



# Appeal or Request for Reconsideration

Planning & Development Services · 1800 Continental Place · Mount Vernon WA 98273  
voice 360-416-1320 · inspections 360-416-1330 · [www.skagitcounty.net/planning](http://www.skagitcounty.net/planning)

File #: <b>PL24-0045</b>
<b>02/06/2024</b>
Received by: <b>PA</b>

## Appeal

What are you appealing?

- Appeal of an Administrative Interpretation/Decision/Action to the Hearing Examiner
- Appeal of an Administrative Order to Abate (code enforcement order) to the Hearing Examiner
- Appeal of Impact Fees to the Hearing Examiner (impact fees must be paid) (SCC 14.30.070)
- Appeal of Hearing Examiner Decision/Action to the Board of County Commissioners
- Request for Reconsideration of a Hearing Examiner Decision (SCC 14.06.180)

<b>File # of Appealed Decision or Permit</b>	PL16-0097 & PL16-0098	<b>Appeal Fee</b>	\$ 1123.20	PDS will calculate
<b>Date of Appealed Decision or Permit</b>	February 6, 2024	<b>Publication Fee</b>	\$ 301.58	PDS will calculate

PDS staff: do not accept appeal form without full payment of fees

**Recording \$303.50**

<b>Appellant</b>				
<b>Standing to appeal</b>	<input type="checkbox"/> Permit applicant <input checked="" type="checkbox"/> Party of Record <input type="checkbox"/> Party subject to code enforcement order <input type="checkbox"/> Other			
<b>Name</b>	Cougar Peak LLC and the McLeod Family			
<b>Address</b>	21454 Grip Road			
<b>City, State</b>	Sedro Woolley	<b>Zip</b>	98284	<b>Phone</b> 425-268-5553
<b>Email</b>	tom@dykesehrlichman.com	<b>Signature</b>		

<b>Attorney or Representative</b> <input type="checkbox"/> None				
<b>Name</b>	Tom Ehrlichman, Dykes Ehrlichman Law Firm, WSBA No. 20952			
<b>Address</b>	PO Box 490			
<b>City, State</b>	Chimacum	<b>Zip</b>	98325	<b>Phone</b> 425-268-5553
<b>Email</b>	tom@dykesehrlichman.com			

## Attachments

For any of the **appeals** listed above, please attach a concise statement with numbered responses to the following questions.

1. What is your interest in this decision?
2. How are you aggrieved by the decision you are appealing?
3. What are the specific reasons you believe the decision is wrong?  
e.g. erroneous procedures, error in law, error in judgment, discovery of new evidence
4. Describe any new evidence.
5. List relevant sections of Skagit County Code.
6. Describe your desired outcome or changes to the decision.

For a request for **reconsideration** of a Hearing Examiner decision, attach a statement identifying the specific errors alleged.

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**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR SKAGIT COUNTY**

In the Matter of:

**Concrete Nor'West/Miles Sand  
and Gravel Special Use Permit**

No. PL16-0097, No. PL16-0098

NOTICE OF APPEAL

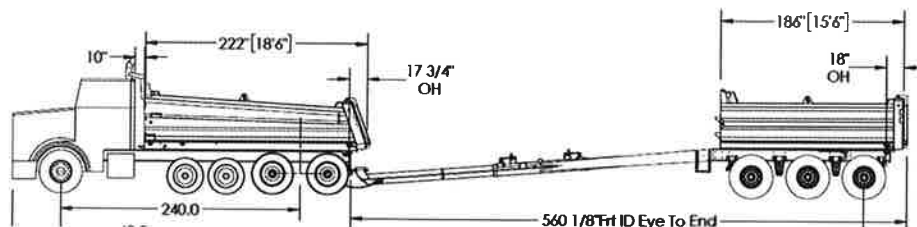
Skagit County Code § 14.06.120

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On behalf of Cougar Peak LLC and the McLeod Family (together "Cougar Peak" or "Appellants"), this is an appeal of the Skagit County Hearing Examiner's approval of a mining permit and forest practice conversion. This administrative appeal to the Board of County Commissioners of the Hearing Examiner's Type II Decision is filed within fourteen days of the Decision, under Skagit County Code (SCC) § 14.06.120(9). Under that code section, the Commissioners may overturn or modify the Hearing Examiner's Decision upon a finding that it was "clearly erroneous."

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In this case, the approval of a new gravel mine on Grip Road is "clearly erroneous" and "wrong" because the applicant refused to add missing shoulders on that dangerous road or negotiate with the County to correct this substandard condition. All traffic experts at hearing agreed truck/trailer crossovers were inevitable and the road lacked escape shoulders. The lives of children on school buses, local residents and employees are at risk. Yet the applicant steadfastly insisted it has the right to operate an unlimited number of truck/trailer combinations during peak hours on Grip Road (shown as greater than 70 feet long in Exhibit C49/S-13 at hearing):



1 Under the County's appeal procedures, it is now up to the Commissioners to correct this  
2 mistaken approval. The record below on traffic safety issues is a defined record-set and demonstrates  
3 existing unsafe limited roadway widths, lack of shoulders and blind curves and intersections on Grip  
4 Road. The Examiner's Decision clearly does not support a mine operation under unsafe conditions.

5 Appellants' specific request is that the Commissioners review the discrete record on traffic  
6 safety issues on Grip Road; adopt appropriate findings and conclusions in place of the Decision; and  
7 then deny the proposal, providing the applicant the opportunity to return to the permit process once  
8 they have developed a specific road mitigation plan that involves cost-sharing negotiations with the  
9 County. In the alternative only, Appellants request a remand directing findings and conclusions on  
10 specific road requirements set by County policy and regulation, including a cost-sharing agreement  
11 with the County, as a condition of approval.

12 However truncated the Hearing Examiner's Decision was when issued last week, Cougar Peak  
13 in this appeal cautions against sending this case back for further review, particularly by a different  
14 hearing examiner, except as an alternative. Rather than reopen the case to even more process  
15 litigation below, the Commissioners can and should find that approval by this or any other hearing  
16 examiner below would be clearly erroneous, based on the existing discrete record of unsafe road  
17 conditions. As demonstrated in Cougar Peak's briefing below, the cold clear facts of this case  
18 demonstrate that project traffic impacts on Grip Road create an unacceptable risk to public safety and  
19 therefore require denial under applicable law.<sup>1</sup>

20 In summary, we respectfully request issuance of a decision denying the proposal, without  
21 prejudice, with findings and conclusions required by code. Under this approach, the applicant may  
22 reapply with a traffic safety study proposing the missing safety improvements to Grip Road.

23 County policies and laws require a denial of the project as it was proposed below, in the  
24 interest of public safety. Denial of the project affords the best path forward for the community.

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27 <sup>1</sup> Upon receiving notice of the Commissioners' hearing on this appeal, Cougar Peak reserves the right to submit a further  
28 written statement to cite to the record below and support the errors cited herein. SCC § 14.06.170(9).

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**I. The Decision Being Appealed.**

On or about February 1, 2024, Hearing Examiner Reeves issued a Decision entitled: *Final Decision of Former Hearing Examiner Reeves (Absent Reconsideration)*. A copy of the Decision is attached hereto as Exhibit A and incorporated herein by reference (the “Decision”). The Decision concluded as follows:

Accordingly, the Hearing Examiner **APPROVES** whatever the Applicant was seeking throughout the permit process and denies all tangential issues and appeals that have stood in the Applicant’s way.

The filing of this administrative appeal stays “all proceedings” utilizing the gravel mine permit.<sup>2</sup>

**II. Name and Address of Appellants and Interests in the Matter.**

The Appellants have standing to bring this appeal to the Commissioners under SCC § 14.06.170(2)(a) (“Only the applicant and parties of record . . . shall have standing to file a closed record appeal of a Level I or Level II decision”). Cougar Peak was a party of record to the Hearing Examiner Level II Decision being appealed here. Appellants participated fully in the proceedings before the Hearing Examiner, represented by counsel.

The Appellants are represented in this appeal by the undersigned attorneys at the address stated below. The names and addresses of the Appellants are as follows:

Cougar Peak LLC	The McLeod Family
c/o Mr. Don Carlin	c/o Mr. Neil McLeod
21454 Grip Road	21454 Grip Road
Sedro Woolley, WA 98284	Sedro Woolley, WA 98284

Cougar Peak LLC is the owner of approximately 800 acres of land directly to the south of the gravel mining operation that is the subject of the Decision. Exhibit C49/S1. The Cougar Peak property is situated directly across from the sole gravel mine entrance on Grip Road. Grip Road is a narrow rural County road with few shoulders, and with blind curves in various places.

The McLeod Family lives on the Cougar Peak property as full time caretakers. *Id.* The single driveway entrance to their residence and to the Cougar Peak property is situated within approximately

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<sup>2</sup> SCC §14.06.230(1).

1 470 feet of the proposed mine entrance on Grip Road, as shown in the attached illustrative map,  
2 Exhibit B.

3 **III. The Specific Reasons why the Appellants Believe**  
4 **the Decision to be Clearly Erroneous; Code and Policy Citations.**

5 The Hearing Examiner's approval of the proposed gravel mine permit in this location is  
6 "clearly erroneous" and should be reversed by the County Commissioners under SCC 14.06.170(3).  
7 The proposal failed to meet the County's specific policies and regulations for mining special use  
8 permits. Those applicable regulations required the applicant to demonstrate proposed road safety  
9 mitigation on Grip Road. The proposal did not include mitigation necessary to preserve safe passage  
10 on Grip Road by the Appellants. The Commissioners should deny the project and reverse the Hearing  
11 Examiner approval with findings and conclusions addressing the obvious Grip Road safety issues.

12 **A. The Commissioners Have the Authority to Issue the Permit Denial.**

13 In response to this appeal, the code requires that the Commissioners conduct a closed-record  
14 appeal of the Hearing Examiner's Type II Decision. SCC § 14.06.170. The Commissioners must  
15 issue a Decision based on "arguments presented in the close record hearing." After holding the  
16 hearing, the code gives the Board the ability to adopt its own Decision: ". . . [I]f the Board believes  
17 the Examiner's decision is clearly erroneous, the Board may adopt its own findings, conclusions and  
18 decision based upon the record made before the Hearing Examiner." SCC § 14.06.170(10)(b).

19 In this appeal, Cougar Peak respectfully suggests that the Commissioners review the record  
20 below related to Grip Road traffic issues, allow a process for comment on that record, adopt findings  
21 and conclusions related to Grip Road, and deny the project for noncompliance with applicable policy  
22 and code criteria for mining special use permits. (As will be explained in prehearing briefing, those  
23 criteria provide solid grounds for permit denial, without overturning the SEPA determination).

24 **B. The Applicant did not Meet Their Burden of Proof.**

25 The Hearing Examiner Decision did not include any finding that the applicant had met its  
26 burden under the code. The County's special use permit code requires the applicant to demonstrate  
27 "that the project complies with applicable goals and policies of the Comprehensive Plan and the  
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1 applicable criteria and requirements of the Skagit County Code and other applicable law.” SCC §§  
2 14.06.160(3), 14.16.900(1)(b)(v)). As a preliminary matter in the Commissioners’ review at hearing,  
3 the Examiner’s failure to include this finding in support of permit approval is itself a basis for reversal  
4 of the approval and denial of the proposal. The appropriate conclusion from that sparse Decision is  
5 that the project did not meet the requirements of the code.

6 **C. The Facts of Road Safety Risk Require Denial of the Project.**

7 The Decision’s approval of this gravel mine on Grip Road is clearly erroneous because the  
8 proposal ignores the key facts in the record. In the proceeding below, it was widely acknowledged  
9 that Grip Road did not have standard road widths or shoulders. The applicant’s traffic studies did not  
10 include any written proposals to widen Grip Road’s substandard widths and shoulders.

11 Appellants presented extensive evidence and expert testimony on these facts and the County’s  
12 requirements related to road safety. There were multiple days of hearing below in which Cougar Peak  
13 presented its evidence, expert witness testimony analyzing the applicant’s traffic studies, and cross  
14 examination of County and applicant traffic witnesses. That record on Grip Road traffic safety issues  
15 is a discrete set that can be readily identified by Appellants in briefing. Cougar Peak requests that the  
16 Commissioners review the discrete record of Grip Road safety issues, and then adopt findings and  
17 conclusions, including the likelihood that the truck/trailer combinations will cross over the centerline  
18 of this narrow road, thus raising the risk of serious injury to existing residents who use the road.

19 **D. The Proposal Lacked the Road Mitigation Required to Meet Policy/Code.**

20 The Commissioner’s’ findings and conclusions should also find that the proposal did not  
21 conform to the fundamental road safety requirements for gravel mines that are clearly spelled out in  
22 County policies and code for the Mineral Resource Overlay zoning district. Specifically, approval of  
23 the project is contrary to the following adopted policies and regulations (in **bold**):

24 1. Skagit County Comprehensive Plan, Mineral Resource Overlay

25 Policy 4D-5.3

26 Roads and Bridges: New public roads and bridges accessing designated Mineral Resource  
27 Overlay Areas shall be designed to sustain the necessary traffic for mineral extraction  
28 operations. **Existing roads and bridges shall be improved as needed as each new extraction**

1 operation is developed. Cost sharing for the improvement of roads and bridges shall be  
2 negotiated between the permitting authorities and the applicant.

3 (Hearing Exhibit C49/S-4)(emphasis added).

4 2. Mineral Resource Overlay Zoning Regulations

5 SCC § 14.16.440(9) . . . .

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

11 . . . .

12 (b) **The Hearing Examiner shall consider** the requirements of this Chapter as minimum  
13 standards based on unique site-specific factors or **conditions as appropriate to protect  
14 public health, safety, and the environment.**

15 (c) **Appropriate site-specific conditions shall be required to mitigate existing and  
16 potential incompatibilities between the mineral extraction operation and adjacent  
17 parcels.**

18 (emphasis added).

19 In summary form, the Commissioners must deny the proposed special mining use because the  
20 project does not comply with the express requirements for mining special use permits, cited above.

21 The proposal and Decision did not protect the public because they:

- 22 ■ Did not include all needed road improvements for the “new extraction operation;”
- 23 ■ Did not include any “cost-sharing” negotiations between Public Works and the applicant  
24 for the improvement of public roads;
- 25 ■ Did not reflect consideration of all “conditions as appropriate to protect public health,  
26 safety, and the environment;”
- 27 ■ Did not include site-specific conditions “required to mitigate existing and potential  
28 incompatibilities” between the heavy use of Grip Road by proposed truck/trailer  
combinations and normal use of Grip Road by residents and school children on adjacent  
parcels.

29 E. **Additional Special Use Permit Criteria for Hearing Examiner Approval.**

30 Approval of the special mining use permit violates five of the following explicit code criteria  
31 in SCC § 14.16.900(1)(b)(v) that require an operation to ensure public safety on Grip Road:

1 (v) The burden of proof shall be on the applicant to provide evidence in support of  
2 the application. **The criteria for approval or denial shall include the following:**

- 3 (A) **The proposed use will be compatible with existing and planned land use.**  
4 (B) The proposed use complies with the Skagit County Code.  
5 (C) The proposed use will not create undue noise, odor, heat, vibration, air and  
6 water pollution impacts on surrounding, existing, or potential dwelling units,  
7 based on the performance standards of SCC 14.16.840.  
8 (D) The proposed use will not generate intrusions on privacy of surrounding uses.  
9 (E) **The proposed use will not cause potential adverse effects on the general  
10 public health, safety, and welfare.**  
11 (F) For special uses in Industrial Forest—Natural Resource Lands, Secondary  
12 Forest—Natural Resource Lands, Agricultural—Natural Resource Lands, and  
13 Rural Resource—Natural Resource Lands, the impacts on long-term natural  
14 resource management and production will be minimized.  
15 (G) **The proposed use is not in conflict with the health and safety of the  
16 community.**  
17 (H) **The proposed use will be supported by adequate public facilities** or services  
18 and will not adversely affect public services to the surrounding areas, or  
19 conditions can be established to mitigate adverse impacts on such facilities.  
20 (I) **The proposed use will maintain the character, landscape and lifestyle of the  
21 rural area.** For new uses, proximity to existing businesses operating via  
22 special use permit shall be reviewed and considered for cumulative impacts.

23 These criteria of permit approval establish a right for Cougar Peak and other rural landowners to  
24 adequate special use permit conditions to assure safe travel on Skagit County roads, including on Grip  
25 Road, prior to adding 70-foot tractor/trailer rigs full of gravel.

26 **F. Specific Reasons for Denial Under the Above Criteria for Approval.**

27 Under the explicit criteria adopted in those policies and regulations, the project must be denied  
28 and the Decision of approval reversed because the Decision:

- 29 1. Fails to describe the existing conditions on Grip Road that do not meet applicable  
30 County road standards, i.e., insufficient widths for travel lanes, lack of shoulders;
- 31 2. Fails to mention or analyze the high potential for cross-over accidents on Grip Road or  
32 the current use of Grip Road by Appellants, their neighbors and local school children, including  
33 morning and afternoon school bus transportation;



1 3. Fails to review and consider relevant evidence in the record concerning the risks  
2 associated with the applicant's proposal to operate 70-foot long truck/trailer combinations filled with  
3 gravel on Grip Road;

4 4. Fails to review and consider the degree to which applicant submittal materials lacked  
5 the traffic safety analysis required to assess necessary mitigation conditions;

6 5. Fails to include "appropriate site-specific conditions" to mitigate the above risks and  
7 road deficiencies, in order to eliminate existing and potential incompatibilities between the proposed  
8 operation and adjacent parcels, as required by SCC 14.16.440(9);

9 6. Fails to impose mitigation conditions to protect public health, safety and welfare, as  
10 required under Comprehensive Plan Policy 4D-5.3, and failed to require negotiations for cost-sharing  
11 between Public Works and the applicant prior to approval;<sup>3</sup>

12 7. Is unsupported by any safety review by Public Works demonstrating that Grip Road is  
13 "capable of sustaining the necessary traffic for the proposed mineral extraction operation," as required  
14 by SCC § 14.16.440(8)(i); and

15 8. Is unsupported by any safety analysis from Public Works of truck/trailer crossovers on  
16 Grip Road and the degree to which they pose increased risk to school buses and local residents.<sup>4</sup>

17 **G. Other Mistakes and Errors in the Decision of Approval.**

18 The Decision and approval of the project was in error and must be reversed for a series of  
19 additional reasons, as follows. The Decision:

20 1. Did not contain the mandatory elements for a Hearing Examiner decision required in  
21 SCC §§ 2.10(a), 14.06.160(9), including, *inter alia* findings of fact and conclusions of law;  
22 Appellants request that the Commissioners review these requirements and adopt their own findings of  
23 fact, conclusions of law, and appropriate order to deny the application;

24 2. Includes the Hearing Examiner's error denying Cougar Peak's motion to intervene in  
25 the SEPA appeal (Cougar Peak's motion and the denial are attached hereto as Exhibit C);<sup>5</sup> and

26 3. Was not accompanied by the Notice of Decision required in SCC 14.06.200.<sup>6</sup>

27 <sup>3</sup> Because the applicant never provided evidence of any cost-sharing negotiations with Public Works under Policy 4D-5.3  
28 for Grip Road shoulder widening, the proposal must be denied.

<sup>4</sup> The Appellants reserve their right to present briefing describing evidence in the record below, including the evidence and  
testimony showing why the level-of-service and line-of-sight analysis performed by Public Works was insufficient to  
analyze the adverse impact of 70-foot truck/trailer crossovers on Grip Road's narrow travel lanes, blind curves and  
intersections, both to the west and to the east of the proposed mine exit.

<sup>5</sup> Note: In response to Cougar Peak's motion to intervene, PDS through its attorney filed a non-objection on April 22,  
2022. However, the applicant opposed intervention.

<sup>6</sup> The Notice of Decision issued by Planning and Development Services on February 2, 2024 contains the following errors:  
(1) an incorrect appeal period for appeals under the State Environmental Policy Act, RCW ch. 43.21C ("SEPA"), when a

1 H. Finality can be Achieved by Commissioner Denial of the Permit Application.

2 Cougar Peak's goal in this appeal is a solution that results in a plan for Grip Road  
3 improvement, allowing the applicant to come back with a new proposal that includes negotiated  
4 improvements and cost-sharing with the County for those repairs. To get to that point in light of the  
5 confusing and lengthy permit process here, the most expedient process would be for the  
6 Commissioners on appeal to: (a) hold a hearing; (b) establish procedures for a review of the record  
7 concerning Grip Road safety issues; (c) issue limited findings and conclusions on Grip Road issues;  
8 and (d) deny the application – with the caveat that the denial is “without prejudice” and the applicant  
9 may return for reprocessing, once the detailed plan for road improvements and cost-sharing with the  
10 County is in place.

11 Cougar Peak requests a denial rather than a remand in order to avoid the potential for  
12 confusion and appearance of fairness issues; proceedings to date illustrate the problems.  
13 Unfortunately, there appear to be questions concerning how the Examiner reached his Decision,  
14 including “ the very clear threat of being put in jail for an indeterminate period of time,” and  
15 foundational behind-the-scenes communications that led to that result. As it turns out, the Hearing  
16 Examiner Decision cites coercion by both the County and the applicant, and characterizes his resulting  
17 approval of the project as a “deferral to the Applicant's desires and County's wishes” as “inevitable”  
18 upon threat of incarceration:

19 But.... Out of an abundance of caution given the very clear threat of being put in jail for an  
20 indeterminate length of time – as the Applicant and County convey as a common solution to  
21 the problem of how to deal with non-financially motivated former appointed part-time staff  
22 who they believe must complete whatever tasks previously assigned no matter the status of  
23 their contract – deferral to the Applicant's desires and County's wishes is appropriate,  
24 inevitable, and definitely, 100%, totally uncoerced.

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27 SEPA decision can only be appealed to superior court with an appeal of the underlying permit decision, filed within 21  
28 days under LUPA, RCW ch. 30.70C; (2) incorrectly stating that the Decision modified “the SEPA MDNS,” when the  
Decision said nothing substantive about modifying the SEPA MDNS; (3) an apparent authorization for “parties of record”  
in general to appeal the Hearing Examiner's Decision on the SEPA appeal; and (4) a lack of reference to the right of  
parties of record to file a petition for reconsideration within ten days.

1 Accordingly, the Hearing Examiner APPROVES whatever the Applicant was seeking  
2 throughout the permit process and denies all tangential issues and appeals that have stood in  
the Applicant's way.

3 Decision at 2.<sup>7</sup>

4 In an unusual County action against its own Examiner during the mandamus proceeding in  
5 Skagit County Superior Court, the County deputy prosecutor for PDS went on record supporting the  
6 mandamus against the Hearing Examiner, when filing the County's answer to the complaint. As a  
7 result, the Examiner identified influence from both the County and the applicant.

8 At some point in the five months between an August 17, 2023 status conference with the  
9 Hearing Examiner and issuance of his decision in February 2024, the applicant and the County deputy  
10 prosecuting attorney representing Planning and Development Services ("PDS") and Public Works  
11 could have called for a status conference with all parties, and a right of public attendance, to discuss  
12 with the Examiner the possibility of a replacement Examiner. Instead, the County and applicant chose  
13 to work together in private for issuance of the Mandamus order and a contempt ruling in Superior  
14 Court. Recently-received public records of email communications show that PDS, through their  
15 representative, conducted negotiations with the applicant for possible removal of the hearing examiner  
16 as well as coordination on the mandamus proceeding directed at the Hearing Examiner, outside of the  
17 view of parties to the proceeding, prior to issuance of the Hearing Examiner's Decision.<sup>8</sup>

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<sup>7</sup> Unlike the typical appearance of fairness case, here the decision maker describes the threat of incarceration as the context  
22 within which he is making his decision in favor of the applicant, and then, with plainly intended sarcasm, says that his  
decision was "100% totally uncoerced," with the obvious intended meaning that it was coerced.

23 <sup>8</sup> These private communications between County officials and Concrete Nor'West appear to be the foundation for the  
24 statement in the Decision concerning coercion. Cougar Peak raises these issues of potential unfairness for the record.  
25 Facts known to date include the existence of a contract between the County and the applicant for supply of material in  
26 2023 for several hundreds of thousands of dollars. And, the public records show that some of the exchanges between  
County officials and the applicant in private discussed replacing this Hearing Examiner; those discussions may have taken  
27 place directly or through intermediaries between the applicant and the County Risk Manager and Deputy Assistant County  
Administrator. The County was a party to the contested proceeding before the Hearing Examiner, defending its SEPA  
28 determination and other judgment calls made during permit review prior to recommending approval with conditions.  
PDS' legal counsel represented PDS and Public Works, asserting at hearing the adequacy of its traffic safety review at  
Grip Road, in response to contrary assertions by Cougar Peak at hearing, assertions identical to those presented here by  
Appellants.

1           Whatever procedural irregularities take place in this case, below, the substance of the case is  
2 now before the Commissioners in this appeal; the central issue is the failure of this proposal to assure  
3 Grip Road safety to the traveling public. The streamlined Decision approving that proposal serves as  
4 a clear basis for denial of the proposal, in a reversal of the Hearing Examiner. A denial provides the  
5 Commissioners with a pathway to dispense with the case short-term in a relatively straight forward  
6 process, substituting new findings and conclusions for the cursory Decision. Any appeals of a denial  
7 by the Board would be decided in Superior Court; by contrast a remand to a new hearing examiner  
8 would likely result in a new appeal up to the Commissioners, in a repeat of this case.

9           And, denial of the permit with the proper wording can still give the applicant a pathway to  
10 correct the missing road mitigation proposal, i.e., denial can be ordered by the Commissioners  
11 “without prejudice.” Cougar Peak’s requested denial of the special use permit does not kill the  
12 proposal (that was never Cougar Peak’s intent) but would allow the applicant the option of reapplying  
13 once road mitigation is proposed, in order to commence a new, impartial process. The finality  
14 achieved by this approach avoids the problems inherent in this long-drawn-out proceeding and ensures  
15 compliance with the code criteria for the special use permit.

#### 16                           **IV.    The Desired Outcome or Changes to the Decision.**

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18           1.       Appellants respectfully request that the Commissioners reverse the Decision and deny  
19 the special use permit based on Grip Road safety issues, with appropriate findings and conclusions  
20 and “without prejudice.” Cougar Peak requests an opportunity to present proposed findings after the  
21 Commissioners establish a process should for participation and review of the limited record on Grip  
22 Road safety issues. Denial of the project based on that record and “without prejudice” will allow the  
23 County and Applicant to commence negotiations over necessary road improvements and cost-sharing  
24 as required by the Unified Development Code, SCC Title 14.

25           2.       In the alternative only, the matter should be remanded to the Hearing Examiner for  
26 findings of fact, conclusions of law and other elements as required by SCC 14.06.160(9) and the rules  
27 of the Hearing Examiner. Appellants request that the Commissioners’ remand include direction to: (a)  
28 require a complete Public Works safety analysis of risk to school bus traffic on Grip Road both west

1 and east of the mine exit due to the maximum extent of truck/trailer use from the mine; (b) impose  
2 mitigation conditions required by policy and code for the protection of public safety on both west and  
3 east segments of Grip Road, including but not limited to at the driveway to the Cougar Peak property,  
4 at blind curbs, and all intersections; (c) require cost-sharing negotiations between the County and the  
5 applicant to widen shoulders on Grip Road, both west and east of the proposed mine exit; and (d)  
6 reverse the order denying Cougar Peak's motion to intervene in the SEPA Appeal portion of the  
7 proceeding.

8 3. The Commissioners should stay any further proceeding on this appeal, including any  
9 decision or remand, until there is a Notice of Decision that accurately describes appeal processes.

10 Respectfully submitted this 6th day of February, 2024.

11 DYKES EHRLICHMAN LAW FIRM

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Tom Ehrlichman, WSBA No. 20952  
Co-Counsel for Cougar Creek LLC, and  
the McLeod Family

LAW OFFICES OF J. RICHARD ARAMBURU



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Per tel. authorization

J. Richard Aramburu, WSBA No. 466  
Co-Counsel for Cougar Creek LLC, and  
the McLeod Family

# EXHIBIT A

## BEFORE THE HEARING EXAMINER FOR SKAGIT COUNTY

In the Matter of the Application for a Special Use Permit by	)	No. PL16-0097; No. PL16-0098
	)	Appeal No. PL22-0142
	)	
<b>Concrete Nor'West/Miles Sand and Gravel</b>	)	
	)	
<b>&amp;</b>	)	
	)	
In the Matter of the Appeal of <b>Central Samish Valley Neighbors</b>	)	
	)	
	)	
Of a Mitigated Determination <u>of Nonsignificance</u>	)	FINAL DECISION OF FORMER HEARING EXAMINER REEVES (ABSENT RECONSIDERATION)

### DECISION

Concrete Nor' West/Miles Sand and Gravel (Applicant) 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 also submitted a Forest Practice Conversion application. Skagit County (County) determined that both applications were complete on March 22, 2016.

For the next *six years*, the Applicant, County staff, and the County's former (former) Hearing Examiner debated, argued, and appealed various aspects of the project and administrative decisions without ever bringing the proposal to an open record public hearing for a final decision.

The record does not reflect whether the Applicant sought a writ of mandamus requiring specific action on the part of County staff or the Hearing Examiner at any point during this six-year period or otherwise threatened sanctions but—given the ease with which the Applicant was able to obtain a mandamus order now in overwhelmingly unusual circumstances—it would be absurd to assume otherwise.

Specifically, with the County's blessing (as evinced in the County Attorney's answer to the show cause motion for mandamus), the Applicant convinced more than one elected judicial officer to dictate specific action to a part-time executive branch appointee (whose contract with the County stresses that the Hearing Examiner will be an independent contractor and that such contract does not create "a relationship of... master-servant") *had already been terminated by the County Board of Commissioners prior to the show cause and later contempt hearings.*

*Final Decision Absent Reconsideration  
Skagit County Hearing Examiner  
Concrete Nor'West/Miles Sand and Gravel SUP  
Appeal No. PL22-0142*

Moreover, while Hearing Examiner Reeves is specifically named in said contract, the County's contract was, prior to termination, with "Sound Law Center," a single-member LLC wholly owned by another attorney, Ted Hunter, whose bar number is much lower and clearly has the experience and background to step in and complete this matter should the County desire it.... Especially given Mr. Hunter's having severed Mr. Reeves' ties with SLC and earlier conveyed such information to the County.

Even further, to ensure there is no confusion, Mr. Reeves would like to clearly to convey to the County that he is releasing any right they have conferred upon him with termination of the previous Hearing Examiner agreement to retain jurisdiction of this matter, and supports the County's clear ability to appoint someone else as needed to conclude it.

But.... Out of an abundance of caution given the very clear threat of being put in jail for an indeterminate length of time – as the Applicant and County convey as a common solution to the problem of how to deal with non-financially motivated former appointed part-time staff who they believe must complete whatever tasks previously assigned no matter the status of their contract – deferral to the Applicant's desires and County's wishes is appropriate, inevitable, and definitely, 100%, totally uncoerced.

Accordingly, the Hearing Examiner **APPROVES** whatever the Applicant was seeking throughout the permit process and denies all tangential issues and appeals that have stood in the Applicant's way.

So decided this 1<sup>st</sup> day of February 2024.



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ANDREW M. REEVES  
Hearing Examiner

#### 14.06.180 Reconsideration.

A party to a hearing before the Hearing Examiner may seek reconsideration only of a final decision by filing a written request for reconsideration at Planning and Development Services within 10 calendar days of the date of decision. The request shall set forth the specific errors alleged. The Hearing Examiner shall consider the request, without public comment or argument by the party filing the request. If the request is denied, the previous action shall become final. If the request is granted, the Hearing Examiner may revise and reissue its decision or may call for argument in accordance with the procedures for closed record appeals. Reconsideration should be granted only when a material legal error has occurred or a material factual issue has been overlooked that would change the previous decision. A request for reconsideration shall not be required, however, prior to exercising any rights to appeal. (Ord. O20070009 (part); Ord. 17938 Attch. F (part), 2000)

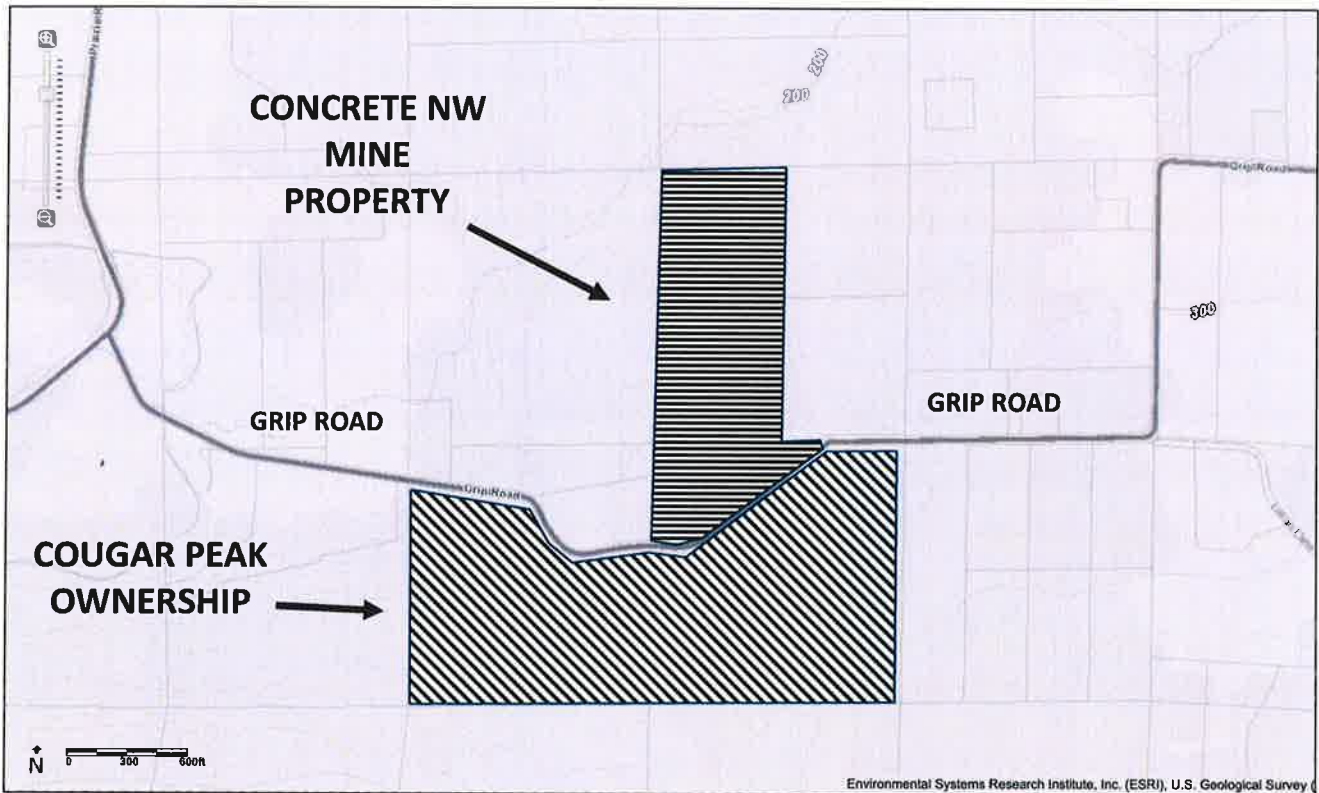


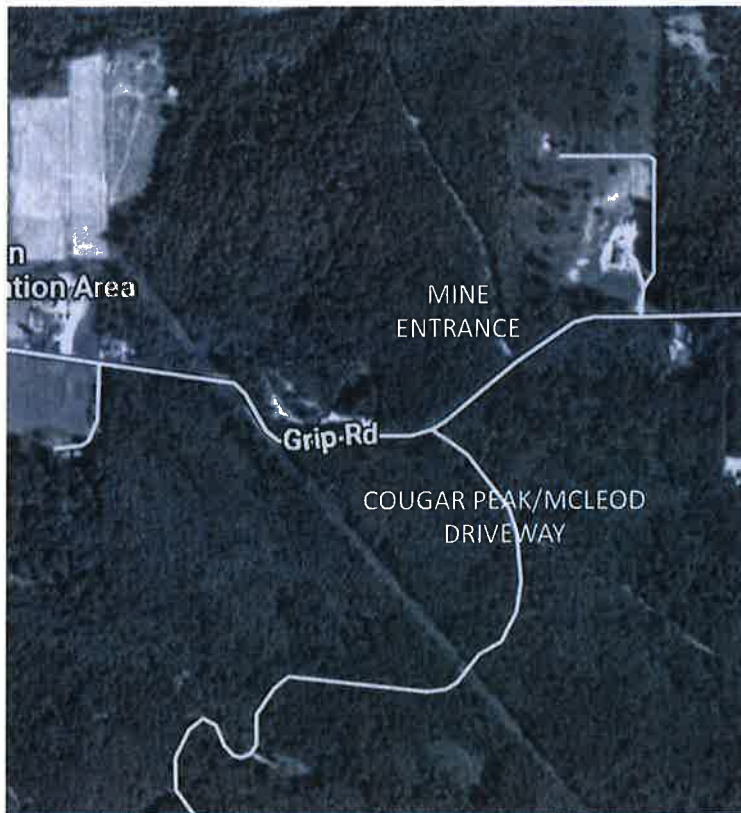
**EXHIBIT B**

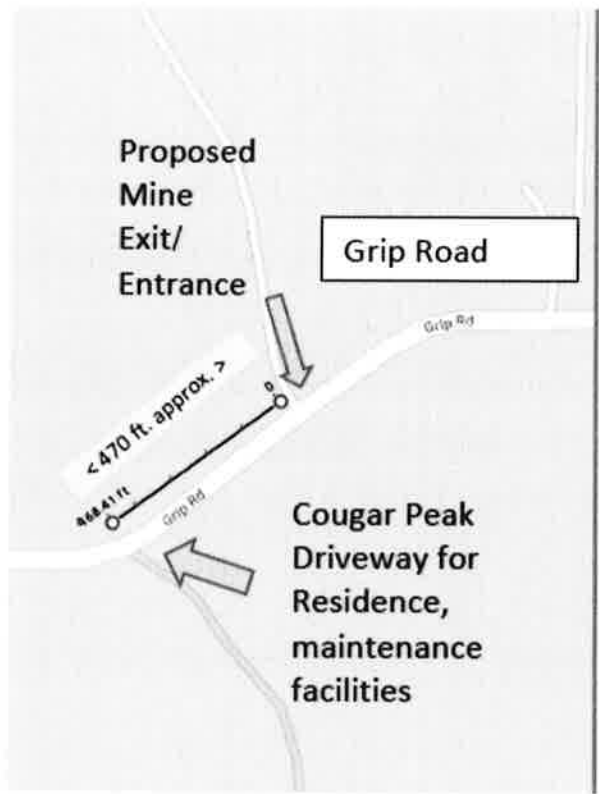
(3 Pages)

**Illustrative Maps of**  
**Adjacent Parcels:**

**Cougar Peak LLC Ownership and**  
**Grip Road Mining Site for Concrete NW**







**EXHIBIT C**

**BEFORE THE HEARING EXAMINER  
FOR SKAGIT COUNTY**

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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 it 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.<sup>1</sup> 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.

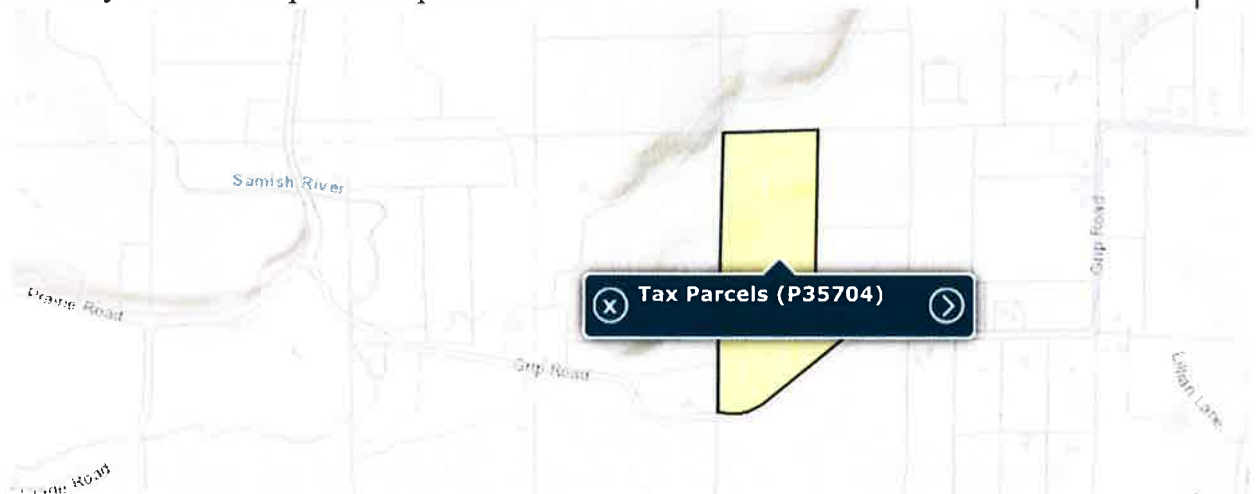
According to application documents on file at Skagit County, the applicant proposes to haul gravel from a mine, by dump truck through a parcel that it owns or controls, out onto Grip Road and thence to Prairie Road, and then onward to a plant for crushing and refining the rock further. Grip Road is a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

<sup>1</sup> 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.

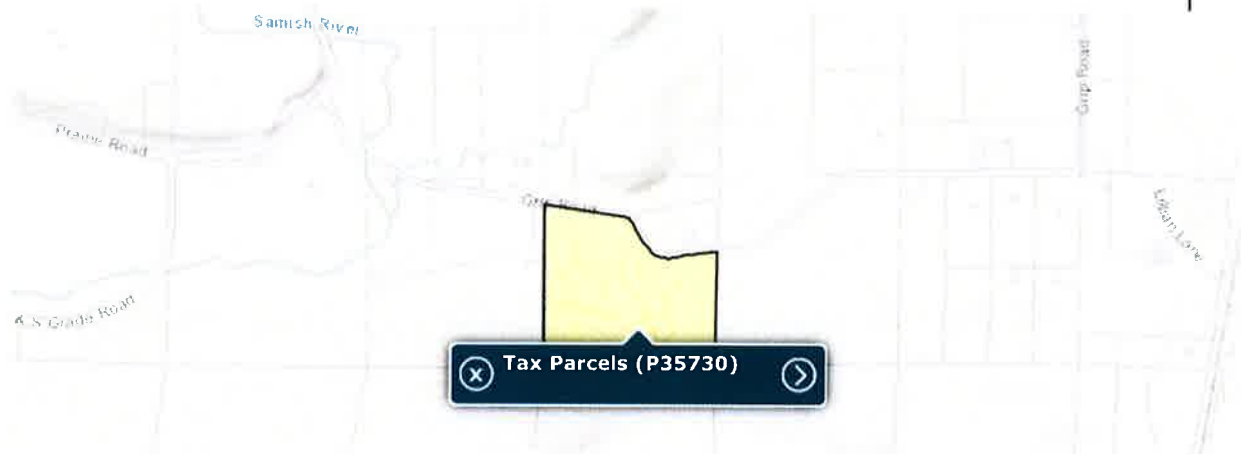
6 Cougar Peak owns approximately four hundred acres directly adjacent to the south of  
7 the mining operation's proposed haul-out route onto Grip Road. The Cougar Peak property is  
8 rural forest land accessed through a driveway gate at Grip Road. The fourteen parcels owned  
9 by Cougar Peak are inter-connected 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:

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

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

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

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  
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27 \_\_\_\_\_  
28 <sup>2</sup> See for example the elements of the case, which will be described in the Hearing Examiner’s order following the  
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.

1 **IV. CONCLUSION**

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

3 (a) The right to participate fully in the prehearing conference to be held April 11,  
4 2022 so as to participate in the scheduling of the hearing date and time for presentations at  
5 hearing, as well as the exchange of exhibit and witness lists and other pleadings in both the  
6 SEPA Appeal and the Special Use Permit proceedings;

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

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

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

16 Respectfully submitted this 8<sup>th</sup> day of April,

17 **DYKES EHRLICHMAN LAW FIRM**

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


22 **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:

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27 

28 Tom Ehrlichman, WSBA No. 20952

**From:** Sound Law Center Clerk soundlawcenter.clerk@gmail.com  
**Subject:** Subject: PL16-0097, PL16-0098, Appeal No. PL22-0142 Concrete NorWest/Miles Sand and Gravel SUP  
**Date:** May 12, 2022 at 4:56 PM  
**To:** tom@dykesehrlichman.com, jasond@co.skagit.wa.us, kyle@loringadvising.com, Lynn, Bill BLynn@gth-law.com, Schutz, Reuben  
rschutz@gth-law.com  
**Cc:** sofiabc@co.skagit.wa.us, hhart@co.skagit.wa.us, corir@co.skagit.wa.us, david@soundlawcenter.com



## PROCEDURAL COMMUNICATION:

The Skagit County Hearing Examiner will be issuing a decision DENYING the intervention request by Attorney Tom Ehrlichman on behalf of Cougar Peak, LLC. That decision will provide additional details on the Hearing Examiner's ruling.

The Hearing Examiner will also provide updated pre-hearing orders to all the parties (those remaining involved in the SEPA appeal as well as Mr. Ehrlichman) further clarifying deadlines, processes, etc. -- much of this information already discussed with the parties at the earlier pre-hearing conference.

Finally, the Hearing Examiner notes that any dispositive motions related to the SEPA appeal remain due (for those still involved in the SEPA portion of this consolidated matter -- i.e., the County, Central Samish Valley Neighbors, and the Applicant) by the end of the day tomorrow, May 13th.

Thank you. -Office of the Skagit County Hearing Examiner