



# 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

File #:
PL24-0058
2/12/2024
Received by:

## 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, -0098, PL22-142	<b>Appeal Fee</b>	\$	<i>PDS will calculate</i>
<b>Date of Appealed Decision or Permit</b>	Feb. 1 2024	<b>Publication Fee</b>	\$	<i>PDS will calculate</i>

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

<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>	c/o PO Box 490			
<b>City, State</b>	Chimacum, WA	<b>Zip</b>	98325	<b>Phone</b> 4252685553
<b>Email</b>	tom@dykesehrlichman.com	<b>Signature</b>		

<b>Attorney or Representative</b> <input type="checkbox"/> None				
<b>Name</b>	Dykes Ehrlichman Law			
<b>Address</b>	PO Box 490			
<b>City, State</b>	Chimacum, WA	<b>Zip</b>	98325	<b>Phone</b> 4252685553
<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.

**BEFORE THE HEARING EXAMINER  
FOR SKAGIT COUNTY**

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In the Matter of the application for a  
Special Use Permit by:

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

&

In the matter of the Appeal of

**Central Samish Valley Neighbors**

of a SEPA Mitigated Determination of  
Nonsignificance

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

COUGAR PEAK'S  
REQUEST FOR  
RECONSIDERATION

SCC § 14.06.180

This matter concerns reconsideration of approval for a mining special use permit under applicable Skagit County Comprehensive Plan policies, development regulations and adopted road standards. The proposal is to extract up to 200,000 tons of gravel annually from a mine near the Samish River and transport it out to Grip Road, the only public roadway serving the mine. The applicant proposes use of Grip Road by truck/trailer combinations that are 74 feet long. Exhibit A.

The applicant proposes to place these combination loads on Grip Road "on average" 46 times per day, but without any limit, so that trucks can travel 29.4 times *per hour* during peak use.<sup>1</sup> At hearing, the applicant testified that they would not agree to a cap the number of truck trips proposed during peak hours of use of Grip Road by local residents and school buses transporting their school children to and from local schools. County staff recommended Hearing Examiner approval, with conditions.

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<sup>1</sup> Applicant's Traffic Impact Analysis dated October 8, 2020, Hearing Exhibit C-18 (B-63).

1 The Hearing Examiner issued a Decision approving the project without conditions or an  
2 interpretation of the law, on February 1, 2024 (“Decision”). Exhibit B. Planning and Development  
3 Services issued a Notice of Decision on February 2, 2024, subsequently revised. *Id.*

4 Cougar Peak LLC and the McLeod Family (together “Cougar Peak”) request reconsideration  
5 of the Decision, as the owners and caretakers of property directly across Grip Road from the truck  
6 mine exit. They do not oppose the mine permit per se, but request that Hearing Examiner reexamine  
7 the record and applicable law and impose conditions of approval .

### 8 I. Questions Presented by This Case.

9 1. Does the Hearing Examiner have authority to impose road safety conditions requested  
10 by Cougar Peak, as the County’s decision-maker on a Mining Special Use Permit application and on  
11 appellate review under the State Environmental Policy Act, RCW ch. 43.21C (“SEPA”) ?

12 2. If so, is there substantial evidence in the record to support the requested conditions  
13 limiting truck/trailer traffic on Grip Road for this mining proposal?

14 3. Should Cougar Peak’s requested conditions be included as part of any SEPA  
15 determination, revisiting and granting Cougar Peak the right of intervention in the SEPA Appeal, as  
16 an owner of property directly across from the proposed mine with a unique interest in the case?

### 17 II. Background Facts.

18 The Skagit County Hearing Examiner reviewed the applicant’s requested mining special use  
19 permit, forest practices permit and an accompanying administrative SEPA appeal. The Examiner  
20 is the County decision maker on the permits and appellate quasi-judicial officer on SEPA appeals. The  
21 Examiner held seven days of hearings on August 26 and 29 and September 2, 8, 9, 13 and 23. Audio  
22 tapes of the hearings are maintained on the County’s website<sup>2</sup> and a list of hearing exhibits is provided  
23 there as well.<sup>3</sup>

24 It was uncontested at hearing that Grip Road is a narrow Skagit County rural roadway that  
25 does not meet County standards under current conditions, due to narrow widths, ditches, curve

26  
27 <sup>2</sup> <https://skagitcounty.net/Departments/OfficeOfLandUseHearings/decisions.htm>

28 <sup>3</sup> <https://skagitcounty.net/Departments/PlanningAndPermit/gravelmine.htm>

1 warning and speed reduction signs, occasional guardrails, no shoulder striping, limited available  
2 shoulder area, and steep grade sections. In several days of expert testimony during direct and cross  
3 examination at hearing, Cougar Peak and others offered the Hearing Examiner a substantial basis in  
4 fact to support permit and SEPA conditions necessary to ensure safe use of Grip Road by the gravel  
5 mine trucks.

6 At hearing and in the record of exhibits, the County was made aware of existing conflicts  
7 between trucks and local residents transiting Grip Road, their sole roadway through their  
8 neighborhood.<sup>4</sup> The testimony of all road engineers at hearing acknowledged that school buses on  
9 Grip Road would encounter the large truck/trailer combinations with more frequency upon operation  
10 of the mine, both during morning and afternoon hours of use. However, traffic engineers for the  
11 applicant and the County did not propose road improvements or mitigation for these conditions,  
12 acknowledging only the need for lighted signage to address sight distance deficiencies on Grip Road.  
13 As described in more detail below, the County Public Works personnel and the applicant interpreted  
14 the County's Road Standards Manual<sup>5</sup> as releasing the applicant from an obligation to provide a road  
15 conflicts analysis addressing safety concerns, also known as a "Level II Traffic Impact Analysis"  
16 ("TIA").

17 Had the applicant provided a Level II TIA, it would have been required to prepare a detailed  
18 safety analysis to identify the kinds of conflicts revealed at hearing (now in the record) and propose  
19 the kind of mitigation conditions requested here on reconsideration, to protect the public. In one  
20 obvious example of this, none of the traffic studies by the applicant or comments by Public Works  
21 ever mentioned use of Grip Road by school buses or attempted to quantify the increase in risk from  
22 heavy gravel trucks. On reconsideration, the Hearing Examiner has the opportunity to review this  
23 record of potential conflicts on Grip Road, make findings of fact and issue permit conditions.

24  
25  
26  
27 <sup>4</sup> Live testimony at hearing involved several instances where cars had left the road, including at least one instance where  
28 transport of a child from school encountered a large truck at an intersection and the truck could not stop.

<sup>5</sup> Chapter 4.00 of the Skagit County Road Standards, Version 5.2 (May 26, 2000) ("Road Standards").

1                   **III. The Hearing Examiner has Authority to Impose Road Safety Conditions.**

2                   Cougar Peak respectfully requests that the Hearing Examiner correct “material errors of law”  
3 in the Decision by incorporating the following discussion of Hearing Examiner authority, as new  
4 “Conclusions of Law.” The Comprehensive Plan gives the Hearing Examiner the authority to require  
5 road improvements as conditions of approval.

6                   Policy 4D-5.3

7                   Roads and Bridges: New public roads and bridges accessing designated Mineral Resource  
8 Overlay Areas shall be designed to sustain the necessary traffic for mineral extraction  
9 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.**

10 (Hearing Exhibit C49/S-4)(emphasis added). Those powers are further enumerated in the County’s  
11 zoning code applicable to mining special use permits:

12                   (9) Hearing Examiner Review. Except as may be provided herein to the contrary,  
13 all applications for mining operations special use permit shall be reviewed by  
14 the Hearing Examiner under the procedures set forth in Chapter 14.06 SCC.

15                   **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:**

16                   . . . .

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

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

21 SCC § 14.16.440(9) (emphasis added).

22                   Elsewhere, the code applicable to mining special use permits authorizes and requires the  
23 Hearing Examiner to add conditions to any permit approval needed to protect local citizenry.

24 SCC § 14.16.900(1)(b)(v) requires public safety on Grip Road as a precondition to approval:

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

27                   (A) **The proposed use will be compatible with existing and planned land use.**

28                   (B) The proposed use complies with the Skagit County Code.

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

19 SCC § 14.16.900(1)(b)(v) (emphasis added). These criteria of permit approval establish a right for  
20 Cougar Peak and other rural landowners to adequate special use permit conditions to assure safe travel  
21 on Skagit County roads, including on Grip Road, prior to adding 70-foot tractor/trailer rigs full of  
22 gravel.

23 Several sections of the County Road Standards adopted by the Commissioners also provide  
24 authority for imposition of road improvements as a condition of approval. The Road Standards at  
25 Chapter 3.00 and § 4.02(A) at Page 44 recognize that the *type of road use* from a project and unsafe  
26 local conditions can trigger the need for road improvements regardless of the number of peak hour  
27 trips involved. Chapter 3.00 of the Road Standards begins by saying that the applicable standard is  
28 determined by both the comprehensive plan/zoning and the use (residential, industrial, commercial,  
etc.), in addition to projected traffic volumes. Section 4.06 specifies that road mitigation is required  
for any development that significantly adds to safety problems:

The County may require developments to make traffic impact contributions if the  
development significantly adds to a road's need for capacity improvement, to a roadway safety  
problem, or to the deterioration of a physically inadequate roadway. Such traffic impact contributions

1 are in addition to transportation and frontage improvements required in the immediate area for access  
2 to and from the development. See also Section 2.14.

3 Section 4.06, Road Standards. Section 4.02(A) specifies that a Level I analysis “shall be expanded to  
4 a Level II TIA if any of the Level II warrants are met.” Subsection 4.02(B) lists the seven Level II  
5 warrants that compel a complete Level II TIA. Under the sixth of those seven warrants, a safety  
6 mitigation analysis (Level II TIA) is required “If there exists any current traffic problems in the local  
7 area as identified by the County . . . .”<sup>6</sup>

8 Section 4.09 and Appendix A of the Road Standards authorizes the County “to determine if the  
9 probability of accidents will increase with the addition of project traffic.” Road Standards § 4.09 at  
10 Page 52. The manual specifies that a “Conflict Analysis should determine the number of conflict  
11 points, frequency of conflicts and severity of conflicts based on expected traffic volumes and mix of  
12 traffic.” Thereafter, a field study is required to identify “what alternative treatment(s) should be  
13 considered to correct the problem. Identified safety problems shall be corrected as part of the overall  
14 development work . . . .” Road Standards at 52-53. That conflict analysis was conducted during the  
15 hearing, through the testimony of the traffic experts of all parties.

16 The analysis of safety considerations conducted at the hearing (beyond level-of-service  
17 discussion in the TIA) reflects the widespread understanding that heavy truck use of narrow rural  
18 country roads comes with impacts that are an order of magnitude greater than other types of  
19 development. The volume of projected truck traffic is only one aspect of the analysis. In this case, a  
20 condition is needed to place reasonable limits on that volume because, proposed staff conditions allow  
21 too much discretion as to the applicant’s estimated volume of up to 29.4 trucks per hour.

22 More relevant to the analysis of the gravel mine road impact is the type of truck, the weight of  
23 the vehicles, the length of the truck rigs, and the ability of existing road conditions to handle the  
24 increase in encounters between trucks and local transit. Under that formula, the comprehensive plan  
25 gives the Examiner the authority to require road improvements as necessary and mandate negotiations  
26 over cost-sharing. Similarly, the special use permit code cited above gives the Examiner express

27 <sup>6</sup> Although Subsection (B) of Section 4.02 describing Level II requirements a statement concerning more than 50 peak  
28 hour trips, Subsection (A) requires a Level II TIA “if any of the Level II warrants are met” without restricting usage of  
safety analysis to projects with a higher trip count, i.e., the referenced plats.

1 authority to impose conditions necessary to protect public safety and to “mitigate existing and  
2 potential incompatibilities between the mineral extraction operation and adjacent parcels.”

3 **IV. Cougar Peak’s Requested Road Safety Conditions.**

4 At the conclusion of the hearing, the Examiner requested that the parties provide him with  
5 proposed conditions in the event he approved the project. Cougar Peak respectfully requests  
6 modification of the Decision to include conditions it presented at that time, attached hereto as  
7 Exhibit C, and reprinted as follows: <sup>7</sup>

8 In addition to the conditions proposed in the Staff Report, Cougar Peak LLC and the McLeod family  
9 propose the following conditions or revisions to staff-proposed conditions:

- 10 1. Prior to commencing operations, the applicant is required to file a certificate of compliance  
11 with the Hearing Examiner demonstrating completion of the following.
- 12 (a) The applicant shall install and maintain automatic traffic counters at the mine  
13 entrance to and from Grip Road and provide Skagit County monthly printouts of all  
14 traffic entering and exiting the mine, indicating time of day, type of vehicle and  
15 whether loaded or unloaded;
- 16 (b) Acquisition of right-of-way and construction of road widening and striping at any  
17 curve or corner on Grip Road to the standard shown on Figure B-6 of the County  
18 adopted Road Standards (Exhibit 18); the applicant shall obtain the written approval  
19 of the County Road Engineer for plan approvals, construction methods, and  
20 inspection of completed construction, which shall become exhibits to the record in  
21 this proceeding;

22 Nothing in this condition prevents the applicant from negotiating payment of a  
23 proportionate share of costs for the improvements to be completed prior to operation of  
24 the mine. This permit may be extended for twelve months in the event the applicant and  
25 the county have not reached agreement, provided regular monthly negotiations are  
26 continuing to identify road improvements and cost allocations.

- 27 2. The mine operation is limited to ingress and egress of trucks or truck/trailer combinations  
28 capable of transporting sand, rock or gravel from the mine in the amount of 11,900 trips  
per calendar year total (ingress and egress) (prorated in the year that operations  
commence). The average of 46 trips per day shall be determined based on this annual  
average (or prorated annual average in the first year of operation).

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<sup>7</sup> *Cougar Peak Letter to Hearing Examiner Reeves (Oct. 7, 2022) (Special Use Permit Conditions).*



- 1 3. For extended hours, no more than six truck trips per hour are authorized (one every 10  
2 minutes). The applicant's intended operation up to 30 trips per hour shall be authorized by  
3 the Directors of Public Works and PDS under "extended circumstances" only on rare  
4 occasions for periods of time not to last more than two hours per approval, not to exceed  
5 ten events per calendar year. In the event of emergencies, deliveries at that rate up to four  
6 hours per approval may be authorized based on a written statement of the emergency and  
7 the phone and email contact information for the contact person at the city, county, agency  
8 or public district requesting the emergency response. The trips for "extended  
9 circumstances" shall be counted against the limit on annual trips per year.
- 10 3. Between the weekday hours of 7:00 a.m. and 5:00 p.m., none of the truck or truck/trailer  
11 traffic capable of transporting sand, rock or gravel shall utilize any portion of Grip Road  
12 east or west of the mine during the time any private or public school bus is present on Grip  
13 Road on a regular schedule. For purposes of this condition and unless otherwise verified  
14 by the applicant based on published school bus schedules, it is assumed the school buses  
15 will be utilizing Grip Road between the hours of 6:45 a.m. and 9:00 a.m. and between the  
16 hours of 2:45 p.m. and 4:15 p.m (Exhibit 49, S-9).
- 17 4. The mine operator shall monitor truck or truck/trailer combination access to and from the  
18 Grip Road mine and adopt measures ensuring that no more than two trucks or combinations  
19 are present on any portion of Grip Road at any one time.
- 20 5. Within six months and prior to operation of the mine the Public Works Director shall  
21 conduct a study of speed limit safety on Grip Road, mail notice of the study availability  
22 for public comment to each taxpayer of record on Grip Road and Lillian Lane, and  
23 thereafter consider the reduction in posted speed limits by class of vehicle to 25 miles per  
24 hour in areas of driveways and school bus stops.
- 25 6. On portions not already being improved under Condition No. 1, above, the applicant shall  
26 widen driveway entrances on Grip Road within the Right of Way with a gravel or asphalt  
27 apron and culvert to standards approved by the Director of Public Works, if requested in  
28 writing by the driveway landowners.

**V. The Record Contains Substantial Evidence to Support Road Safety Conditions.**

On reconsideration, the Examiner may reconsider the following material fact issues that would change the outcome of the Decision of approval. Cougar Peak respectfully requests that the Examiner review the existing (closed) record and issue Findings of Fact that include the following.

1. On October 8, 2020, the applicant's traffic engineer, Gary Norris, finally acknowledged the need to file a Level I Traffic Impact Analysis, based on an admission that the

1 project could generate up to 29.4 trips per hour. Hearing Exhibit C-18 (Hearing Exhibits are  
2 hereinafter referred to with the abbreviation “Exh.”).

3 2. A word-search of the applicant’s Level I TIA at Exh. C-18 shows that the applicant  
4 never mentioned school bus use of Grip Road or the presence of children alongside the road.<sup>8</sup>

5 3. At hearing, the Examiner heard credible testimony from local residents Jennifer Aven,  
6 Jessica Hoyer, Wallace Groda and Neil McLeod concerning substandard road conditions, traffic  
7 concerns, conflicts with truck traffic and accidents on Grip Road, including incidents and road use  
8 involving school children transport. The applicant did not contest credibility or rebut the testimony.

9 4. At hearing, the Examiner certified Ross Tilghman as an expert witness and found  
10 credible his testimony that the applicant had not mentioned school bus travel in any of their traffic  
11 analyses in the record and that the applicant had not offered mitigation or voluntary permit conditions  
12 in any of their traffic studies to address conflicts with local school bus travel on Grip Road; Mr.  
13 Tilghman testified based on his analysis of all of the applicant and County traffic analyses over the  
14 years in this project.

15 5. Staff recommended conditions including proposed SEPA conditions on traffic, as  
16 currently written, are vague and insufficient to regulate the amount, types and hours of truck/trailer  
17 combinations proposed by the applicant on Grip Road.

18 6. There is a substantial body of credible evidence of substandard and unsafe road  
19 conditions on Grip Road in the record, including but not limited to:

- 20 ■ Portions of the applicant’s traffic studies themselves acknowledging the lack of  
21 shoulders and potentials for crossovers on Grip Road;
- 22 ■ County third party reviews, which do not identify any safety analysis by the applicant;
- 23 ■ The exhibits submitted by SEPA appellants related to traffic; and
- 24 ■ The field measurements, photos of Grip Road, maps, and depictions of truck/trailer  
25 features presented by Cougar Peak, Exh. C-49/S-2 through S-15, including but not  
26 limited to the Declaration of Wallace Groda, Exh. C-49/S-16; the Letter from Neil  
27 McLeod, C-49/Exh. S-1 with attachments; and exhibits submitted by Cougar Peak,  
28 Exh. C-49, S-2 through S-15.

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<sup>8</sup> Applicant document accessed Feb. 12, 2024 at <https://skagitcounty.net/Departments/PlanningAndPermit/gravelmine.htm>  
(Exh. C-18 at hearing).

1           7.       The testimony of the applicant’s traffic expert and company representatives and the  
2 County’s Public Works engineer was that the introduction of the projected truck/trailer operations on  
3 Grip Road would not impose an increase of risk to local residents traveling and walking on Grip  
4 Road. That testimony was not credible because:

- 5           ▪ It relied upon undocumented safety records of past operations;
- 6           ▪ It relied upon an analysis of accident history data on Grip Road that did not include  
7 documentation of any heavy truck/trailer combination mining operation use of Grip  
8 Road during relevant time periods;
- 9           ▪ It relied upon written traffic analysis that did not mention or analyze possible increased  
10 risk to school bus use of Grip Road;
- 11           ▪ It was unsupported by any analysis for segments of Grip Road east of the mine  
12 entrance/exit with respect to road widths, shoulders or intersections; No improvements  
13 were proposed for any of the intersections on Grip Road to the east of the mine, and no  
14 road safety analysis or Auto Turn analysis was conducted on that road segment; and
- 15           ▪ It did not rely upon any County third-party review or written comments from Public  
16 Works evaluating the applicant’s Level I TIA signed October 8, 2020, Exh. C-18,  
17 because none existed.

18           8.       The record does not include any evidence that the applicant negotiated with Skagit  
19 County for any haul agreements concerning Grip Road or negotiated to determine the applicant’s pro-  
20 rata share of costs to mitigate safety issues on Grip Road related to substandard shoulder widths,  
21 substandard road travel widths, steep grades, and sharp curves, either west or east of the mine  
22 entrance/exit, including but not limited to costs associated with right-of-way acquisition, engineering  
23 design, or construction.

24           9.       In light of the foregoing material facts, the record for this application does not contain  
25 an adequate “review from Skagit County Public Works . . . demonstrating that roads or bridges are  
26 capable of sustaining the necessary traffic for the proposed mineral extraction operation and that the  
27 proposed operation meets level-of-service, safety and other standards as outlined in . . . the Skagit  
28 County Comprehensive Plan . . . and local regulations,” as specified by SCC § 14.16.440(8)  
(Mineral Resource Overlay); additional conditions based on the record are therefore warranted.

          10.       As this code requirement states, level-of-Service analysis by the applicant for this  
project does not satisfy the independent requirement for analysis of safety standards. Just as

1 stormwater analysis would look at both quantity/volume as well as water quality, traffic analysis  
2 involves analysis of volumes at intersections (wait times, level-of-service) and types of vehicles  
3 proposed for the project and their weight and length as a factor in determining the likelihood that they  
4 will cross-over the centerline into opposing travel lanes or be able to stop as needed to avoid other  
5 vehicles on a rural roadway. The applicant's traffic safety analysis relies upon level-of-service  
6 analysis and accident data (without the proposed gravel trucks) and therefore does not include  
7 adequate road mitigation reflecting the likelihood of increased risk to local residents and school  
8 children, due to the likely increase in cross-over encounters under Grip Roads' current road  
9 conditions.

10 11. The applicant's offer at hearing for improvement of two Grip Road curves was  
11 insufficient to mitigate the impacts of the proposal, due to the lack of dimensional analysis, the failure  
12 to indicate the size and type of vehicles, and a lack of advance Public Works review as required by  
13 SCC 14.16.440(8). Nonetheless, it provides some basis for imposing conditions requiring right-of-  
14 way acquisition and widening at those curves.

15 12. Intersections on the eastern segments of Grip Road are numerous and require  
16 mitigation to ensure that the problem of crossovers on Grip Road identified in the record do not occur.  
17 See maps attached to Exh. C-49/S-16; testimony of local residents.

18 13. The steep grades and lack of sight distance at curves on Grip Road also support  
19 conditions requiring reductions in speeds and limits on hours of use, during School Bus useage.

20 14. The presence of local resident's driveways on Grip Road also supports the need for  
21 safety improvements and speed reductions to ensure gravel trucks traveling at speed can stop in time  
22 to avoid pull-outs and local residents can pull out of the roadway along the shoulder.

23 15. On cross examination, the applicant's attorney, the applicant's representative and the  
24 applicant's traffic engineer, Gary Norris all refused to identify an annual or monthly cap on total truck  
25 trips from the project for Grip Road, thereby making it impossible in the future, if approved, to  
26 determine whether the project was complying with conditions that limited truck traffic to an average  
27 number of vehicles per day.

28



1 McLeod family are longstanding residents on that property, managing the forests, roads and other  
2 improvements for Cougar Peak LLC; their access is a single driveway on Grip Road, located  
3 approximately 470 feet west of the mine exit point. Exhibit F. County code authorizes a request for  
4 reconsideration by any “party to a hearing before the Hearing Examiner.” SCC § 14.06.180.

5 Cougar Peak meets the test for standing because it was “a party to a hearing before the Hearing  
6 Examiner.” *Id.* In this request for reconsideration, Cougar Peak identifies the “specific errors  
7 alleged,” and identifies the material legal errors and material factual issues overlooked in the  
8 Decision, as required. Those errors and issues, if accepted, “would change the previous decision.” *Id.*

9 B. The Parties do not Provide Input on Reconsideration in This Contested Proceeding.

10 Notably, the code requires that Examiner’s determination on whether to grant reconsideration  
11 be done without “public comment or argument.” SCC § 14.06.180. Cougar Peak asserts that the  
12 intent of this provision is to ensure that the decision on whether to grant reconsideration is done in  
13 isolation, by the Hearing Examiner, without argument from any party.

14 C. Identifying the Hearing Examiner.

15 Based on the email received from Examiner Reeves on February 9, 2024, Exhibit D, it does  
16 not appear that he has received any notification from the County to discontinue serving as the County  
17 Hearing Examiner during Requests for Reconsideration.<sup>10</sup> During superior court proceedings, neither  
18 the County or the applicant sought to remove Examiner Reeves, instead insisting that he issue a  
19 Decision. When he did, the County confirmed his status by issuing a Notice of Decision on February  
20 2, 2024, and again on February 9 in a revision. Exhibit B.

21 The decision of who is to serve as the Hearing Examiner is a decision for the Board of County  
22 Commissioners, made in an open public meeting. See SCC § 14.02.070(2),(3). The Appearance of  
23 Fairness doctrine and County code would preclude the Department of Planning and Development  
24 Services from selecting a different decision maker on reconsideration, except by action of the County

25  
26  
27 <sup>10</sup> Under Resolution No. R20230245 (adopted November 27, 2023 and attached hereto as Exhibit G), the Commissioners  
28 kept Mr. Reeves in office until completion of his “outstanding work” or until it notified him that this work was  
“unneded.” As of this writing, Cougar Peak has not seen any “notice by the County that any such outstanding work is  
unneded.”

1 Commissioners.<sup>11</sup> If for some reason the County does seek to terminate Mr. Reeves as Hearing  
2 Examiner and install a new decision maker, Cougar Creek maintains that the actions should take place  
3 in an open public forum with advance notice to affected parties, including Cougar Peak.<sup>12</sup>

4 D. Procedures for Holding a Hearing on the Request for Reconsideration.

5 If the Examiner grants reconsideration, any argument permitted must be done “in accordance  
6 with the procedures for closed record appeals.” SCC § 14.06.180 (“the Hearing Examiner may revise  
7 and reissue its decision or may call for argument in accordance with the procedures for closed record  
8 appeals”).

9 Those procedures for a closed record hearing on a Level II decision are governed by  
10 SCC § 14.06.170 and include the following requirements:

- 11 ■ The planning department is responsible to transmit the record from the open record  
12 hearing “at least seven days prior to the date of the closed record hearing.” SCC §  
13 14.06.170(5).
- 14 ■ Notice must be provided to the applicant and all parties of record at least fourteen days  
15 prior to the hearing. SCC § 14.06.170(6), (7).
- 16 ■ Parties of record have the right to make presentations during the hearing. *Id.* at (8).
- 17 ■ The party requesting reconsideration and staff are provided a right of rebuttal following  
18 those presentations. *Id.*
- 19 ■ “No new evidence or testimony shall be given or received. The parties to  
20 the appeal may submit written statements or arguments prior to the hearing. SCC §  
21 14.06.170(9).

22 SCC § 14.06.170.

23 Under these procedures, any oral argument on reconsideration is a “closed record hearing,”  
24 and the code requires that the Examiner be provided with “the record from the open record hearing.”  
25 Cougar Peak respectfully requests that a complete copy of this record be made available to the public  
26

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27 <sup>11</sup> Planning and Development Services is an interested party in this contested proceeding. The outcome of the Decision  
28 will depend on approval or rejection of their recommendation of approval. PDS would appear to be constrained in any  
activity to change the Decision maker, now that a Decision has been issued. SCC § 14.02.070(7): Freedom from  
Improper Influence. No County official or any other person shall attempt to interfere with or improperly influence  
the Hearing Examiner in the performance of his or her duties.

<sup>12</sup> In the event the County has already terminated Mr. Reeves’ services, Cougar Peak requests a copy of the notification  
sent by the County to Examiner Reeves.

1 and parties at the same time it is provided to the Examiner, so that Cougar Peak and other parties can  
2 prepare adequately for presentations authorized by code at the closed record hearing.

3 E. Additional Material Legal Errors and Factual Issues.

4 1. Failure to Include Mandatory Elements for a Hearing Examiner Decision.

5 The Decision included material errors of law because it did not contain the mandatory  
6 elements for a Hearing Examiner decision required in SCC §§ 2.10(a), 14.06.160(9), including, *inter*  
7 *alia* findings of fact and conclusions of law.

8 2. Denial of Cougar Peak's Motion to Intervene in the SEPA Appeal.

9 The SEPA appeal filed in this case was an integral part of the proceeding and was interwoven  
10 procedurally with the record and the Examiner's review and decision on the Special Use Permit.  
11 Cougar Peak's interests in the appeal are unique, based on the unique nature of property ownership  
12 and proximity of its property directly across Grip Road from the mine. Accordingly, Cougar Peak  
13 should have been admitted as an intervenor in the SEPA appeal. Cougar Peak described in its motion  
14 for intervention the reasons its unique property interest would not be adequately represented by the  
15 appellants. The County and the appellant did not oppose the motion.

16 In support of reconsideration, Cougar Peak again provides its motion, attached hereto and  
17 incorporated herein by reference as Exhibit E.<sup>13</sup> To the extent Cougar Peak is allowed to participate  
18 as an intervenor, it joins in and incorporates by reference, as though fully set forth herein, all portions  
19 of the Request for Consideration filed on February 9, 2024 by Appellants, with the exception of those  
20 portions objecting to issuance of the Decision or concerning replacement of Hearing Examiner Reeves  
21 as the decision maker. Cougar Peak believes the Decision was issued by the County's Hearing  
22 Examiner and he is the one that should be deciding on all Requests for Reconsideration.

23 3. Failure to Provide Adequate Notice of Appeal Opportunities.

24 Neither the Decision (Feb. 1) nor the Notice of Decision (Feb. 2), nor the revised Notice of  
25 Decision (Feb. 9) contained a complete or correct statement of appeal procedures under Skagit County  
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27  
28 <sup>13</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.



1 law. The Decision contained only provisions concerning reconsideration without notice of a right to  
2 appeal directly to the Board of County Commissioners. By contrast, the Notice of Decision and its  
3 revision did not contain any mention of reconsideration avenues available to parties of record. The  
4 first Notice of Decision incorrectly stated that the Decision had modified the SEPA determination,  
5 which is not the case. The revised Notice of Decision incorrectly stated that parties of record may  
6 appeal the Decision's denial of the SEPA appeal to court, when presumably SEPA does not allow a  
7 stand-alone appeal under SEPA until the underlying permit decision becomes final. These errors have  
8 the potential to confuse the public in a proceeding with a high level of public interest.

9 **VII. Relief Requested on Reconsideration .**

10 Cougar Peak respectfully requests that:

- 11 1. Hearing Examiner Reeves make the decision on this Request for Reconsideration  
12 pursuant to SCC § 14.06.180;
- 13 2. The Hearing Examiner grant the Request for Reconsideration and initiate the  
14 procedures required for a close-record hearing under SCC § 14.06.170, .180, consolidated with any  
15 other Requests for Reconsideration on the consolidated permits/appeals Decision that are granted;
- 16 3. The Hearing Examiner, upon reconsideration, modify the Decision by including  
17 Findings of Fact and Conclusions of Law consistent with the requirements of code and as proposed  
18 above, and by adding new conditions modifying the Mining Special Use Permit approval, as proposed  
19 herein (to modify the proposed staff conditions); and
- 20 4. The Hearing Examiner reconsider and thereby grant our Motion to Intervene in the  
21 SEPA appeal herein; and
- 22 5. Upon granting our Motion for Intervention in the SEPA appeal, thereafter modify the  
23 conditions contained in the Mitigated Determination of Non-Significance to conform to the proposed  
24 conditions herein with respect to traffic on Grip Road, or otherwise grant the SEPA appeal and require  
25 a Determination of Significance for preparation of an Environmental Impact Statement concerning  
26 traffic on Grip Road, consistent with the findings and conclusions proposed herein.

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Respectfully submitted this 12th day of February, 2024.

DYKES EHRLICHMAN LAW FIRM



---

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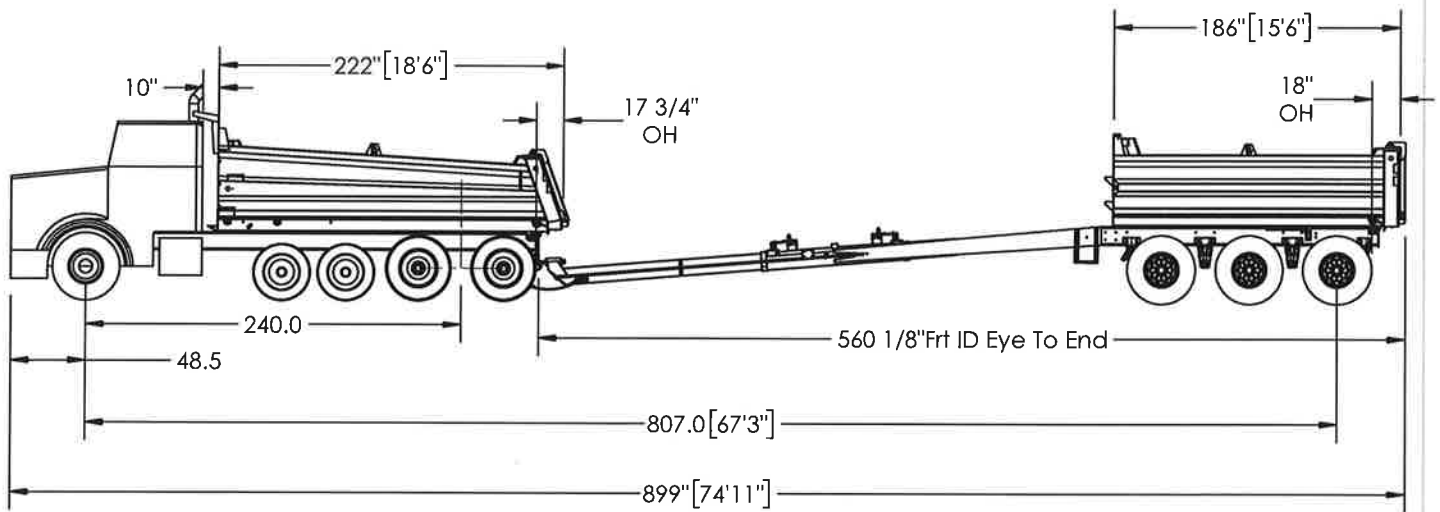
Per tel. authorization  
J. Richard Aramburu, WSBA No. 466  
Co-Counsel for Cougar Creek LLC, and  
the McLeod Family

**KW NW Construction SDBSTSD 18'6" & DS36SA-43 15'6" 6-20<sub>Rev0</sub>**

Truck Length grill to tail = 29.72 feet

$899'' - 560.125'' + 17.75'' = 356.625''$   
 $356.625'' \text{ divided by } 12'' = 29.72 \text{ feet}$

**EXHIBIT C49/S-13**



**Truck Length = 30 feet**

**Trailer length adds 45 feet to the length fully extended**  
**74.92' total - 30' truck length = 44.92' <sub>Build Qty</sub>**

**SEE SPEC FOR BODY DETAILS**

See Sht 2 - truck details  
 See Sht 3 - trlr details

**VERIFY TRUCK DIMS**

		KWNW	
PROPRIETARY AND CONFIDENTIAL THE INFORMATION CONTAINED IN THIS DRAWING IS THE SOLE PROPERTY OF OSW Equipment & Repair, Inc. ANY REPRODUCTION IN PART OR AS A WHOLE WITHOUT THE WRITTEN PERMISSION OF OSW Equipment & Repair, Inc. IS PROHIBITED.		TITLE:	
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# EXHIBIT B

## BEFORE THE HEARING EXAMINER FOR SKAGIT COUNTY

In the Matter of the Application for a	)	No. PL16-0097; No. PL16-0098
Special Use Permit by	)	Appeal No. PL22-0142
	)	
<b>Concrete Nor'West/Miles</b>	)	
<b>Sand and Gravel</b>	)	
	)	
<b>&amp;</b>	)	
	)	
In the Matter of the Appeal of	)	
<b>Central Samish Valley Neighbors</b>	)	
	)	
	)	
Of a Mitigated Determination	)	FINAL DECISION OF FORMER
<u>of Nonsignificance</u>	)	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 Atch. F (part), 2000)

**SKAGIT COUNTY PLANNING AND DEVELOPMENT SERVICES  
NOTICE OF DECISION**

Concrete Nor'west Special Use Permit; PL16-0097;  
Forest Practice Conversion, PL16-0098; &  
SEPA MDNS Appeal, PL22-0142

Notice is hereby given that on February 1, 2024, the Hearing Examiner approved Special Use Permit PL16-0097 and Forest Practice Conversion Application PL16-0098 to permit a proposed gravel mine/quarry on the subject properties. Additionally, the Hearing Examiner denied appeal PL22-0142 filed by the appellant of Skagit County Planning and Development Services Department's issued SEPA Mitigated Determination of Non-Significance (MDNS) threshold determination associated with the subject Special Use Permit application. The subject property lies within the Rural Resource Natural Resource Lands (RR-NRL) Zoning/Comprehensive Plan designated area as indicated in the Skagit County Comprehensive Plan and associated maps. The proposed properties subject to the mining operation are located approximately 1.5 miles north of Grip Road and south/southwest of the Samish River, within a portion of the Southeast Quarter of Section 27; Township 36 North; Range 04 East; Willamette Meridian within unincorporated Skagit County, Washington. Proposed Mine/Quarry: P125644, P125645, & P50155. Haul Road (Under Same Ownership Providing Access to Mine): P125646, P125647, P125626, P125627, P125628, P125629, P125630, P125631, P125623, P125624, P125632, P125633, & P35704

**APPLICANT:**

Concrete Nor'West / Miles Sand & Gravel  
P.O. Box 280  
Mount Vernon, Washington 98273

**LANDOWNER:**

Lisa Incorporated  
400 Valley Avenue Northeast  
Puyallup, Washington 98372

Pursuant to Skagit County Code 14.06.200, the Notice of Decision shall be forwarded to the applicant, parties of record, and other applicable parties of interest. The applicant and/or a parties of record may appeal the decision to deny the subject Special Use Permit to Skagit County Board of County Commissioners pursuant to the provisions of Section 14.06.110. The applicant and/or parties of record may appeal the decision to uphold and modify the SEPA MDNS to the Skagit County Superior Court pursuant to Section SCC 14.06.220 (Judicial Appeals). Parties with standing to appeal must appeal within 14 calendar days of the date of the decision.

Transmitted to the Skagit Valley Herald:	February 2, 2024
Please publish:	February 6, 2024
Appeals must be submitted by:	February 14, 2024

Kevin Cricchio, AICP, ISA, Senior Planner; Phone: (360) 416-1423  
Skagit County Planning and Development Services Department  
1800 Continental Place, Mount Vernon, WA 98273

**SKAGIT COUNTY PLANNING AND DEVELOPMENT SERVICES  
REVISED NOTICE OF DECISION**

Concrete Nor'west Special Use Permit; PL16-0097;  
Forest Practice Conversion, PL16-0098; &  
SEPA MDNS Appeal, PL22-0142

Notice is hereby given that on February 1, 2024, the Hearing Examiner approved Special Use Permit PL16-0097 and Forest Practice Conversion Application PL16-0098 to permit a proposed gravel mine/quarry on the subject properties. Additionally, the Hearing Examiner denied appeal PL22-0142 filed by the appellant of Skagit County Planning and Development Services Department's issued SEPA Mitigated Determination of Non-Significance (MDNS) threshold determination associated with the subject Special Use Permit application. The subject property lies within the Rural Resource Natural Resource Lands (RR-NRL) Zoning/Comprehensive Plan designated area as indicated in the Skagit County Comprehensive Plan and associated maps. The proposed properties subject to the mining operation are located approximately 1.5 miles north of Grip Road and south/southwest of the Samish River, within a portion of the Southeast Quarter of Section 27; Township 36 North; Range 04 East; Willamette Meridian within unincorporated Skagit County, Washington. Proposed Mine/Quarry: P125644, P125645, & P50155. Haul Road (Under Same Ownership Providing Access to Mine): P125646, P125647, P125626, P125627, P125628, P125629, P125630, P125631, P125623, P125624, P125632, P125633, & P35704

**APPLICANT:**

Concrete Nor'West/Miles Sand & Gravel  
P.O. Box 280  
Mount Vernon, Washington 98273

**LANDOWNER:**

Lisa Incorporated  
400 Valley Avenue Northeast  
Puyallup, Washington 98372

Pursuant to Skagit County Code 14.06.200, the Notice of Decision shall be forwarded to the applicant, parties of record, and other applicable parties of interest. The applicant and/or a parties of record may appeal the decision to approve the subject Special Use Permit to Skagit County Board of County Commissioners pursuant to the provisions of Section 14.06.110. The applicant and/or parties of record may appeal the decision to deny the appeal of the issued SEPA MDNS to the Skagit County Superior Court pursuant to Section SCC 14.06.220 (Judicial Appeals). Parties with standing to appeal must appeal within 14 calendar days of the date of the decision.

Transmitted to the Skagit Valley Herald:	February 2, 2024
Please publish:	February 6, 2024
Appeals must be submitted by:	February 14, 2024

Kevin Cricchio, AICP, ISA, Senior Planner; Phone: (360) 416-1423  
Skagit County Planning and Development Services Department  
1800 Continental Place, Mount Vernon, WA 98273





## EXHIBIT C

### DYKES EHRlichman LAW FIRM

*Land Use, Real Estate, & Environmental Law*

October 7, 2022

*Via Electronic Mail:*  
[monak@co.skagit.wa.us](mailto:monak@co.skagit.wa.us)

Mr. Andrew Reeves  
Skagit County Hearing Examiner  
c/o Ms. Mona Kellog  
Dept. of Community Development  
1800 Continental Place  
Mount Vernon, WA 98273

Re: PL16-0097, PL16-0098, Appeal No. PL22-0142  
Concrete Nor'West/Miles Sand and Gravel SUP

Dear Examiner Reeves:

Toward the end of the consolidated permit and appeal hearing referenced above, you invited comment from counsel on two issues: (a) possible permit hearing procedure if SEPA MDNS remanded; and (b) a party's proposed conditions for Hearing Examiner consideration. We are writing to address both questions. As you know, we represent Cougar Peak, LLC and the McLeod family, owners and caretakers of approximately 800 acres of rural forested land directly adjacent to the proposed gravel mine.<sup>1</sup> Thank you for the opportunity to submit these comments on these two issues.

A. Case Law Concerning the Single, Open-Record Hearing Rule in State Law.

At the conclusion of the hearing, you invited us to present case law citation in support of our position that the Special Use Permit ("SUP") hearing could not be simply "frozen" or put on hold intact, while a remanded SEPA threshold determination was processed, reissued and possibly appealed.<sup>2</sup> It is our position that a remand of the SEPA MDNS voids the MDNS and without it, there is no basis to hold a hearing on the underlying permit, which is based on that particular MDNS. This approach is consistent with the holding in *Puyallup v. Pierce County*.<sup>3</sup> Thus, the SUP hearing could not simply be put in a frozen state and revived when a new MDNS is issued, with limited testimony on how the new MDNS affects the SUP. In other words, the entire SUP proceeding is stale, moot and does not relate to a matter in front of the Hearing Examiner when the MDNS is voided. This is a jurisdictional question.

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<sup>1</sup> Wallace Groda, who is not our client but was a witness in our case, submitted his own list of proposed conditions at Exhibit 49, S-16.

<sup>2</sup> To be clear, our statement of position has been in the context of a party opposing the proposed conditions of approval for the Special Use Permit and not as an intervenor party to the SEPA appeal; our motion to intervene was denied at the outset of the proceeding based on the applicant's objection.

<sup>3</sup> This case is distinguishable from the circumstances decided in *Pierce*, where the court determined that the voiding of an MDNS did not void decisions or process that were not dependent on that MDNS. *City of Puyallup v. Pierce Cnty.*, 500 P.3d 216, 220 (Wash. App. 2021) ("Decisions based on a void determination are also void. See *King County v. Wash. State Boundary Review Bd.*, 122 Wash.2d 648, 667, 860 P.2d 1024 (1993).") *Id.*

P.O. Box 3308  
Sequim, WA 98382  
(425) 268-5553  
[tom@dykesehrlichman.com](mailto:tom@dykesehrlichman.com)

There is case law disfavoring the bi-furcation of SEPA appeals from the open record hearing on the underlying permit action, e.g., a conditional use permit decision. Our supreme court overturned a local decision by Kittitas County because the County held a closed record SEPA appeal but then separately held an open record hearing on a conditional use permit. *Ellensburg Cement Prod., Inc. v. Kittitas County, et al.*, 179 W.2d 737, 317 P.3d 1037 (2014). The court held that RCW 36.70B.010(2) and RCW 43.21C.075(3)(b) read together require the county to “consolidate an appeal of [SEPA] determinations ... with a hearing or appeal on the underlying governmental action by providing for a *single simultaneous hearing*,” RCW 43.21C.075(3)(b) (emphasis added). *Id.* at 1043 (emphasis in the court's decision).<sup>4</sup>

The remand of the SEPA MDNS remand poses the same problems confronted earlier in this case. The Hearing Examiner considered the risk of possible violations of the single simultaneous hearing rule in RCW 36.70B.010(2) and RCW 43.21C.075(3)(b), i.e., if evidence and testimony in the SEPA appeal are bifurcated from the evidence and testimony on the underlying permit, and members of the public are not afforded the opportunity at open hearing to comment on expert testimony brought up only in the SEPA appeal portion of the case. That problem arises in part because the SUP conditions expressly incorporate the SEPA MDNS conditions.<sup>5</sup> The violations of law occur if the SEPA MDNS conditions are crafted based on a record that is not available in the public permit hearing proceeding, and then introduced into the permit decision by incorporating the separate MDNS conditions as underpinning for the project compliance with permit code requirements.

There would be obvious savings to the County by not having to repeat the SUP hearing simply because the SEPA determination is remanded. The intertwining of the SEPA decision with the SUP decision make that desired savings problematic in terms of state law and policy.

**B. Proposed Special Use Permit Conditions.**

In addition to the conditions proposed in the Staff Report, Exhibit , at \_\_\_\_\_, Cougar Peak LLC and the McLeod family propose the following conditions or revisions to staff-proposed conditions:

1. Prior to commencing operations, the applicant is required to file a certificate of compliance with the Hearing Examiner demonstrating completion of the following.
  - (a) The applicant shall install and maintain automatic traffic counters at the mine entrance to and from Grip Road and provide Skagit County monthly printouts of all traffic entering and exiting the mine, indicating time of day, type of vehicle and whether loaded or unloaded;
  - (b) Acquisition of right-of-way and construction of road widening and striping at any curve or corner on Grip Road to the standard shown on Figure B-6 of the County adopted Road Standards (Exhibit 18); the applicant shall obtain the written approval of the County Road Engineer for plan approvals, construction methods, and

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<sup>4</sup> The court imagined a circumstance not in the record in which a simultaneous SEPA appeal and permit hearing are held, offering dicta suggesting that the hearings and decisions could be held "in sequence." *Id.* at 1043-44. However, the court was not confronting the obvious difficulties encountered in the current case before this Hearing Examiner – issues sorted out in a number of prehearing discussions and in side bars with counsel for the parties at hearing.

<sup>5</sup> During the hearing, all parties and the Hearing Examiner affirmed that the MDNS conditions would be binding on the operation and would be incorporated as Special Use Permit conditions.

inspection of completed construction, which shall become exhibits to the record in this proceeding;

Nothing in this condition prevents the applicant from negotiating payment of a proportionate share of costs for the improvements to be completed prior to operation of the mine. This permit may be extended for twelve months in the event the applicant and the county have not reached agreement, provided regular monthly negotiations are continuing to identify road improvements and cost allocations.

2. The mine operation is limited to ingress and egress of trucks or truck/trailer combinations capable of transporting sand, rock or gravel from the mine in the amount of 11,900 trips per calendar year total (ingress and egress) (prorated in the year that operations commence). The average of 46 trips per day shall be determined based on this annual average (or prorated annual average in the first year of operation).
3. For extended hours, no more than six truck trips per hour are authorized (one every 10 minutes). The applicant's intended operation up to 30 trips per hour shall be authorized by the Directors of Public Works and PDS under "extended circumstances" only on rare occasions for periods of time not to last more than two hours per approval, not to exceed ten events per calendar year. In the event of emergencies, deliveries at that rate up to four hours per approval may be authorized based on a written statement of the emergency and the phone and email contact information for the contact person at the city, county, agency or public district requesting the emergency response. The trips for "extended circumstances" shall be counted against the limit on annual trips per year.
3. Between the weekday hours of 7:00 a.m. and 5:00 p.m., none of the truck or truck/trailer traffic capable of transporting sand, rock or gravel shall utilize any portion of Grip Road east or west of the mine during the time any private or public school bus is present on Grip Road on a regular schedule. For purposes of this condition and unless otherwise verified by the applicant based on published school bus schedules, it is assumed the school buses will be utilizing Grip Road between the hours of 6:45 a.m. and 9:00 a.m. and between the hours of 2:45 p.m. and 4:15 p.m (Exhibit 49, S-9).
4. The mine operator shall monitor truck or truck/trailer combination access to and from the Grip Road mine and adopt measures ensuring that no more than two trucks or combinations are present on any portion of Grip Road at any one time.
5. Within six months and prior to operation of the mine the Public Works Director shall conduct a study of speed limit safety on Grip Road, mail notice of the study availability for public comment to each taxpayer of record on Grip Road and Lillian Lane, and thereafter consider the reduction in posted speed limits by class of vehicle to 25 miles per hour in areas of driveways and school bus stops.
6. On portions not already being improved under Condition No. 1, above, the applicant shall widen driveway entrances on Grip Road within the Right of Way with a gravel or asphalt apron and culvert to standards approved by the Director of Public Works, if requested in writing by the driveway landowners.

Skagit County Hearing Examiner

October 5, 2022

Page 4

Our post-hearing brief will outline why the law requires conditions necessary to bring the proposed operation in line with Skagit County's adopted standards for mining proposals. As you know, we are of the firm conviction that those standards require protection of public safety on Grip Road in rural Skagit County. We also are confident that Skagit County ordinances grant you the authority to impose these conditions.

In our view, the record now contains substantial evidence to support your use of that authority as proposed here. That record includes the lack of Grip Road traffic safety analysis by the applicant; the narrowness of existing roadway widths; the proposed type of vehicles and frequency which increase the frequency of potential encounters resulting in high risk of injury or death to school children and local residents.

Thank you for considering the above.

Respectfully submitted,




Tom Ehrlichman

cc: Counsel for all Parties  
Mr. Neal McLeod, Cougar Peak, LLC

## EXHIBIT D

**From:** Sound Law Center Clerk soundlawcenter.clerk@gmail.com  
**Subject:** Subject: PL16-0097, PL16-0098, Appeal No. PL22-0142 Concrete Nor'West/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

**EXHIBIT E**

**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.

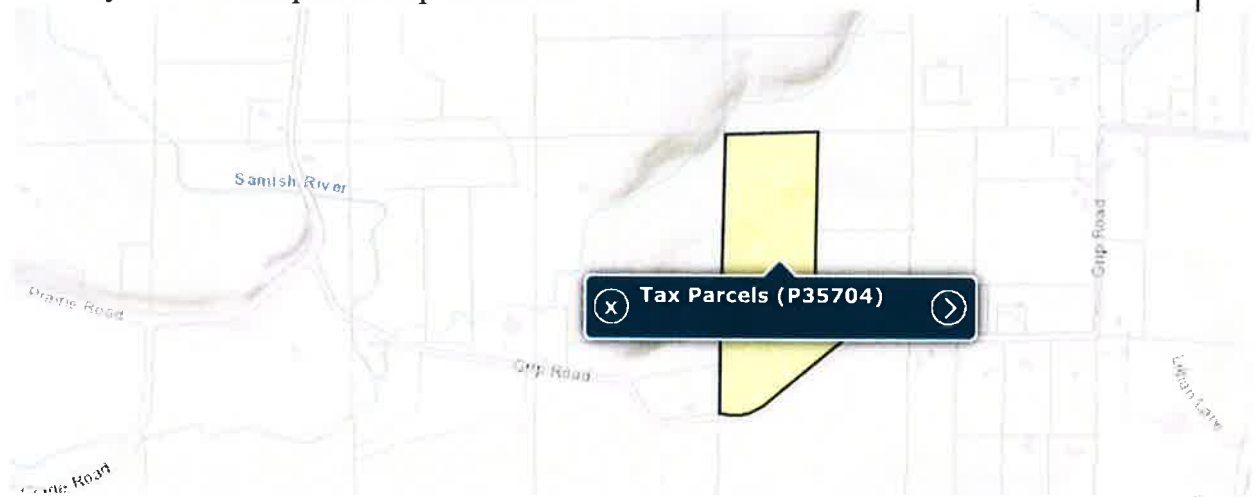
According to application documents on file at Skagit County, the applicant proposes to haul gravel from a mine, by dump truck through a parcel that it owns or controls, out onto Grip Road and thence to Prairie Road, and then onward to a plant for crushing and refining the rock further. Grip Road is a 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").

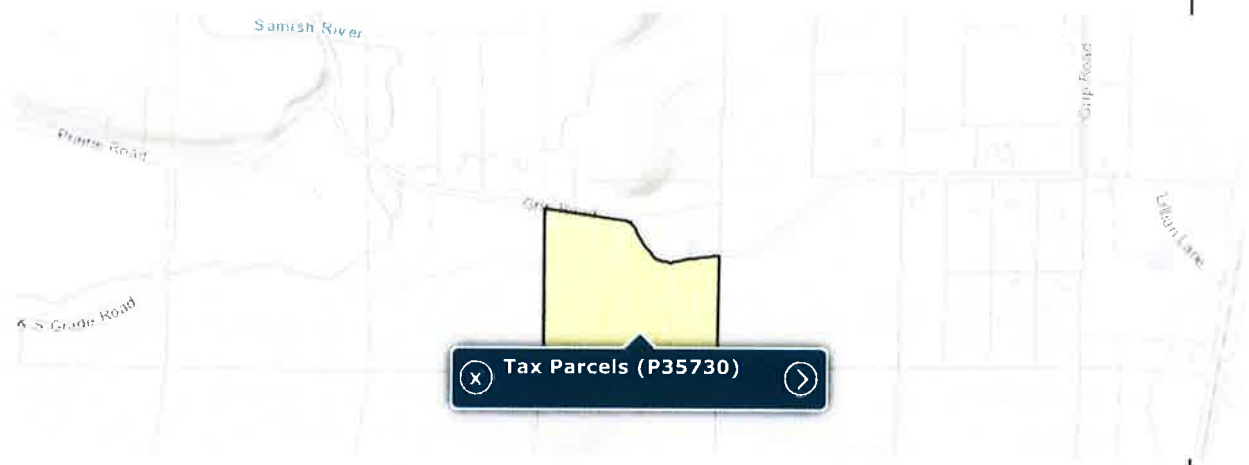
15 The mining applicant's parcel containing their haul-out entrance to Grip Road is shown  
16 in the County's online tax parcel map as follows:



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

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

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

22 **III. GROUNDS AND APPLICABLE LAW**

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

27  
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.

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**IV. CONCLUSION**

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

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

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

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

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

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

DYKES EHRLICHMAN LAW FIRM



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

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**CERTIFICATE OF FILING**

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



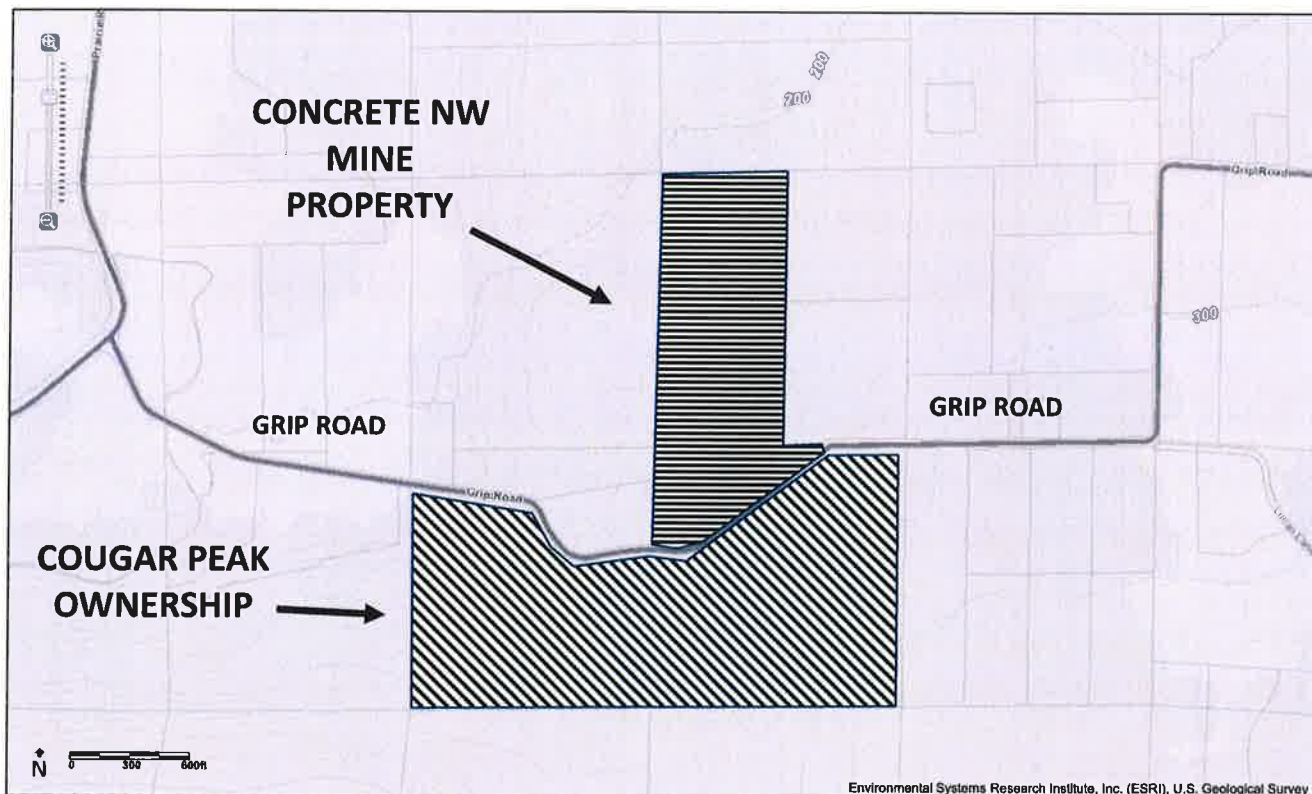
\_\_\_\_\_  
Tom Ehrlichman, WSBA No. 20952

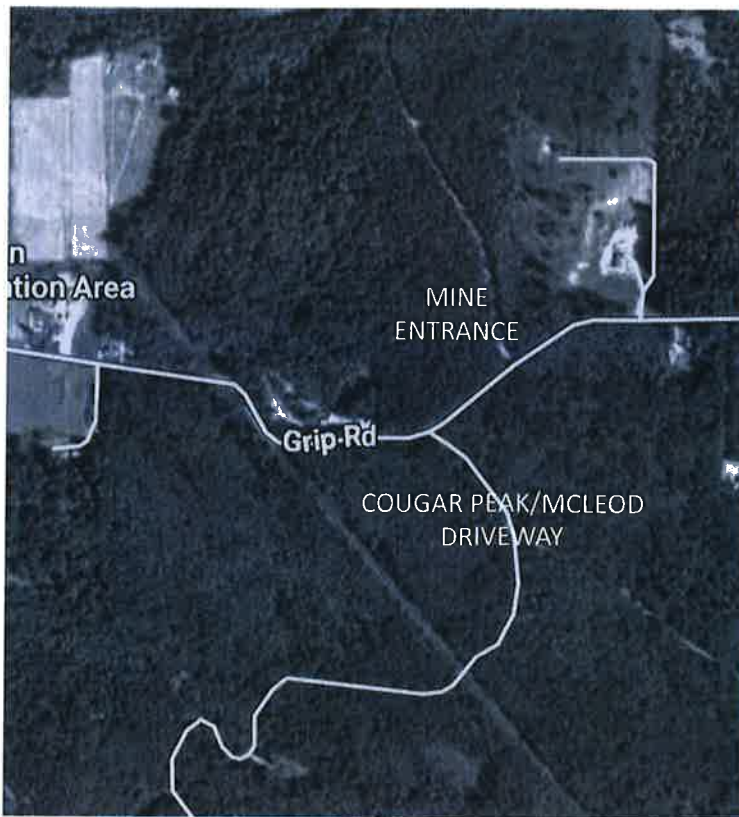
**EXHIBIT F**

(3 Pages)

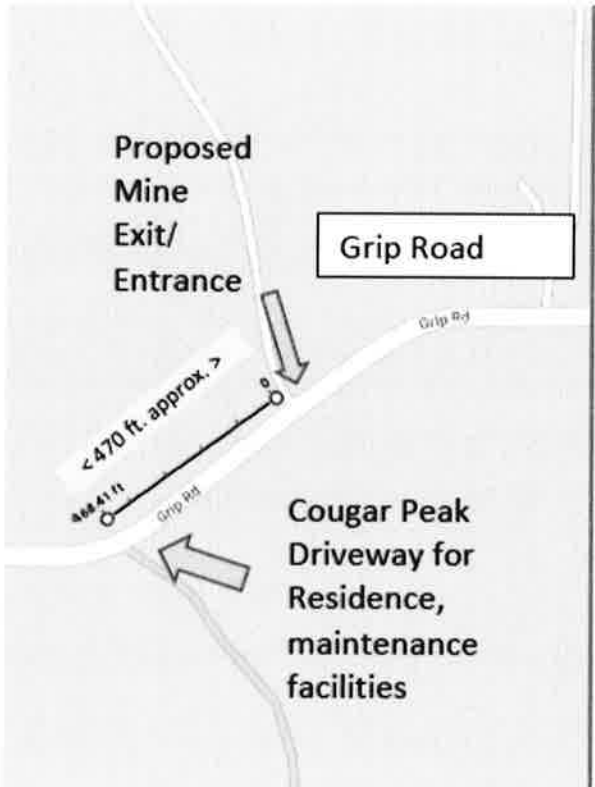
**Illustrative Maps of  
Adjacent Parcels:**

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









**EXHIBIT G**

SKAGIT COUNTY  
Resolution # R20230245  
Page 1 of 2

**Resolution No.** \_\_\_\_\_

**A Resolution Authorizing the Termination of the Personal Services Agreement Between Skagit County and Sound Law Center, LLC and Removal of Andrew Reeves as Hearing Examiner**

**Whereas**, the Board of Skagit County Commissioners approved Personal Service Agreement C20230015 on January 3, 2023, between Skagit County and Sound Law Center, LLC for the provision of hearing examiner services.

**Whereas**, Sound Law Center, LLC is in default of Personal Service Agreement C20230015 because it has failed to timely issue decisions in multiple matters;

**Whereas**, Personal Service Agreement C20230015 provides that the agreement can be terminated for default upon written notice;

**Whereas**, Section 14.02.070(3) of the Skagit County Code provides that a hearing examiner may be removed from office at any time by a majority vote of the Board of County Commissioners;

**Now, Therefore Be It Resolved**, that the Board of Skagit County Commissioner approves as follows:

1. Personal Service Agreement C20230015 shall be terminated for default as of the effective the date of this resolution; and
2. Andrew Reeves is removed as hearing examiner pursuant to SCC 14.02.070(3) effective upon completion of outstanding work or notice by the County that any such outstanding work is unneeded.

**Witness Our Hands and the Official Seal of Our Office** this 27 day of November, 2023.



BOARD OF COUNTY COMMISSIONERS  
SKAGIT COUNTY, WASHINGTON

Ron Wesen  
Ron Wesen, Chair

Lisa Janicki  
Lisa Janicki, Commissioner

Peter Browning  
Peter Browning, Commissioner

Attest:

  
\_\_\_\_\_  
Clerk of the Board  
Skagit County Board of Commissioners

Recommended:

  
\_\_\_\_\_  
Department Head

Approved as to Form:

  
\_\_\_\_\_  
Deputy Prosecuting Attorney