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**BEFORE THE BOARD OF COUNTY COMMISSIONERS
IN AND FOR THE COUNTY OF SKAGIT, WASHINGTON**

In the Matter of the Application for a
Special Use Permit by

**Concrete Nor’West/Miles Sand and
Gravel**

&

In the Matter of the Appeal of

Central Samish Valley Neighbors

of a Mitigated Determination of
Nonsignificance,

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

**APPELLANT CENTRAL SAMISH
VALLEY NEIGHBORS’ NOTICE
OF APPEAL**

I. INTRODUCTION AND DECISION BEING APPEALED

Appellant Central Samish Valley Neighbors (“CSVN”) respectfully files this Notice of Appeal pursuant to SCC 14.06.110(13) and 14.06.120(10) to request that the Skagit County Board of Commissioners (“Commissioners”) reverse the Skagit County Hearing Examiner’s ruling in the document titled “Final Decision of Former Hearing Examiner Reeves (Absent Reconsideration)” (“Ruling”), which Skagit County Planning and Development Services (“PDS”) circulated on February 2, 2024 as a final decision in the above-captioned permit applications and State Environmental Policy Act (“SEPA”) appeal, case numbers PL16-0097, PL16-0098, and Appeal No. PL22-0142. That Ruling omits any rationale for its ultimate

1 approval of “whatever the Applicant was seeking throughout the permit process” or its denial of
2 “all tangential issues and appeals that have stood in the Applicant’s way” other than the threat
3 of serving time in jail, which does not qualify under SEPA or the Skagit County Unified
4 Development Code (“Code”) as a legitimate basis for granting permits or upholding a deficient
5 SEPA determination. For that matter, the Ruling does not expressly state that it denies the
6 SEPA appeal. Because the Ruling’s lack of any factual or legal grounds demonstrates that the
7 Hearing Examiner clearly erred in approving the Mining Special Use Permit and in denying the
8 appeal of the SEPA Mitigated Determination of NonSignificance (“MDNS”), CSVN requests
9 that it be reversed.
10

11 As an initial matter, CSVN requests that the Commissioners stay this appeal while the
12 Hearing Examiner reviews and issues a decision on the request for reconsideration that CSVN
13 filed on February 9, 2024. CSVN files this notice of appeal out of an abundance of caution to
14 ensure that its rights to appeal all issues that arise from the Ruling are preserved. CSVN also
15 recognizes that the Commissioners do not review appeals of SEPA threshold determinations,
16 but has included a description of the unevaluated and unmitigated environmental impacts below
17 to demonstrate the project’s lack of compliance with Special Use Permit criteria.
18

19 A copy of the Notice of Decision and Ruling are attached hereto as Exhibit A.
20

21 **II. NAME, ADDRESS, AND INTEREST OF APPELLANT.**

22 2.1 Appellants’ names and addresses are as follows:

23 Martha Bray
24 6368 Erwin Ln.
25 Sedro-Woolley, WA 98284

Linda Walsh
21710 Prairie Rd.
Sedro-Woolley, WA 98284

26 John Day
6368 Erwin Ln.
Sedro-Woolley, WA 98284

Larry Hedgepeth
5809 Brookings Rd.
Sedro-Woolley, WA 98284

1 Josie Hedgpeh
2 5809 Brookings Rd.
3 Sedro-Woolley, WA 98284

Kathy Reim
23262 Meadow View Lane
Sedro-Woolley, WA 98282

4 Wallace Groda
5 6386 Lillian Ln.
6 Sedro-Woolley, WA 98284

Robert Reim
23262 Meadow View Lane
Sedro-Woolley, WA 98282

7 Brian Bowser
8 21110 Parson Cr. Rd.
9 Sedro-Woolley, WA 98284

Jim Wiggins
21993 Grip Rd.
Sedro-Woolley, WA 98284

10 Jedidiah Holmes
11 7691 Delvan Hill Rd.
12 Sedro-Woolley, WA 98284

Abbe Rolnick
21993 Grip Rd.
Sedro-Woolley, WA 98284

13 2.2. Appellants are represented in this appeal by Kyle Loring, who can be reached as
14 follows:

15 Kyle Loring
16 Loring Advising, PLLC
17 PO Box 3356
18 Friday Harbor, WA 98250
19 360-622-8060
20 kyle@loringadvising.com

21 2.3. Appellants have a direct interest in the proposed development of a gravel mine
22 because they are parties of record and because they live and recreate in the vicinity of the
23 proposal and would be affected by the traffic, noise, pollution, and ecological impacts it would
24 generate. As an initial matter, Appellants have submitted numerous comment letters to address
25 the flaws in PDS' State Environmental Policy Act ("SEPA") review of the proposed gravel
26 mine and the proposal's inconsistency with Mining Special Use Permit criteria, as individuals,
as Central Samish Valley Neighbors, and through representation by Loring Advising, PLLC.
The Skagit County Code ("Code") defines a "party of record" as "any person who has testified
at a hearing or has submitted a written statement related to a development action and who

1 provides the County with a complete address, or a person who has formally requested to receive
2 information via a written statement with a complete mailing address.” SCC 14.04.020.

3 Appellants qualify as parties of record because they have submitted written statements related to
4 the applications for PL16-0097 and PL16-0098 and the SEPA review for those applications. As
5 parties of record, they have standing to appeal the Ruling.

6 2.4. In addition, Appellants live, commute, recreate, run errands, and observe and
7 enjoy fish and wildlife and their natural surroundings, all in the vicinity of the proposed Grip
8 Road gravel mine, and will be significantly harmed by the Ruling. As explained below,
9 Appellants all have a clear and direct interest in a proper SEPA review of the proposed mine’s
10 impacts and in efforts to ameliorate those impacts so that they do not suffer them. All of the
11 Appellants live near and travel frequently along potential haul routes and are aggrieved by the
12 lack of adequate review of traffic impacts described below. Appellants are aggrieved by the lack
13 of adequate review of the impacts of the mine operations, including those of its heavy gravel
14 hauling trucks, on the local wildlife that they observe in their own backyards and that ply the
15 waters of the Samish River and Swede Creek, where some of them volunteer and recreate.
16 Appellants all share a concern for their own safety and the safety of their family, friends and
17 neighbors who frequently travel the proposed haul route. And Appellants who live directly
18 adjacent to the mine site are aggrieved by the inadequate review of mine site pollution and
19 habitat degradation.
20
21

22 2.5. Martha Bray and John Day have an interest in traveling safely along the same
23 Grip Road that would be traveled by the project’s large trucks and trailers, which they also
24 travel frequently. They regularly ride their bikes along the likely haul route and are concerned
25 that the increased truck traffic along the narrow rural roads will harm their safety and
26

1 enjoyment. They also have an interest in maintaining and restoring wildlife habitat in the
2 vicinity of the proposed mine. They chose to live within their rural surroundings so that they
3 could enjoy the peace and quiet and live close to nature, and are actively restoring wildlife
4 habitat on their property. In addition, they have an interest in the preservation and restoration of
5 salmon runs in Swede Creek and the Samish River, which border and traverse the mine
6 property. Mr. Day serves as a volunteer steward of Skagit Land Trust's Tope Ryan
7 Conservation Area, which is located at the confluence of Swede Creek and the Samish River,
8 just downstream of the mine property.
9

10 2.6. Jedediah Holmes has an interest in safely commuting and cycling along the same
11 roads that gravel trucks and trailers from the mine may use. He is interested in his daughter
12 safely waiting for the school bus along that same route. He has an interest in being able to
13 continue to observe the same abundant wildlife that currently visits his family's lands, and in
14 being able to observe salmon where he volunteers to survey them in the Samish River basin.
15 And he is concerned that other mineral resource overlay properties near his home be held to a
16 high standard when applying to establish new, intensive mines.
17

18 2.7. Wallace Groda owns a farm less than ½ mile from the Grip Road entrance to the
19 proposed mine and has an interest in safely traveling along Grip Road and in maintaining his
20 property value and quality of life. He hauls farm equipment along the haul route and
21 understands firsthand the hazards related to encountering truck traffic on it.
22

23 2.8. Linda Walsh lives directly adjacent to the mine parcels that would be stripped
24 and excavated just 100 feet from her property line. She and her family have lived in this
25 location for many years, long before the mine was proposed, or even before the current owners
26 purchased the property. Ms. Walsh has an interest in ensuring safe travel along Grip and Prairie

1 Roads at the same time as the mine traffic. Ms. Walsh has an interest in avoiding noise impacts
2 from the neighboring mine, as well as dust wafting onto her property and into the Samish River
3 that runs through her property. Ms. Walsh also has an interest in preserving the wildlife that
4 travel across her property and onto the mine property, and preventing impacts to them from the
5 mine's heavy truck traffic and associated pollution, noise, erosion, and other impacts. She
6 wishes to continue the quiet enjoyment of her property along the Samish River for her family
7 and grandchildren.
8

9 2.9. Kathy and Robert Reim have an interest in preserving the safety of their growing
10 residential area from the proposed mine operations. They have experienced traffic impacts and
11 observed automobile crashes on the narrow, rural roads that the mine's gravel trucks and trailers
12 would have to negotiate.
13

14 2.10. Jim Wiggins and Abbe Rolnick live directly adjacent to the mine property. They
15 have an interest in safely navigating intersections like Grip Road and Prairie Road when gravel
16 truck and trailers from the mine would be negotiating that same intersection, especially in light
17 of increased vehicular traffic there in recent years. They also have an interest in maintaining the
18 quantity and quality of water in Swede Creek and the Samish River in their neighborhood while
19 the mine operates. And they have an interest in continuing to enjoy the peace and tranquility of
20 their rural home at the same time that the mine operators propose to generate significant heavy
21 truck traffic. When the applicant conducted work on the haul road during the summers of 2018
22 and 2019, the experienced significant noise.
23

24 2.11. Larry and Josie Hedgpath are concerned about traffic safety along the likely haul
25 route. Their grandson lives with them and attends nearby public school. They are particularly
26 concerned about his safety riding his bike and traveling to and from school. They also have

1 participated in stream enhancement projects on their property to restore fish habitat in Swede
2 Creek, and are concerned about impacts to this important aquatic habitat from the mine
3 operations.

4 2.12. Brian Bowser has lived in the Prairie Road/Parson Creek road area for more than
5 forty years. He has an interest in ensuring that the proposed mine does not significantly lower
6 the quality of life in the community. Mr. Bowser has an interest in ensuring that traffic
7 generated by the mine does not cause undue repair needs for Grip Road and that the gravel
8 shipping does not create safety hazards on the road. Mr. Bowser also has an interest in ensuring
9 that the mine operations do not cause excessive noise.
10

11 **III. SPECIFIC REASONS WHY THE DECISION IS WRONG AND RELEVANT**
12 **SECTIONS OF SKAGIT COUNTY CODE**

13 3.1. The Ruling is clearly erroneous because it is bereft of any legal reasoning or
14 statements of material facts and any application of law to the facts in the matter and thus does
15 not satisfy the criteria for a hearing examiner decision notwithstanding that the parties
16 developed a record over 7 days of hearing. SCC 14.06.160(9), 14.06.170.
17

18 3.2. The Ruling is facially void because it did not contain any of the elements
19 required of a Hearing Examiner decision, and should not have been circulated with a notice of
20 decision. SCC 14.06.160(9). Skagit County directs that a decision shall include:

- 21 • a statement of the applicable criteria and standards from the Skagit County
22 Comprehensive Plan, Skagit County Code, and other applicable law;
- 23 • a statement of the facts that the Hearing Examiner found showing the application does or
24 does not comply with each applicable approval criterion;
- 25 • assurance of compliance with applicable standards;
- 26 • the reasons for the decision to approve or deny the development permit or appeal; and
- any conditions or modifications deemed necessary.

1 The Ruling omits all of these elements, including even an express reference to the SEPA appeal
2 or the challenged MDNS.

3 3.3. Instead of containing the necessary elements for a decision, the Ruling contains
4 sarcastic text indicating that Mr. Reeves issued it on the grounds that he felt coerced to grant the
5 approval in the face of the combined pressure brought to bear against him by the Applicant and
6 PDS. These are not legally cognizable grounds for denying a SEPA appeal or granting a mining
7 special use permit.
8

9 3.4. The Ruling can be reversed on the above grounds alone, and remanded for
10 consideration of the record and production of a ruling that qualifies under the Code as a
11 decision. SCC 14.06.170(10).
12

13 3.5. However, in the event that the Commissioners deem it necessary to review the
14 appeal substantively, CSVN offers the grounds below for reversing the permit altogether due to
15 the failure to conduct sufficient SEPA review and because the application does not satisfy
16 mining SUP criteria.
17

18 3.6. The matter below involved applications by Concrete Nor'West/Miles Sand and
19 Gravel ("Applicant") for a special use mining permit (PL16-0098) and forest practice
20 conversion (PL16-0097) to convert 51 acres of largely forested land to a gravel mine and an
21 appeal by CSVN of a Mitigated Determination of Significance ("MDNS") that PDS issued for
22 that development in late February, 2022. In March, 2022, CSVN submitted first a
23 comprehensive set of comments identifying numerous deficiencies in the MDNS and, when that
24 failed to achieve withdrawal of the MDNS, a Notice of Appeal to request its invalidation and
25 the completion of an appropriate review of the proposal's likely significant environmental
26 impacts. CSVN submitted comprehensive project comments on July 8, 2023 and post-hearing

1 briefs on both the SEPA appeal and permit issues on October 28, 2023.

2 3.7. The hearing on CSVN's appeal and the applications occurred over seven days in
3 August and September, 2022. CSVN alone called nine (9) witnesses and provided
4 approximately 60 exhibits. Through these witnesses and the exhibits, CSVN demonstrated that
5 the project would have significant adverse impacts, that other likely significant impacts had not
6 been explored, and that the project did not satisfy the standards for a Mining Special Use Permit
7 pursuant to Chapter 14.24 of the Code due to noncompliance with wetland and stream
8 protections and its traffic and noise impacts. The following two sections summarize the
9 project's environmental impacts based on CSVN's evidence at hearing.
10

11 **A. Evidence of significant, unmitigated impacts.**

12 **1. Traffic Impacts.**

- 13
- 14 • Hauling east of the mine site on Grip Road--Brian Bowser shared video showing that a
15 truck and trailer likely would be unable to stay within their lanes along the haul route's
16 numerous tight turns, including one across train tracks. Bowser Test.; Ex. A-27.
 - 17 • Hauling on F&S Grade Road – witnesses testified to the sharp curve that would need to
18 be negotiated at the intersection with Prairie Road, in addition to the intersection with
19 Kelleher Road.
 - 20 • Unstable and flooded roads – photographs depicted the unstable shoulder toward the top
21 of the Grip Road hill, and flooding near the intersection of Grip and Prairie Roads. Exs. A-
22 14 and A-15. Bowser testified that flooding can be severe enough to close the road, yet the
23 application does not evaluate measures to mitigate the impacts of redirected mine hauling
24 traffic as a result of the flooding or ensuring that the unstable road shoulder receives timely
25 repairs when impacted by mine traffic.
26

1 • Sight distance at Prairie and Grip Road intersection – the applicant asserted at hearing
2 that it would be too expensive to address the sight distance by cutting into the slope and
3 removing the impediment but failed to produce figures or analysis to support that claim.
4 Testimony from Tilghman and Bowser demonstrated that, consistent with WSDOT draft
5 guidance, this step should have been taken before relying on a mechanical stopgap like
6 beacon lights. In addition, Bowser testimony indicated that the cost for additional right-of-
7 way would not have been significant.
8

9 • Grip Road hill – While the Applicant offered during the hearing to take some steps to
10 address the narrow road, acknowledging the need to take action there, the Applicant did not
11 offer a concrete proposal and the MDNS does not include a specific condition to ensure that
12 the road can accommodate the anticipated mine traffic.
13

14 **2. Noise Impacts.**

15 • Adjacent properties – Kristen Wallace acknowledged that the sound studies relied on
16 residential receptors far from property lines and testified that at 100 feet, which is the actual
17 width of the setback between the mine and adjacent residential properties, mining equipment
18 will generate noise as high as 75-76 dBA. Yet the MDNS does not include mitigation for
19 those impacts on neighbors like Linda Walsh and her family when they enjoy the woods
20 along the boundary line. At a minimum, such measures could include limited hours for
21 excavating near adjacent properties.
22

23 **3. Wildlife, Wetland, and Stream Impacts.**

24 • Samish River wetland – Matt Mahaffie, an expert in critical areas and SEPA application
25 with a background as a private consultant and a government employee, testified that the
26

1 MDNS did not mitigate for the impacts of an undersized 200-foot buffer when the County's
2 Critical Areas Ordinance requires a 300-foot buffer for the high impact industrial land use,
3 with an additional 25 feet above the top of a 25% slope (Semrau Exhibit, C-36 at 41, shows
4 average slopes of nearly 50% rising from the wetlands). This testimony was consistent with
5 the County's July 6, 2017 letter to Applicant (Ex. A-34) and the Department of Ecology
6 comments to Skagit County (Exs. A-36, A-37, A-38, A-39). Mahaffie testified that the mine
7 characteristics cited by Graham for reducing the buffer do not actually minimize its impacts
8 and were not consistent with Appendix 8C recommendations for reducing the buffer based
9 on the land use impact, and Graham testified that he was not familiar with Appendix 8C.
10 Molly Porter, another Applicant consultant, testified that she would typically characterize
11 surface mines as high impact land uses.
12

13
14 • Haul Road – Mahaffie testified that the 2018 work identified by Nora Kammer and John
15 Day on the 2.2-mile-long haul road, including vegetation removal, graveling the surface,
16 and any widening of the road, caused impacts in wetland and stream buffers that have not
17 been mitigated. Porter testified that she had not examined those impacts based on her
18 assumption that the road size, surface, and devegetation preexisted the application. While
19 there may be an allegation that the road widening occurred in conjunction with forestry
20 activities, Kammer explained that the forestry applications submitted by Applicant had not
21 identified the need to conduct road work, and had indicated that no work would occur in the
22 vicinity of streams. Exs. A-41, A-42. This information demonstrated that the road widening,
23 hardening, and devegetation were conducted in anticipation of mine traffic, and should have
24 been evaluated for the project. Mahaffie also testified that daily use of the haul road by
25 gravel truck and trailer traffic would cause greater impacts than periodic logging operations
26

1 in the form of a distinct habitat break, noise, dust, and lights that would affect amphibians
2 and other species, yet the MDNS does not mitigate for the increased scope and scale of
3 impacts above historic forestry impacts.

4 **B. Evidence of unexamined impacts.**

5 **1. Traffic Impacts**

6 • Substantial increase in truck traffic on substandard Grip Road – Applicant’s traffic
7 studies showed that large truck traffic would increase from approximately 3/week to an
8 average of 230/week over a 25-year period, with a maximum of 5,040/week¹ -- this is an
9 increase of 70-1680 times current traffic (*compare* Ex. 49-S-13 and the 6-8 axle truck that
10 Applicant would use to haul gravel *with* Ex. C-18 at pages 57-67). Yet Applicant did not
11 conduct a conflicts analysis. Tilghman testified that the authorization for up to 30 trucks and
12 trailers also should have been reviewed for safety under the county road standards because
13 the trucks and trailers stretch out for 75 feet and state guidance typically characterizes this as
14 2 vehicles. Further, SEPA functions as supplemental authority and a conflicts analysis
15 should have occurred to fully evaluate the mine’s hauling impacts. WAC 173-11-030(1).

16 That analysis would have evaluated safety issues like:

- 17
- 18 ○ Bicycle impacts. Phil McLoud testified to the use of Prairie and Grip Roads and the
19 lack of rideable shoulders and thus safety risks of adding large gravel hauling trucks
20 without improving the roads. Though Norris claimed during his testimony that
21 Applicant surveyed bicycle use, the vehicle counts do not do so.
 - 22 ○ Potential conflicts with school buses and emergency vehicles;
 - 23 ○ Roadway geometries;
- 24
- 25
- 26

¹ Under the extended hours scenario, Applicant would be authorized to run 30 trips per hour for 24 hours per day over a 7-day week, resulting in 5,040 trips.

- Safety along the steep Grip Road grade and the possibility of brake failure;
- Safety with just 20-22 feet of pavement and lack of usable shoulder; and
 - Maintenance needs for the roads as the truck/trailers override the pavement edge.
- Speeds traveled – Gary Norris conceded that although actual travel speeds on Grip Road are significantly higher than posted speeds, as seen on Ex. 49-S-6, Applicant’s analysis used posted speeds for its review, presumably including those for turns. This significantly under-represented traffic risks from the mine’s substantial increase of heavy truck traffic on Grip Road.
- Cumulative impacts – Applicant’s testimony conceded that they have purchased and operate a gravel mine (Proctor Pit) to the east on Grip Road, but did not study the cumulative traffic impacts of hauling gravel from both mines.

2. Climate Change and Carbon Emissions.

- The application did not evaluate air pollution like diesel or carbon emissions. Tilghman testified that mine excavation and hauling would generate a significant amount of emissions—at least 718 metric tons annually, not including the carbon impacts of removing 68 acres of trees, shrubs, and soils at the site that would otherwise absorb carbon. In *Wash. State Dairy Fed. v. State*, 490 P.3d 290, 317 (Wn. App. 2021), the court held that Ecology erred when it failed to consider climate change when drafting waste discharge permits, indicating that SEPA requires review of these impacts.

3. Noise Impacts

- The Applicant declined to study noise impacts from gravel hauling based on an exemption that does not apply to SEPA, which provides supplemental authority to study

1 impacts like the noise of compression brakes when traveling down Grip Road's 8% grade,
2 or the noise and vibration from crossing the bridge on Prairie Road.

3 **4. Slope stability impacts along the private haul road near Swede Creek**

4 • Unevaluated slope instability -- Dan McShane testified that, based on his experience in
5 the vicinity of the mine and as an engineering geologist, no responsible geologist could
6 conclude that the private haul road is not at risk from landslides or does not pose a risk of
7 increasing landslides or erosion. Applicant's geotechnical report erroneously assumed the
8 existence of high strength glacially consolidated sediments and thereby overlooked:

- 9
- 10 ○ Swede Creek's stream processes and potential slope undercutting;
 - 11 ○ Convergent topography below the east-west portion of the road; and
 - 12 ○ Dessication fractures.
- 13

14 McShane provided further unrebutted testimony that the report failed to identify
15 numerous areas of potential instability, including non-planar features like:

- 16
- 17 ○ An Incised creek – during the hearing, Applicant's consultant acknowledged this
18 issue but the Applicant has not proposed a method to address it other than
19 generally suggesting that they would do so;
 - 20 ○ Likely landslides;
 - 21 ○ Convergent topography;
 - 22 ○ Very steep slope above the creek; and
 - 23 ○ Eroded stream bank.

24 • **Salmon impacts**—Kammer testified that the application did not study the
25 impacts of the slope instability and potential sedimentation on multiple salmon species,
26 including protected salmonids like bull trout, Chinook, Coho, that inhabit the Samish

1 River and its Swede Creek tributary.

2 **5. Wildlife, Wetland, and Stream Impacts.**

3 • Wildlife corridor – Mahaffie testified that the application did not investigate the
4 impacts of clearing and mining a significant portion of one of the area’s last forested
5 wildlife corridors through the overall property, and its use by bears, cougars, bobcats,
6 and other species. The SEPA checklist did not identify these species at the site and John
7 Semrau, who prepared it, had no explanation for that omission.

8 • Redirected water -- Mahaffie testified that the application did not evaluate the
9 impact of removing the top of the hill above the wetland or redirecting water away from
10 it.
11

12
13 **3.8. In addition to these incompletely or unaddressed environmental impacts,**
14 **Application No. PL16-0097 does not satisfy Skagit County’s mining SUP criteria, as**
15 **follows.**

16
17 3.8.1. An applicant for a mine permit bears the burden of proving that the
18 impacts of the mine comply with Skagit County’s Mineral Resource Overlay (“MRO”)
19 regulations and Special Use Permit (“SUP”) criteria, and that conditions will mitigate
20 detrimental impacts to the environment and will protect the general welfare, health and
21 safety. SCC 14.16.440(9)(a), .900. If the impacts are mitigable, then the permit shall be
22 granted. SCC 14.16.440(9)(a). Mitigating conditions must be performance-based,
23 objective standards. *Id.* In addition, the County’s mining rules are “minimum standards
24 based on unique site-specific factors or conditions as appropriate to protect public
25 health, safety, and the environment.” SCC 14.16.440(9)(b). Ultimately, appropriate
26

1 conditions “shall be required to mitigate existing and potential incompatibilities between
2 the mineral extraction operation and adjacent parcels.” SCC 14.16.440(9)(c). In
3 addition, site-specific conditions are required to mitigate a mine’s stormwater runoff and
4 erosion impact. SCC 14.16.440(9)(d).

5 3.8.1.1. The application did not provide information required for a
6 mining SUP application, including required information about mine operations
7 and critical areas impacts. A mining SUP application must include, among other
8 information: (1) an operations proposal that estimates the number of truckloads
9 per day; and (2) any critical areas studies that may be required by Chapter 14.24
10 SCC. SCC 14.16.440(8)(f), .440(8)(g).

11 3.8.1.2. The Application does not provide adequate information about
12 truck trips. The application provides an “average” number of 23 truckloads per
13 day and a high-end estimate of 30 trucks per hour, but did not identify the actual
14 number of truck trips per day, or even describe the timeframe over which the
15 number of trips would be averaged. Consequently, the application did not
16 provide sufficient guidance to members of the public about the number of gravel
17 trucks and trailers that they will encounter on the narrow roads on any given day.

18 3.8.1.3. The application omitted necessary site assessment information for
19 the project site’s wetlands, streams, and geologically hazardous areas. Skagit
20 County’s Critical Areas Ordinance (“CAO”) applies to any land use or
21 development under County jurisdiction within the geographic area that meets the
22 definition and criteria for critical areas. SCC 14.24.040(1). Any non-exempt
23 activity that can impair the functions and values of critical areas or their buffers
24
25
26

1 requires critical areas review and written authorization. SCC 14.24.060. In
2 addition, if the CAO conflicts with any other provisions of the Skagit County
3 Code, the more restrictive provisions apply unless the CAO expressly states
4 otherwise. SCC 14.24.060(2). It should be emphasized here that “[i]t is the
5 responsibility of the landowner, or designee, who conducts or proposes to
6 undertake land use activities that can adversely impact critical areas or their
7 buffers to obtain County authorization prior to commencing such activities.”
8 SCC 14.24.060 (emphasis added).
9

10 3.8.1.4. While the applicant here ultimately provided documents related to
11 Skagit County’s geologic hazard requirement and wetlands and streams, those
12 documents omitted required general critical areas information. Where project
13 activities will occur within 200 feet of a critical area or its buffer, the applicant
14 must provide a critical areas site assessment. SCC 14.24.080(4). A critical areas
15 site assessment must include: (a) an assessment of the probable cumulative
16 impacts to critical areas resulting from development of the site and the proposed
17 development; (b) a description of the proposed stormwater management plan for
18 the development and consideration of impacts to drainage alterations; (c) a
19 description of efforts made to apply mitigation sequencing; (d) a proposed
20 mitigation plan including land use restrictions and landowner management,
21 maintenance, and monitoring responsibilities. SCC 14.24.080(4)(c).
22

23 3.8.1.5. The application does not assess the probable cumulative impacts
24 of applying undersized buffers to every wetland and stream affected by the
25 proposal based on the erroneous designation of the industrial scale mining as a
26

1 medium-intensity land use like rural, 5-acre housing. Nor did the application
2 assess the impacts of the expanded internal haul road on the surrounding
3 wetlands or streams, based on the false assumption that the road work preexisted
4 this proposal. Last, as noted above and explained in detail in the McShane
5 review, the AES Memo that concluded that there was no landslide risk failed to
6 evaluate non-planar slopes at the site or possible old slides in the glacial marine
7 drift at the site. These substantial omissions fall short of the site assessment
8 criteria.
9

10 3.8.1.6. In addition, the application did not consider the potential for
11 dewatering the Samish River wetlands by directing stormwater runoff into the
12 mine site and underlying groundwater and away from those wetlands. The
13 application states that stormwater will be infiltrated at the site, and will thus be
14 converted from surface water to ground water. Yet the hydrogeologic assessment
15 and other application materials fail to examine the impact of converting surface
16 water runoff that presumably would flow naturally down a steep slope to the
17 wetlands into groundwater flow that would travel in a more north/northeast
18 direction according to the flow direction arrows depicted on the map.
19

20 3.8.1.7. Because the application materials erroneously assume that the
21 mine will not adversely impact critical areas, including the wetlands, streams,
22 and geologically hazardous areas on the site, they do not attempt to apply a
23 mitigation sequence to the project's impacts.
24

25 3.8.2. The proposal does not satisfy protected critical areas requirements. To
26 ensure that critical areas near project areas receive long-term protection, the CAO

1 establishes protected critical areas (“PCA”) requirements. SCC 14.24.090. PCAs include
2 all critical areas and associated buffers and any areas on a parcel not investigated for
3 critical areas. SCC 14.24.090(1). PCAs must be depicted on a site plan suitable for
4 recording. *Id.* PCAs must be identified in the field and the buffer edges must be marked;
5 temporary markers must be established prior to construction and permanent markers
6 involving permanent stakes and critical areas markers must be installed. SCC
7 14.24.090(2). The location of these permanent markers must be shown on a plat map or
8 site plan and recorded with the auditor. SCC 14.24.090(2)(b)(ii). Landowners who must
9 establish PCAs must also record a binding agreement needed to stipulate to any other
10 conditions of approval. SCC 14.24.090(3)(b). While the staff report’s proposed
11 conditions direct the applicant to depict a PCA, they do not apply the other necessary
12 conditions.
13

14
15 3.8.2.1. The fish and wildlife documents submitted in support of the
16 application fail to satisfy either the site assessment criteria or the buffer
17 requirements for wetlands under the CAO.

18 3.8.2.2. The application omitted information necessary for a wetlands site
19 assessment. The CAO requires that wetland site assessments include the
20 following components: (a) a wetland delineation performed by a qualified
21 professional; (b) a site plan indicating wetland and buffer boundaries and the
22 locations of all data points; and (c) a functions and values analysis that includes a
23 discussion of water quality, fish and wildlife habitat, hydrologic regime, flood
24 and stormwater control, base flow and groundwater support, and cultural and
25 socioeconomic values. SCC 14.24.220. A wetland delineation involves “mapping
26

1 wetlands and establishing a wetland edge or boundary in accordance with the
2 manual adopted under RCW 36.70A.175 pursuant to RCW 90.58.380.” SCC
3 14.04.020.

4 3.8.2.3. Application materials did not provide a wetland site assessment
5 that satisfies these criteria. For example, they do not demonstrate that a wetland
6 delineation, which involves a significant effort to identify the exact edge of the
7 entire wetland, occurred.

8 3.8.2.4. Nor did the application offer data points or a complete functions
9 and values analysis. Because the application assumed that no impacts are
10 anticipated to threatened, endangered or sensitive species if the standard riparian
11 buffer is applied, it does not assess the impacts to fish and wildlife habitat
12 notwithstanding the proposal to reduce the buffer from the standard 300 feet to
13 200 feet.

14 3.8.2.5. The substandard medium-intensity buffers for the project,
15 including the 200-foot buffer for the Samish River wetlands, violates the CAO.
16 As repeatedly stated by the Washington Department of Ecology, the state agency
17 entrusted with regulating and protecting wetlands, the mining proposal qualifies
18 as a high intensity use that requires the largest buffers. As the agency that created
19 the regulatory regime for critical areas in Washington, Ecology’s expert opinion
20 on the policy issue of the correct buffers to apply should receive substantial
21 deference.
22

23 3.8.2.6. Category I and II wetlands necessitate a 300-foot-wide buffer for
24 high land use impact development. SCC 14.24.230(1)(a). These buffers “must be
25
26

1 measured horizontally in a landward direction from the wetland edge, as
2 delineated in the field....” SCC 14.24.230(2). In addition, where lands abutting a
3 wetland contain a continuous slope of 25% or greater, the buffer must include the
4 sloping areas. *Id.* And where the horizontal distance of the sloping area is greater
5 than the required standard buffer, the buffer should be extended to a point 25 feet
6 beyond the top of the bank of the sloping area. *Id.*

7
8 3.8.2.7. The Samish River wetland qualifies as a Category II wetland and
9 warrants a 300-foot buffer. SCC 14.24.230. According to the Skagit County
10 Code, “high intensity land uses” include “land uses which are associated with
11 high levels of human disturbance or substantial habitat impacts including, but not
12 limited to, medium- and high-density residential (more than one home per five
13 acres), multifamily residential, some agricultural practices, and commercial and
14 industrial land uses.” SCC 14.040.020 (emphasis added). The Mine qualifies as a
15 commercial and industrial use of the land, and the removal of all vegetation and
16 soil across at least 51 acres in order to gain access to underlying rock qualifies as
17 a high level of human disturbance and substantial habitat impacts.

18
19 3.8.2.8. The application also underestimated the impacts to the thirty-six
20 (36) wetlands within 300-feet of the gravel hauling road, because it assumed that
21 undersized buffers were standard for those areas, notwithstanding that frequent
22 gravel truck and trailer traffic plainly qualify as high impact industrial land uses
23 that require 300-foot buffers for the Category II wetlands along the internal haul
24 road. Category III wetlands require 150-foot buffers, and Category IV wetlands
25 require 50-foot buffers. SCC 14.24.230(1)(a)
26

1 3.8.2.9. Moreover, by clearing 100 feet of the required forested buffer, the
2 Mine would adversely affect functions that the forest provides to the productive
3 riparian zone, including: (1) maintaining water quality; (2) controlling fine
4 sediment; (3) contributing large woody debris; (4) providing shade and
5 moderating the microclimate; (5) contributing litter fall and organic matter; (6)
6 moderating site hydrology and stabilizing slopes; and (7) providing fish and
7 wildlife habitat.
8

9 3.8.2.10. In addition to the requirement to apply a high impact buffer, the
10 buffer would need to extend more than the standard width for buffer areas that
11 abut continuous slopes greater than 25%.

12 3.8.3. The application does not satisfy geologically hazardous area criteria. The
13 area where the internal haul road traverses Swede Creek is a geologically
14 hazardous area due to its gradients greater than 30% and its susceptibility to
15 stream bank erosion. SCC 14.24.410(1)(a), .410(1)(e). Consequently, the
16 project is subject to the CAO's geologically hazardous areas site assessment
17 and mitigation requirements, neither of which are met by the application.
18
19 SCC 14.24.420, .430.

20
21 3.8.3.1. First, the application omits several elements of the requisite site
22 assessment for the geologically hazardous area near Swede Creek, including: (1)
23 a site plan depicting the height of the slope, slope gradient and cross section
24 indicating the stratigraphy of the site; (2) a description of load intensity, surface
25 and groundwater conditions, fills and excavations; and (3) a description of the
26 extent and type of vegetative cover including tree attitude. The August 2015

1 Hydrogeologic Site Assessment (by the same consultant) that CNW submitted
2 along with its original permit application includes some of the above elements,
3 but only addresses the site where the gravel will be excavated, not the haul road.

4 3.8.3.2. These omissions are particularly critical along the fish-bearing
5 Swede Creek because the geologically hazardous area exhibits characteristics of
6 risk from landslide and erosion. According to a report from a licensed
7 engineering geologist, Dan McShane, the application's fundamental assumption
8 that relatively planar slopes (generally stable) underly the road where it crosses
9 the steep slope is not "remotely consistent" with his view of the site, as
10 demonstrated by Figure 1 of the McShane Report. McShane identified numerous
11 non-planar slopes that should have been evaluated for their potential impact on
12 road stability. In addition to identifying other significant deficiencies in the
13 project's slope stability review, Mr. McShane concluded that
14

15
16 [t]he report does not provide an adequate discussion of the hazard and
17 a number of slope issues on this site are never discussed or mentioned.
18 **The lack of analysis of several areas of the slope in the AES report**
19 **is such that it is my opinion that no responsible geologist could**
20 **reach the conclusion that the road is not at risk from landslides or**
21 **does not pose a risk of increasing landslides or erosion.**

22 3.8.3.3. Thus, the application failed to reflect indicators of slope instability
23 at the site, and consequently failed to prepare a mitigation plan designed to avoid
24 and minimize the geologically hazardous impacts of the proposal. SCC 14.24.430.
25 Such a plan would need to address numerous factors to protect against risk to the
26 critical area. SCC 14.24.430(1).

3.8.4. In addition to the above, mine applications must demonstrate compliance

1 with Skagit County’s Special Use Permit (“SUP”) criteria. SCC 14.16.440(9);
2 .440(11). The information in the Application and provided to date by the public
3 demonstrates that the mine, as currently proposed, would cause adverse impacts to
4 general public health, safety, and welfare and thus does not meet SUP criteria.

5
6 3.8.4.1. A special use permit must demonstrate that the proposed activity
7 will not adversely affect or prevent those uses normally allowed within the
8 respective district. SCC 14.16.900(1)(a). In addition, the applicant bears the
9 burden of providing evidence to prove that:

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

1 special use permit shall be reviewed and considered for cumulative impacts.
2 SCC 14.16.900(1)(b)(v).

3 3.8.4.2. The application does not demonstrate that the proposed mine will
4 avoid potential adverse effects on the general public health, safety, and welfare
5 and will avoid conflict with the health and safety of the community, or that it is
6 supported by adequate public facilities or services and will not adversely affect
7 public services to the surrounding areas because it has not demonstrated
8 compliance with Skagit County Road Standards, 2000 (“Road Standards”). The
9 applicant conducted a level I TIA, rather than the level II TIA required of the
10 proposal, and thus omitted necessary information as explained below. In addition,
11

12
13 (A) The TIA errs in not correcting the trip numbers for heavy trucks to
14 reflect their much greater size and weight than ordinary passenger vehicles
15 and light trucks. The Highway Capacity Manual, which is incorporated by
16 reference in SCRS (SCRS 2000 2.07), states that for road capacity purposes,
17 such vehicles are equivalent to two passenger cars (on level grade, much more
18 when climbing hills). At that rate, peak pm hour mine traffic should be
19 counted as 58.8 trips, not 29.4 trips (Tilghman Transportation Report, Ex. A-
20 28 to the SEPA appeal hearing). Since 58.8 trips exceeds the 50 trip threshold
21 for triggering a Level II TIA, the applicant should have conducted a level II
22 TIA (SCRS 2000 4.02.B).

23 (B) The TIA does not adequately address traffic impact contributions for
24 identified roadway safety problems and physically inadequate roadways
25 (SCRS 2000 4.06 and Appendix A, Level II Analysis, III.2.c);

26 (C) The TIA does not meet the requirements for study of impacts to
driveways, adjacent roadways, and major roadways and intersections in all
directions from the site. This is true for certain routes identified as part of the
haul route, as well as other roads that could be used because there is no
provision in the TIA limiting mine traffic to the identified routes (SCRS 2000
4.07.B and Appendix A, Level II Analysis, III.1.a);

1 (D) The TIA fails to take future growth into account in looking at
2 background traffic levels on the proposed haul route (SCRS 2000 4.08.C;
Appendix A, Level II Analysis, III.1.a, III.1.d, and IV.1);

3 (E) The TIA fails to identify and evaluate the combined traffic impacts of
4 the mine and other major residential and industrial development already
5 planned for the area north of Sedro Woolley, such as the SWIFT Center
(SCRS 2000 4.07.C; Appendix A, Level II Analysis, III.1.a, III.1.d, and IV.1);

6 (F) The TIA states falsely that there are no designated bicycle facilities that
7 coincide with the mine haul route and fails to evaluate risks to bicyclists using
8 bicycle routes designated in the County's Comprehensive Plan and US
9 Bicycle Route Map Route 87 (SCRS 2000 4.07.D.12);

10 (G) The TIA fails to evaluate the risks posed to Sedro Woolley and
11 Burlington-Edison School District bus routes by the increased truck traffic
(SCRS 2000 4.07.D.15);

12 (H) The TIA misstates the conditions on Prairie Road, implying that there
13 are paved shoulders between two and four feet wide when in fact there are no
14 paved shoulders and there are long stretches of the road where the guard rails
15 are immediately adjacent to the fog line, leaving virtually no shoulder (SCRS
2000 4.09.B);

16 (I) Aside from the two sharp curves on Prairie Road just east of Old
17 Highway 99, the TIA fails to provide any analysis for other locations such as
18 the "S" curves on Grip Road where it will be difficult to impossible for trucks
19 with trailers to stay within their lanes (SCRS 2000 4.09; Appendix A, Level II
Analysis, III.2.c, V, VI, VII, VIII);

20 (J) The TIA acknowledges that county roads on the proposed haul route do
21 not meet county standards in several key aspects and that there is inadequate
22 sight distance at certain intersections, but does not provide the required
23 conflict analysis for the proposed volume of heavy truck traffic (SCRS 2000
4.09; Appendix A, Level II Analysis, III.2.c, V, VI, VII, VIII);

24 (K) The TIA fails to propose adequate mitigation measures even for traffic
25 safety issues it identifies, much less for those it omits. For example, there is
26 no explanation as to why the option of cutting back the embankment that
restricts sight distance on Prairie Road at the intersection with Grip Road was
not considered, when that could fully resolve the sight distance issue. Instead,

1 it proposes as mitigation a traffic-activated, flashing yellow beacon system
2 that, when he originally proposed it, the author characterized as only a
3 temporary measure (SCRS 2000 4.09; Appendix A, Level II Analysis, VI,
4 VII, VIII);

5 (L) The TIA fails to evaluate the risk of truck brake failure on the steep
6 grade on Grip Road just west of the mine haul road entrance (SCRS 2000
7 4.09; Appendix A, Level II Analysis, V.3, VI, VII, VIII);

8 (M) The TIA does not evaluate impacts from longer days, more days or
9 both; and

10 (N) The TIA does not evaluate the impact of hauling in hours of
11 darkness.

12 3.8.4.3. In addition, the following mine impacts, explored in detail above,
13 conflict with SUP criteria that the mine comply with the Skagit County Code, that
14 it will not cause potential adverse effects on the general public health, safety, and
15 welfare, that it is not in conflict with the health and safety of the community, and
16 that it will maintain the character, landscape, and lifestyle of the rural area that
17 preexists the proposed mine:

- 18 • past and likely future adverse impacts to wetlands and streams;
- 19 • impacts to an essential wildlife corridor;
- 20 • water pollution impacts;
- 21 • inadequately-examined noise impacts to neighbors; and
- 22 • unexamined carbon impacts.

23
24 3.9. Post-hearing briefing concluded by October 28, 2022. CSVN's SEPA appeal
25 brief provided the above summary and CSVN's permit application brief discussed the need to
26 deny the mining special use permit due to its inconsistency with the Code's wetland buffer

1 protections and stream and stream buffer protections, and with noise and traffic standards.

2 3.10. The Hearing Examiner issued his Ruling in response to being threatened with
3 jail, submitted the Ruling to Skagit County Superior Court on February 1, 2024. It reads in
4 pertinent part as follows:

5 But.... Out of an abundance of caution given the very clear threat of being put in
6 jail for an indeterminate length of time – as the Applicant and County convey as a
7 common solution to the problem of how to deal with non-financially motivated
8 former appointed part-time staff who they believe must complete whatever tasks
9 previously assigned no matter the status of their contract – deferral to the
Applicant’s desires and County’s wishes is appropriate, inevitable, and definitely,
10 100%, totally uncoerced.

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

14 3.11. The Ruling did not discuss material facts or identify applicable legal standards
15 for the permit review or SEPA appeal, and did not articulate whether the material facts satisfied
16 or did not satisfy those standards.

17 3.12. PDS subsequently deemed this text a final decision and circulated a Notice of
18 Decision (“NOD”) on February 2, 2024. The NOD sets the 14-day appeal date twelve days
19 later, on February 14, 2024. This NOD was amended and a new NOD circulated on February
20 12, 2024.

21 **IV. RELIEF REQUESTED**

22 CSVN respectfully requests the following relief:

- 23 • reversal of the ruling;
- 24 • the granting of CSVN’s SEPA appeal, withdrawal of the MDNS, and direction to
25 properly evaluate the environmental impacts listed at Section II above and in CSVN’s
26 Notice of Appeal and post-hearing briefing;

- denial of the Forest Practice Conversion application, PL16-0097 and Mining Special Use Permit application, PL16-0098;
- in the alternative, remand for review of and mitigation for the environmental impacts set forth above and an evaluation of the mining SUP against the Code criteria; and
- such other and further relief as the Hearing Examiner deems just and equitable.

V. CONCLUSION

The Hearing Examiner clearly erred when he failed to issue a decision that included any of the elements required by the Skagit County Code for a decision. CSVN respectfully requests that the Ruling be reversed.

RESPECTFULLY SUBMITTED this 15th day of February, 2024.

LORING ADVISING PLLC

By



Kyle A. Loring, WSBA No. 34603
Attorney for Appellants

DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington, that on the date and in the manner indicated below, I caused the following:

- **Appellant Central Samish Valley Neighbors’ Notice of Appeal; and**
- **Declaration of Service**

to be served on:

Jason D’Avignon	[] By United States Mail
Skagit County Civil Deputy	[x] By Electronic mail
Prosecuting Attorney	
jasond@co.skagit.wa.us	

William T. Lynn	[] By United States Mail
Reuben Schutz	[x] By Electronic mail
Attorneys for Miles Sand and Gravel	
blynn@gth-law.com	
rschutz@gth-law.com	

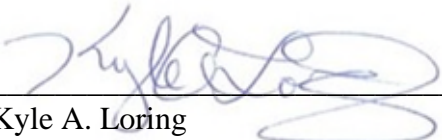
with courtesy copy to:

Tom Ehrlichman	[] By United States Mail
Attorney for Cougar Peak	[x] By Electronic mail
tom@dykesehrlichman.com	

and filed with:

Skagit County Board of Commissioners
Via permit portal

DATED this 15th day of February, 2024, at Friday Harbor, Washington.



 Kyle A. Loring

EXHIBIT A

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

E-FILED
Skagit County Clerk
Skagit County, WA
2/1/2024

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR SKAGIT COUNTY

CONCRETE NOR'WEST, a division of
MILES SAND AND GRAVEL, a Washington
corporation

Plaintiff,

v.

SKAGIT COUNTY, a political subdivision of
the State of Washington and ANDREW
REEVES, an individual and Hearing Examiner
for Skagit County

Defendants.

NO. 23-2-00631-29

FINAL DECISION OF FORMER
HEARING EXAMINER REEVES
(ABSENT RECONSIDERATION)

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 1st day of February 2024.



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)