

William T. Lynn
Direct: (253) 620-6416
E-mail: blynn@gth-law.com

March 22, 2019

Wick Dufford
Skagit County Hearing Examiner
1800 Continental Place
Mount Vernon, WA 98273

RE: Concrete Nor'west/Miles Sand & Gravel
PC16-0097 – County Decision to Deny Application dated April 5, 2018

Dear Examiner Dufford:

I am writing on behalf of Concrete Nor'West/Miles Sand & Gravel, the Applicant for this permit. Unfortunately, we feel compelled to request that this matter be scheduled again for hearing, with a prehearing conference as an initial step.

You will recall that we had a prior prehearing conference and, on the same day we came before you, met with the County attorney and staff and reached agreement on a path that would produce all of the information the County found necessary for its review. Since that time, the Applicant has made several submittals to the County. In the 5 months after submittal, we received no written comments, only a February 22 letter stating that the Application was incomplete, in large part on the basis of comments never previously made by the County. The Applicant has been forced to shoot in the dark.

We attach three letters that we believe explain the current status. The first is a letter dated May 11, 2018 from the Applicant's attorney to the County summarizing the agreed upon steps for completing the application. This was merely to confirm what we agreed to on the date of the Prehearing Conference. It was the agreed list of what was needed.

The second is a letter dated February 22, 2019 from the County's Prosecuting Attorney stating that the information they had received was not sufficient providing a list of "outstanding items supporting the denial of the Application." This was the only written communication we received from the County after May 11. There were several letters from the Applicant to the County updating information and providing modified reports. These, however, were not the result of normal written project comment and response, but rather followed phone calls between the

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Tacoma Office
1201 Pacific Ave., Suite 2100 (253) 620-6500
Tacoma, WA 98402 (253) 620-6565 (fax)

Seattle Office
600 University, Suite 2100 (206) 676-7500
Seattle, WA 98101 (206) 676-7575 (fax)

Gordon Thomas Honeywell_{LLP}
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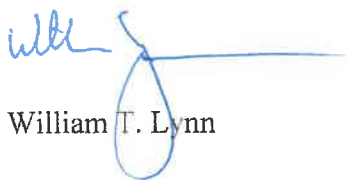
County's attorney and the Applicant's Attorney. County Code requires that requests for information be in "writing". SCC 14.06.100(3).

The third letter is a letter from the undersigned to the County dated February 27, 2019 providing answers, but also noting that many of the comments were brand new. Some comments could have been made by the County much earlier, even at the time of the original application. For example, the County claims the application is deficient because the applicant has not provided a vicinity map, which goes back to Day One. Other comments do not go back quite so far but could have been made at the time reports were submitted months ago or longer. For example, the County rejects the noise study because the noise expert did not provide a biography or sign the report. This could have been noted on the initial review or could have been included when we agreed on the "to do" list last May.

Sadly, these are the same kinds of issues we raised in our initial appeal of the County's denial last Spring. At that time, the County based its denial on comments and requirements that the Applicant had never had an opportunity to address. Now, one year later, we find ourselves in the same situation: unable to guess at what the County is looking for. This violates SCC 14.06.100, which requires a writing stating the "specific requirements" for a complete application.

We request that a Prehearing Conference be scheduled, preferably by telephone unless the Examiner wants to see the parties in person. Alternatively, (and preliminarily) we request that the Hearing Examiner require the County to provide a complete, written list of all of the deficiencies in the Application and an opportunity for the Applicant to respond to those within 30 days after receipt. We believe that such a request is consistent with law and specifically the County code provisions cited above and RCW 36.70B.070(b).

Very truly yours,



William T. Lynn

WTL:lb

Enclosures

cc: Julie Nicoll
Brad Barton
Dan Cox
Mike Schuh

*emailed
5/11/18*

William T. Lynn
Direct: (253) 620-6416
E-mail: blynn@gth-law.com

May 11, 2018

Julie Nicoll
Skagit County Attorney's Office
605 S. Third
Mount Vernon, WA 98273

RE: Concrete Nor'west/Miles Sand & Gravel

Dear Julie:

I wanted to follow up and set out what I understand our plan of action is for getting additional information to the County. We have 90 days (to August 7) to respond to the Hearing Examiner so I want to make sure we are on the same page. We agreed to submit the following:

1. An alternative site plan showing a 300 foot buffer from the wetland edge. This will be submitted without any waiver of our right to contend to the Hearing Examiner that only a 200 foot buffer is required.
2. We will resubmit the Noise Report or provide a supplement to the report that responds to the concerns set forth in the County's letter dated April 5, 2018 on that subject.
3. On traffic, you will obtain the input from Gibson, the County's third-party expert, on the traffic information that the Applicant has previously submitted. Please let us know when we should expect to receive those comments. If possible, we would like to have our traffic consultant communicate with the County's expert so that we can begin to address any comments as soon as possible. We will then either resubmit the report or submit a supplemental report addressing any comments by the County's consultant.
4. We will submit a revised narrative discussion of how the Applicant believes the proposal meets the criteria for a special use permit. Our revised submittal will make reference to the various reports and studies that have been submitted since the time the original hearing was scheduled and will address other mitigation measures or project elements that help ensure the criteria are met.

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Tacoma, WA 98402 (253) 620-6565 (fax)

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5. We will submit a water quality plan that describes the equipment and facilities that could provide potential sources of contamination, and identify ways in which potential risks are avoided or addressed by the proposal. That will likely attach the provisions of the Washington State Department of Ecology Sand And Gravel General Permit with appropriate references to sections where mitigation is provided. We will also provide a conceptual drawing showing implementation of measures to protect water quality and show any sensitive areas.


6. With respect to the private mine access road, the Applicant's consultants will be contacting the Public Works Department representatives who were unable to attend our meeting in hopes of working out a mutually acceptable condition of approval that will identify how the proposal can be conditioned to require compliance with applicable standards. In any event we will submit a proposed condition.

We can provide a more definite time line once we have information about the expected timing of the Gibson input.

The expectation of both the Applicant and the County is that this information will address the requirements of the County so that the current Application can proceed to hearing, hopefully shortly after the materials are submitted. That would allow us to dismiss the currently pending appeal.

We appreciated the productive communications we had Wednesday and hopefully we can continue that as this last remaining information is put together. From our conversation I know we share a commitment to establishing a record that will provide all of the information the Hearing Examiner needs to decide this matter in accordance with legal requirements.

Very truly yours,



William T. Lynn

WTL:lb

cc: Hal Hart, Director, Planning & Development Services
Betsy Stevenson, Senior Planner/Team Supervisor, Planning & Development Services
Dan Cox
Brad Barton
Mike Schuh
Patricia Larson



Skagit County Prosecuting Attorney Richard A. Weyrich

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CHIEF DEPUTY
KURT E. HEFFERLINE

SENIOR DEPUTY
KAREN PINNELL

February 22, 2019

Via E-Mail Only: BLynn@gth-law.com

William Lynn
Gordon Thomas Honeywell LLP
1201 Pacific Avenue, Suite 2100
Tacoma, WA 98402

RE: Concrete Nor'West/Miles Sand & Gravel Mining Special Use Permit (PL16-0097)

Dear Mr. Lynn,

We are in receipt of your correspondence dated September 14, 2018, December 7, 2018, and January 29, 2019. As noted in our April 5, 2018 letter and as discussed subsequently in person and by phone on numerous occasions, Concrete Nor'West failed to submit the information requested by Skagit County Planning & Development Services necessary to process the permit application. This list of outstanding items supports the continuing denial of application PL16-0097. Despite our best efforts to settle this matter, it appears we must proceed to hearing on the appeal of the denial of the incomplete application. We suggest setting a pre-hearing conference with the Hearing Examiner and preparing for a hearing as discussed further below.

In summary, below is a list of outstanding items supporting the denial of the application:

- 1) Skagit County Planning & Development Services cannot evaluate the potential impacts from the proposed project because the application materials contain conflicting information about the scope of the project. For example:

Main Office
605 S. Third Street
Mount Vernon WA 98273
(360) 416-1600
Fax: (360) 416-1648
prosecutor@co.skagit.wa.us

Civil Division
Administration Bldg., 700 S 2nd St., Rm 202
Mount Vernon WA 98273
(360) 416-1600
Fax: (360) 416-1649
prosecutor@co.skagit.wa.us

Family Support Division
PO Box 1226, 208 E Blackburn Rd Ste 203
Mount Vernon WA 98273
(360) 416-1161 fax (360) 416-1163

- The application form, narrative, and SEPA checklist contain conflicting information as to the proposed hours of operation and are silent as to the anticipated number of truck trips per day; these documents also fail to discuss potential traffic impacts;
 - The traffic report, traffic report addendum, and Noise and Vibration Study contain conflicting information as to the proposed hours of operation and the number of truck trips per hour:
 - The traffic report evaluates operations for off-peak hours only (9 am to 3 pm), 8 truck trips per hour;
 - The traffic report addendum evaluates up to 60 truck trips per hour or 720 truck trips per day;
 - The updated Noise and Vibration Study assumes less than 70 truck trips per day from 7 am to 5 pm;
 - As noted in the prior letters dated March 14, 2017, July 6, 2017, and April 5, 2018, Skagit County requested the application materials be updated to address numerous factual inaccuracies and to ensure consistency with current project plans. Concrete Nor'West has failed to submit this additional information as requested.
- 2) As previously mentioned by phone, none of the map sets provided contain the 100 foot mining buffer as required by SCC 14.16.440(10)(b)(iii). SCC 14.16.440(8)(a)(ii)-(iv) also requires buffers to be shown on pre-mining maps, reclamation sequence maps, and final reclamation maps. Map sheets C3, C4, and C5 submitted by Concrete Nor'West failed to include the 100 foot buffer.
- 3) Additionally, Concrete Nor'West failed to submit a proper vicinity map pursuant to SCC 14.16.440(8)(a)(i). SCC 14.16.440(8)(a)(i) requires "a vicinity map with a north arrow indicating the area on which the extraction operation is proposed including a legal description, showing right-of-way width of access roads to the proposed site from the nearest community and any roads proposed on the site, and showing zoning of adjacent properties and land uses within 5 miles of the area proposed for mineral extraction and related activities";
- 4) As previously mentioned by phone, the on-site study to determine appropriate mitigation requirements for noise, vibration and dust levels remains incomplete pursuant to SCC 14.16.440(8)(e). For example, insufficient explanation was provided on how the "speed adjustments" were calculated in the vibration analysis. While your December 7, 2018

letter referenced the FTA guidance as a basis for the adjustments, no additional explanation was provided. Based on the FTA guidance, it appears that further adjustments may be necessary to address the type of vehicle and suspension system. Furthermore, the locations of the residential properties analyzed along Grip Road and Prairie Road were not specifically identified, making it difficult to evaluate the report's findings. Additionally, the geographic scope of the vibration study was not addressed in the report. The study fails to analyze potential vibration impacts along the known haul routes to other local gravel pits. In addition, it is unclear how the model was analyzed based on "northern and southern scenarios." No explanation was provided as to what these terms refer to. The report also lacks basic information such as the limits of the mine in Figure 1 of the report. Finally, it should be noted that the report is not signed by a qualified professional, so it is unclear who the author of the report is and what qualifications they have.

- 5) As referenced in the April 5, 2018 letter and in prior letters dated March 14, 2017, July 6, 2017, and October 24, 2017, potential water pollution impacts have not been sufficiently analyzed under SCC 14.16.900(1)(b)(v)(C). Your letter dated May 11, 2018 stated that a conceptual drawing showing implementation of measures to protect water quality and sensitive areas would be provided. To date, the County has not received this information. As noted above, inconsistencies in the application materials need to be addressed. For example, the Hydrogeological Site Assessment states that only mobile fueling will take place, but the project narrative and special use application discuss a fueling station. However, the SEPA checklist fails to reference fueling operations.
- 6) As referenced in the April 5, 2018 letter, the application materials were not updated to ensure the access road is in compliance with the private road standards pursuant to SCC 14.16.440(8)(i). In a letter dated March 14, 2017, we asked you to provide a plan indicating the proposed improvements to the access road to achieve private road standards. In a letter dated July 6, 2017, this issue was raised again. However, this plan was never received. To date, the County has only received as-builts of the access road.
- 7) In response to the inquiry in your January 29, 2019 letter about the status of Gibson Traffic Consultants' third party review of the traffic study, Skagit County will not proceed with this task until the application is deemed complete and this appeal is resolved.

Mr. William Lynn
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A pre-hearing conference should be scheduled with the Hearing Examiner to finalize a hearing date and associated case schedule deadlines (briefing schedule, witness disclosures, etc.). The Hearing Examiner is available on the 2nd and 4th Wednesdays of the month. I will also be out of town March 11-15.

Finally, it should be noted that this matter cannot be "set for hearing before the Hearing Examiner on the merits of the requested permit" as stated your January 29, 2019 letter because the application has been denied for failure to timely submit requested information. Accordingly, it is premature to discuss the merits of the requested permit.

Please feel free to contact me with any questions and let me know about your availability for a prehearing conference.

Sincerely,

A handwritten signature in black ink, appearing to read "Julie", with a stylized flourish at the end.

Julie Nicoll

cc: Hal Hart

John Cooper

Betsy Stevenson

Paul Randall-Grutter

Dan Cox

Brad Barton

William T. Lynn
Direct: (253) 620-6416
E-mail: blynn@gth-law.com

February 27, 2019

Julie Nicoll
Deputy Prosecuting Attorney
Skagit County Prosecuting Attorney's Office
605 S. Third
Mount Vernon, WA 98273

RE: Concrete Northwest/Miles Sand & Gravel
PL16-0097 - Mining Special Use Permit

Dear Ms. Nicoll:

We are most surprised by your letter of February 22, 2019 concluding that the application remains incomplete. Most notable is the fact that we submitted information on September 14, 2018, more than five months ago and this is the first written communication since that submittal. For reasons unknown to us, the County has completely abandoned the normal comment and response process and we believe has actually prevented staff members from having normal communications with the Applicant about any claimed deficiencies. Instead, we have been forced to "read the tea leaves" by having the Applicant's lawyer get sporadic filtered telephone comments from the County's lawyer and pass them onto the various consultants. That has led to two different resubmittals, one on December 7, 2018 and another on January 29, 2019 to respond as best we can understand the issues. If the County still finds the information inadequate it is certainly not the result of the Applicant's failure to try to both understand and respond to County questions.

Before turning to the specific comments in your letter we feel compelled to lay out a few things about the normal land use processes not only in Skagit County but elsewhere. These practices are certainly well known to the staff; applied here, they should easily resolve any claimed deficiencies.

1. Applications are read as a whole. Not every map, plan or report independently contains all of the information that relates to the Application. They are independent pieces that relate to a whole project.
2. Projects evolve over time. It is not surprising that there would be older information that is not 100% consistent with later information reflecting project changes. That is why we

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Tacoma, WA 98402 (253) 620-6565 (fax)

Seattle Office
600 University, Suite 2100 (206) 676-7500
Seattle, WA 98101 (206) 676-7575 (fax)

submitted the Project Narrative (at your suggestion), to summarize all of the current project elements that should be considered in the County review.

3. If staff has questions or concerns about a proposal, they contact the Applicant and explain the concern so that the Applicant can respond. Verbal communications between experts can be the quickest way to answer a question. Where the comments are more significant they are put in writing. The County has completely departed from both the informal and formal process that successfully works on every other application in the County, instead relying upon very sporadic communication between the lawyers.

4. Finally, comments should work like a punch list, with the Applicant having an opportunity to address County comments until they are all answered. The Applicant should not have to face new comments with every review. That was an objection we noted in our original appeal of the County's decision finding the project application incomplete, and your latest letter includes several new requirements. There is no lawful basis for the County to add new requirements at the end of the process and then tell the Applicant its information is incomplete because those completely new comments have not been addressed.

We now turn to the specific comments in your letter. The paragraphs correspond to those in your letter:

1. Conflicts in Traffic and Hours

Hours of Operation.

Hours in Traffic Study. There have been numerous communications between the Applicant and the County regarding the hours of operation. On March 14, 2017, the County indicated that it would accept operations limited to Monday-Friday, 7:00 a.m. - 5:00 p.m. Miles responded by letter dated May 15, 2017 indicating that will be up to the Hearing Examiner to establish the hours of operation and that there is no basis to restrict hours at all. The County replied again on July 6, 2017 indicating that the PDS staff would recommend to the Hearing Examiner hours from 7:00 a.m. - 5:00 p.m. All of these letters post-dated the traffic analysis (2016). Why is this question about hours of operation in the traffic analysis coming up in 2019 for the first time? Is the County really going to tell the Hearing Examiner the application is deficient for a matter raised for the first time 3 years after the traffic study was submitted? We are confident that the hours of operation that are proposed are well established by the record. If the County would like us to file a correction or an errata to the traffic analysis so that it corresponds with the most recent discussions, we can do so but that seems extraordinary and unnecessary.

Hours in Noise and Vibration Study. The County noted deficiencies in the noise study in its letter of April 5, 2018, which we appealed. No deficiency was noted with respect to hours of operation. This is literally the first time we have heard this objection. New comments should come at the last minute and should certainly not be the basis for a determination of deficiency.

We do not even believe that this is a material point. The project will have to comply with the County's day/night noise regulations no matter what. If, however, the County wants a correction or errata filed we can certainly do so. The Applicant should certainly have the right to take that simple step rather than having its application deemed incomplete.

Traffic Volumes.

The initial traffic report addressed an average trip count of 46 trucks per day. The traffic report addendum does not propose 60 trucks per hour (or 720 trucks per day). The addendum was prepared in response to a County question as to capacity of the intersection without exceeding the County's adopted level of service. All the addendum did was identify the number of trips that could be accommodated without exceeding the level of service threshold.

The Noise and Vibration Study makes clear on page 12 that it is the adopted impact criterion that is based on 70 events per day. That was not a projection of traffic but only an indication of the FTA-adopted standard. The study on the same page indicates that the expected measurement is below the level that would occur even if there were more events per day and so concludes that "no vibration impacts are anticipated." Thus the number of trips is irrelevant to the conclusion.

We recognize that the County does not receive (because it does not require) vibration analysis on a regular basis. That makes it all the more appropriate that the County simply ask the question of the expert rather than identify it too late as a basis for rejecting the application.

2. PLANS SHOWING BUFFERS

This is the first mention in a written comment of this requirement. You and I have discussed this by phone but not with the understanding that this was a code requirement. This is an easy fix; we can promptly submit plans showing all of the information that is required. Since the buffer itself is a code requirement we fail to see how this is material to the County's review. County law would require the buffers in any event. But, we are certainly willing to include this information and only ask that we receive a written comment.

3. VICINITY MAP

This is a very surprising requirement and even more so that it would serve as the basis for rejecting the application. This Special Use Application was filed on March 7, 2016, and this is literally the first time this comment has been made. There are countless maps in the files and there is certainly no mystery on the part of anybody about where this proposal is. Again though, a vicinity map can easily be submitted now that (3 years later) the comment is made.

4. NOISE AND VIBRATION ANALYSIS

We suspect that some of the County's comments relate to the fact that it does not ordinarily require or review vibration analysis. That is why the Report itself and our January 29, 2019 letter specifically advise where the FTA Guidance can be obtained. In that latter letter we actually attached copies of the pages in question. It would have been a simple matter for the County to either put its comments in writing so that they could be responded to or to simply pick up a phone and ask for a conversation with the expert.

The geographic scope is explained. Page 11 of the report states that Ramboll identified all structures located within 50 feet of the nearest and farthest lanes of Grip Road and Prairie Road, west of the mine entrance. What more information is needed beyond that?

You state the County cannot determine "the locations of residential properties analyzed." Does the County want a map? All the County needs to do is identify the defect and it can be easily remedied. How is this even material since no impact is identified?

The County complains about the lack of information such as the limits of the mine in Figure 1 of the Report. As noted at the very beginning of this letter, applications must be read as a whole. Of course, this refers to the mine as proposed in all of the other documents, including the numerous plans that are made part of the record. And, again, if the County has a question or comment this could simply be remedied.

Your letter complains of the lack of signature and discussion of credentials. The Report was first submitted on February 23, 2018, and resubmitted on September 17, 2018 and this is the first notice of this request. With this kind of comment, it frankly looks like the County is seeking reasons to deny the Application, not undertaking a serious review. Ramboll is a nationally recognized firm that has no doubt prepared other reports, reviewed and approved by the County. If the County wants a signature page or a resume of the parties involved in the report, it needs to say so and that will be provided.

5. WATER QUALITY

We have provided a copy of the DOE's Sand and Gravel General Permit, which includes all of the mitigation measures and best management practices required of any surface mine. This is important because the County is required under SEPA to consider mitigation provided by other applicable regulation. RCW 43.21C.240. We have provided a plan that shows the points at which water quality will be measured. And, we have made clear that the equipment may either be fueled by mobile sources or the Applicant may provide a central fueling location following best management practices in either case. The most recently submitted narrative makes very clear that both of these are options. There is no inconsistency. As to prior statements, we refer you to the note above – that Applications evolve over time. The most recent submittals are those that should govern the County's review. As projects evolve it is not common to go back and revise every prior document submitted.

6. ROAD

It is very surprising to receive this comment since the ball is in the County's court on this matter, not the Applicant's. The Applicant did provide at the County's request an as-built survey and that was submitted September 17, 2018. That was followed by a field meeting on December 4, 2018 attended by both Shane Whitney and John Cooper from the County. At that point, one location was identified where there was a deficiency: a short bridge crossing with the road section on either side. The County representatives noted that a variance could be obtained relatively easily, largely based on the fact that an expansion of the crossing at this location would potentially impact critical areas. We are still awaiting the applicable variance criteria.

7. GIBSON REVIEW

We have no idea why the County continues to stall its review of the traffic information. This Application is not going to go away and the County needs to conduct its review. We noted in our letter dated May 11, 2018 that the County was obtaining that information and that we wanted to begin addressing any comments "as soon as possible." It is disturbing to learn that the County has not even commenced its review of the traffic report and addendum, both submitted in 2016.

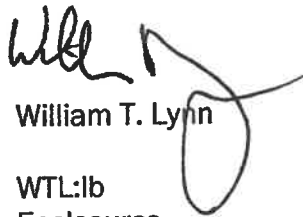
We are willing to go to hearing on this and to set a pre-hearing conference with the Hearing Examiner. We are confident, though, that the Examiner would be very surprised and disappointed to learn that the first comments that the Applicant received from the County came 5 months after the September submittal and in the form of a denial based on incompleteness. Even more surprising and disappointing will be the fact that the decision is

Gordon Thomas Honeywell
February 27, 2019
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based on comments made for the first time more than three years after the Application was submitted. We strongly suggest that the Applicant be provided an opportunity to respond to these written comments before we trouble the Hearing Examiner again.

We request a conference with the actual County experts making the comments so that we can fully understand the concerns and then an opportunity to address those comments in a reasonable amount of time consistent with long standing practices in this County and elsewhere.

Very truly yours,



William T. Lynn

WTL:lb

Enclosures

cc: Hal Hart, Director, Planning & Development Services
Betsy Stevenson, Senior Planner/Team Supervisor, Planning & Development Services
Dan Cox
Brad Barton
Mike Schuh
Patricia Larson