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August 7, 2019

Via E-Mail Only (skivi@co.skagit.wa.us)

Honorable Wick Dufford, Hearing Examiner
Skagit County
700 S. 2nd Street, Rm. 100
Mount Vernon, WA 98273

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

Dear Mr. Dufford,

Concrete Nor' West's June 24, 2019 submittal does not address all of the items requested by the County as outlined in the County's February 22, 2019 and May 15, 2019 letters (as well as additional correspondence dating back to 2017). In anticipation of the upcoming pre-hearing conference, Skagit County prepared an updated list of outstanding issues that Concrete Nor' West has failed to address. At this time, the County cannot change its prior determination that the application is incomplete. The County seeks a ruling from the Hearing Examiner upholding the County's April 5, 2018 Administrative Decision denying Concrete Nor' West's incomplete application.

Over the past year, the parties have been unable to settle this matter. The parties recently explored the possibility of mediation, but have been unable to identify specific issues that could be resolved at mediation.

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Below is a list of outstanding items supporting the denial of the application current as of the date of this letter. For ease of reference, the original language of the County's February 22, 2019 letter outlining the outstanding items is italicized before the description of Concrete Nor'West's June 24, 2019 response. It should be noted that Concrete Nor'West responded to certain items in the County's February 22, 2019 letter, but not all of the items.

Item #1 Skagit County's February 22, 2019 Letter:

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:

- *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.*

Concrete Nor'West's Response to Item #1:

The letter submitted June 24, 2019 from John Semrau states "we are submitting a memorandum prepared by our traffic engineer, Mr. Gary A. Norris, PE, dated June 11, 2019, summarizing the traffic studies prepared for the project." The Memorandum from Mr. Norris dated June 6, 2019 failed to address the conflicting information noted above and it closed by stating "the hours of operation and anticipated volumes remain the same as originally stated."

County's Analysis to Item #1:

Concrete Nor'West failed to address the conflicting information with respect to truck trips and hours of operation in the application form, narrative, SEPA checklist, and Noise and Vibration Study pursuant to the County's prior requests. Concrete Nor'West's June 26, 2019 submittal did not include a revised application form, narrative, or any substantive revisions to the Noise and Vibration Study. Concrete Nor'West also submitted "supplemental information regarding SEPA checklist," but this document merely contained excerpts from the SEPA checklist with additional reports listed under certain sections. The supplemental information did not address the conflicting information identified above by the County.

Failing to update the application materials and supporting documentation to provide clarity about the conflicting information makes it impossible for the County, the Hearing Examiner, and members of the community to decipher the true scope of the proposed project and its potential impacts. It is understandable that there is confusion about the applicant's submittals since the County has received application materials on the following dates:

- Original Application date - March 7, 2016
- Supplemental Information provided by applicant:
 - May 16, 2017
 - September 21, 2017
 - February 23, 2018
 - September 17, 2018
 - December 7, 2018
 - June 24, 2019

These application materials were not updated to address the outstanding factual inconsistencies based on the County's repeated requests for information. The County reiterates its request from the Hearing Examiner for a determination that the application materials remain incomplete.

Item #4 Skagit County's February 22, 2019 Letter:

[T]he 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.

Concrete Nor’West’s Response to Item #4:

The letter received from John Semrau on June 24, 2019 states “[w]e are submitting a signed copy of the November 21, 2018 noise study and a resume for Kristen Wallace.”

County’s Analysis to Item #4:

Concrete Nor’West failed to address the majority of the outstanding issues described above with respect to the Noise and Vibration Study. The only additional information that was provided was a signed copy of the 2018 report, which included the report writer’s resume. It also appears the Supplemental Information regarding the SEPA Checklist was updated to reference the July 18, 2018 Noise and Vibration Study (which is an outdated version). The bottom line is, Concrete Nor’West failed to respond to the County’s substantive questions about its Noise and Vibration Study.

The County hereby seeks a determination that the application materials remain incomplete since they were not updated to address the noise and vibration analysis calculations and assumptions.

Item #5 Skagit County’s February 22, 2019 Letter:

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.

Concrete Nor'West's Response to Item #5:

The letter received from John Semrau on June 24, 2019 states “[t]here is no additional submittal materials [sic] for this topic. Project is planning on mobile fueling. Please refer to Mr. William T. Lynn response to this topic in his letter to Julie Nicoll on February 27, 2009 [sic].”

County's Analysis to Item #5:

Concrete Nor' West failed to respond to this request yet again. It also appears the Supplemental Information regarding the SEPA Checklist was updated to reference mobile fueling and compliance with the NPDES General Sand and Gravel Permit yet to be issued by the Washington Department of Ecology. Simply referencing another permit requirement is insufficient for the purposes of Skagit County's review pursuant to SCC 14.16.900(1)(b)(v)(C). Additionally, inconsistencies remain in the other application materials with regard to mobile fueling and the potential for fueling stations and on-site storage of hazardous materials as noted above.

The County hereby seeks a determination that the application materials remain incomplete since they failed to address potential water pollution impacts and the implementation of measures to protect water quality and sensitive areas.

Item #6 Skagit County's February 22, 2019 Letter:

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.

Concrete Nor'West's Response to Item #6:

The letter received from John Semrau on June 24, 2019 included an Alternative Road Standard Request dated June 14, 2019.

County's Analysis to Item #6:

This information is currently under review with Public Works and Planning and Development Services (which includes the Fire Marshal's Office). Upon initial review by Public Works, the

County Engineer has determined that the Signage Plan does not comply with the current edition of the U.S. Department of Transportation "Manual on Uniform Traffic Control Devices" (MUTCD), as amended and approved by the Washington State Transportation Commission. Compliance with the MUTCD is a requirement of the Skagit County Road Standards. Additional review time is necessary to complete the County's analysis of the Concrete Nor'West's Alternative Road Standard Request. As previously noted in the County's letters dated March 14, 2017, July 6, 2017, and April 5, 2018, the proposal must also be reviewed by the Skagit County Fire Marshal's Office to ensure compliance with the Uniform Fire Code. This review has not yet been completed.

Finally, with regard to the status of Gibson Traffic Consultants' third party review of the traffic study, as previously stated, Skagit County will not proceed with this task until the application is deemed complete and this appeal is resolved.

In summary, as this letter outlines, the County cannot change its prior determination that the application is incomplete. The fact that the applicant has made 3 additional submittals of information that remain incomplete also supports the County's prior determination. The County seeks a ruling from the Hearing Examiner upholding the County's April 5, 2018 Administrative Decision denying Concrete Nor'West's incomplete application.

We look forward to discussing this matter further at this afternoon's prehearing conference.

Sincerely,

Skagit County Prosecuting Attorney

Julie Nicoll
Deputy Prosecuting Attorney

Enclosures:

- February 22, 2019 Letter from County to Concrete Nor'West
- All below received by County June 26, 2019:
- June 21, 2019 Letter from J. Semrau
 - June 6, 2019 Memorandum from Gary A. Norris, PE
 - November 21, 2018 Updated Noise and Vibration Study & Wallace Resume
 - Supplemental Information Regarding SEPA Checklist
 - June 14, 2019 Alternative Road Standard Request

Honorable Hearing Examiner

August 7, 2019

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cc: Hal Hart (via e-mail)

John Cooper (via e-mail)

Betsy Stevenson (via e-mail)

Paul Randall-Grutter (via e-mail)

Bill Lynn (via e-mail)

Dan Cox (via e-mail)

Brad Barton (via e-mail)