

BEFORE THE HEARING EXAMINER
FOR SKAGIT COUNTY, WASHINGTON

In the matter of a:)
)
Mining Special Use Permit (SUP); and) PL22-0142
Appeal of the Mitigated Determination) PL16-0097
of Non-Significance (MDNS);) PL16-0098
and the issuance of a Forest Practice)
Conversion Permit regarding:)
)
MILES SAND and GRAVEL FKA) FINDINGS, CONCLUSIONS and
CONCRETE NOR'WEST;) FINAL DECISION
)
CENTRAL SAMISH VALLEY NEIGHBORS)
(CSVN); and)
COUGAR PEAK and the MCLEOD)
FAMILY(COUGAR PEAK))
)

FINDINGS

1. Through all the decades and all of the hearings the undersigned has participated in, either as a representative of a party or as a hearing examiner (HEX) this case must certainly be recognized as the most unusual of all. The unusual circumstances involved events that occurred prior to the open record hearing (hearing) and the bizarre and rather highly unlikely circumstances that occurred after the close of the hearing.
2. The lengthy passage of time from the application, by then Concrete Nor'west, to approve a proposed gravel mine and a contemporaneous Forest Practice Act (FPA) conversion request were submitted more than eight years ago on **March 7, 2016**.

3. The FPA was to harvest 50,000 board feet of timber, and removal of the stumps resulting in clearing 68 acres. The proposed mine would remove approximately 4,280,000 yards of gravel over a 25-year period. Three separate parcels (P125644, P125645, and P50155) of the 735 acres in contiguous forest ownership is the specific property involved.
4. The property is located approximately 1.5 miles north of Grip Road and south-southwest of the Samish River. The property is located within a portion of the southeast quarter of Section 27; Township 36 North; Range 4 East; Willamette Meridian within unincorporated Skagit County.
5. The removal of the gravel is to be done by one or two employees and one or two pieces of equipment. The gravel will be loaded onto truck and trailer for transportation to market or to a nearby facility owned by the applicant for processing. The application specifically sets forth that no blasting, crushing or other processing will occur on this site.
6. As each of the three locations are excavated, each will be reclaimed as approved by the Washington State Department of Natural Resources (DNR).
7. Trips by truck and trailer will average 46 per day of which 23 will be full and 23 will be empty. The average will be calculated on a one-year period of time, excluding extended periods authorized by PDS. Applicant is agreeable to limiting mining operations from 7:00 a.m. to 5:00 p.m. Monday through Friday.
8. The trucks will travel over an existing "Haul Road" located on the property.
9. The property lies within the Rural Resource Natural Resource Land (RR-NRL) zoning and comprehensive plan land use designation. The property also includes a mineral resource overlay (MRO).

10. The general description of surrounding land uses are forestry, agriculture and sporadic single family residences. One residential building north of the proposed mine site lies within 930 feet. A dairy farm/residence and six other residences are located within 1,500 feet of the mine.
11. The Samish River flows along the eastern border of the project site. There are riparian wetlands that have been delineated. The shoreline environment designation for this portion of the Samish River is Rural.
12. All proposed mining activities are located outside the shoreline jurisdiction.
13. The applications for SUP and FPA were deemed complete on March 22, 2016, certainly an ironic declaration to the applicant.
14. A State Environmental Policy Act (SEPA) MDNS was issued May 26, 2016. A public hearing was opened by the HEX on November 16, 2016. It was determined that proper notice had not been given and thus the HEX continued the hearing to a future date. A significant number of public comments were received before the comment period ended December 30, 2016.
15. On March 14, 2017, Planning and Development Services (PDS) requested additional information from the applicant. The additional information that was provided was deemed by PDS to be insufficient. An administrative decision to deny the application for failure to timely submit requested information, pursuant to SCC 14.06, was entered.
16. The applicant appealed this administrative decision on April 16, 2018. After a lengthy number of mediation attempts a hearing was held before the unquestioned GOAT HEX for Skagit County the venerable Wick Dufford. Mr. Dufford denied the county's motion for

summary judgment and ordered that the application proceed for a decision on the merits. The order was entered October 17, 2019.

17. The next years can be categorized as “we need more information” “I gave you that information and here it is again” and “no, that’s not the information we want”.
18. On April 15, 2021, PDS withdrew the original MDNS and issued a new one addressing many of the public concerns raised about the project. On May 11, 2021, the county withdrew that second MDNS.
19. On June 17, 2021, PDS informed the applicant that it was required to obtain Critical Areas review for the private Haul Road that would be used to access the proposed mine.
20. On June 24, 2021, an appeal of that administrative determination concerning the Haul Road was filed. On August 30, 2021, HEX Dufford upheld the county’s decision.
21. On December 16, 2021, as requested by Skagit County, Associated Earth Sciences submitted a geological hazard report. The report concluded mitigation requirements were necessary as follows:

“The proposed gravel mine will utilize the existing Haul Road to transport aggregates from the mine to Grip Road and will propose asphalt surfacing for a portion of the Haul Road north of Swede Creek. This section of Haul Road is located near a geologic hazard area which includes landslide and erosion hazards. No alterations through grading, stripping, or mining to the geological areas is proposed. The change in use of the existing gravel-surfaced road from a logging Haul Road to an aggregate mine Haul Road is considered by the County a form of site disturbance, and therefore is subject to the County’s Critical Areas review. From a geotechnical standpoint, the Haul Road will have a similar function and will be subject to similar truckloads compared to its past use. Review of the geological mapping indicates the steep slope areas have a core of dense glacially consolidated sediments, which is consistent with our on-site observations. No evidence of significant slope instability, road instability, past deep-seated land sliding, or groundwater seepage, was observed on the steep slopes near the Haul Road

or on the Haul Road itself. This is also consistent with review of the LIDAR imagery of the site. Given these factors, it is our opinion that the impact to the identified geological hazards near the Haul Road caused by the change in Haul Road usage based on truck type can be avoided. This conclusion is predicated on the project following the mitigation recommendations...

Mitigation for using the existing Haul Road near the geological hazard areas for mining operations shall include:

- No clearing of vegetation within the geologic hazard areas.
- Maintain roadside swales and protect dams. Clean out material that has
- sloughed into the swale that could potentially block surface water. Avoid
- concentrated surface water discharge onto the steep slopes.
- Do not place uncontrolled fill, strippings, or other debris over the top of steep slopes."

22. Skagit County hired independent third-party consultants (1) Gibson Traffic Consultants, and (2) HDR (ex 15,16), to review the applicant's traffic information and analysis. Their recommendations resulted in revisions and ultimately a submittal of a Traffic Impact Analysis. Those measures were incorporated as mitigation and conditions of approval. CSVN also submitted a "peer review" prepared by Transportations Solutions dated April 30, 2021.

23. The initial hydrogeologic site assessment and maps were prepared by Associated Earth Sciences dated August 21, 2015. That report concluded that:

- Groundwater is present beneath this site at a depth of approximately 70 feet, at an elevation of approximately 145 to 155 feet (msl).
- Groundwater beneath the site generally flows to the north and/or northeast and presumably discharges to Samish River, located at a minimum of 200 feet from the proposed mine boundary.
- There are no water supply wells located downgradient of the proposed mine between the mine boundary and the Samish River.

- The proposal is for a dry, surface mining operation, with limited on-site processing. The potential for a negative impact to groundwater quantity and/or quality from the proposed mining activities is low.

24. A new MDNS was issued on February 22, 2022. An appeal by CSVN challenging the issuance of the MDNS was filed March 25, 2022.
25. On June 13, 2022, PDS submitted a nine-page report to the HEX concerning the MDNS appeal.
26. A pre-hearing order was entered establishing the dates for the public hearings. A notice of public hearing was published in the Skagit Valley Herald on June 23, 2022. The notice was posted on the subject property and mailed/emailed to both landowners located within 300 feet of the subject property, along with parties that had commented on the project, as is required by SCC 14.06.150(3).
27. On January 3, 2023, the Skagit County Board of Commissioners (BOCC) entered into a personal service agreement with Sound Law Center LLC for the provision of HEX services.
28. Pursuant to that resolution Mr. Andrew Reeves was assigned by Sound Law Center to preside over the hearing.
29. The hearings required by the SUP and the MDNS were scheduled for July 11, July 12 and, if needed, the afternoon of July 13, 2022.
30. A very short time before the 9:00 a.m. commencement of the July 11, 2022, hearing, Mr. Reeves had an emergency medical issue that required hospitalization. The hearings were rescheduled.
31. The rescheduled hearing commenced August 26, 2022, continued on August 29, September 2, 8, 9, 13 and ended on September 23, 2022. The first day the hearings generally consisted of introduction and non-expert public testimony. For the remaining six days extensive expert testimony and cross examination occurred. The

last two hours of the last day involved an informal discussion between Mr. Reeves and the attorneys concerning HEX authority to modify or add mitigation conditions to the MDNS.

32. Throughout the hearings and the time prior to the hearings Mr. Reeves did not indicate any difficulty conducting the hearings as HEX and in fact had done so in a professional manner.

33. At the completion of the seven days of hearings, the parties were allowed to submit closing briefs by the end of October 2022.

34. At some point after the close of the hearing Sound Law Center dissolved apparently without further compensation to Mr. Reeves. Andrew Reeves was an employee of Sound Law Center and not a shareholder. Thereafter Mr. Reeves found it untenable to render a written final decision.

35. On November 27, 2023, the BOCC found that Mr. Reeves was in default and removed him as HEX on this case pursuant to SCC 14.02.070(3) *effective upon completion of outstanding work* or notice by the county that the work was unneeded.

36. Mr. Reeves continued his failure to complete a final decision. Ultimately a lawsuit in Skagit County Superior Court to compel him to issue a decision or to face "contempt" was filed. A letter was issued by him dated February 1, 2024. The letter was entitled "Final Decision of Former Hearing Examiner Reeves (Absent Reconsideration)". The final decision included a statement that "approves whatever the applicant was seeking through the permit process..." There was also a statement by Mr. Reeves that he was releasing any right to have jurisdiction retained and supported the "county's clear ability to appoint someone else as needed to conclude it". PDS filed a notice of final decision.

37. The purported final decision "letter" contained none of the requirements nor analysis required by SCC 14.06.190(9) which provides:

Decision or Recommendation. Within 15 days after completion of the public hearing or after the date for submittal of all written comments, whichever is later, the Hearing Examiner shall render a decision or make a recommendation on the appeal or development permit. The Hearing Examiner decision or recommendation shall be in writing and shall include a statement of the applicable criteria and standards from the Skagit County Comprehensive Plan; the Skagit County Code and other applicable law; a statement of the facts that the Hearing Examiner found showing the application does or does not comply with each applicable approval criterion and assurance of compliance with applicable standards; the reasons for the decision or the recommendation to approve or deny the development permit or appeal; and any conditions or modifications deemed necessary.

38. On March 4, 2024, BOCC adopted resolution #R20240048 relieving Mr. Reeves of all duties concerning this case. Contemporaneously with that action the BOCC entered into Personal Services Agreement #20240125 to appoint the undersigned as substitute HEX. That resolution directed complete review of the record in this case and the issuance of a final decision in an appropriate, legally supported manner, in compliance with SCC.
39. In an abundance of caution both CSVN and Cougar Peak filed motions for reconsideration and notices of appeal of the February 1, 2024 letter. Since the letter by Mr. Reeves did not in any way become a legally sufficient final decision the motions for reconsideration are irrelevant. It is up to the BOCC to decide what action to take with regard to the notices of appeal.

MITIGATED DETERMINATION OF NON-SIGNIFICANCE

40. On February 22, 2022, CSVN filed an appeal of the 2022 MDNS. The appeal challenged the FPA only because of the MDNS use. (Ex 41, pg.12) CSVN and Cougar Peak both challenged the mining SUP application.
41. During the time Mr. Reeves was conducting the hearing he assigned appellant CSVN a categorization to start exhibit numbers with the letter A. He also assigned to the applicant (Miles Sand and Gravel) the letter B to apply to all exhibits offered by the applicant. The county's participation involved starting the exhibits with the letter C. While it is not difficult to specify the exhibits submitted by Cougar Peak, the mechanism for doing so is still a bit elusive. These exhibit numbers are distinct from the numbering system used in the 31-page county staff report exhibits 1-43.
42. Not surprisingly, many of the exhibits show up as part of each presentation. They may be more accurately identifiable by name and date.
43. As part of its application submittal the applicant provided the following reports. First, the applicant included a report entitled "Samish River Ordinary High Water Mark (OHWM)/Wetland Edge" dated May 18, 2015, denominated as Ex 4.
44. A "Fish and Wildlife Site Assessment" prepared by Graham-Bunting Associates (GBA) dated August 20, 2015, set forth facts that supported the conclusion that the proposed gravel mine use was appropriately identified in SCC 14.24.240(30)(a) as "moderate intensity" rather than "high intensity". Those facts were set forth on page 7 and include the following:

- Three separate mining sites within the 51-acre parcel were all located greater than 200 horizontal feet landward of the OHWM.

All the mine sites are separated vertically approximately 90 feet above the OHWM.

- Mining activities will be separated from the OHWM by a protective berm.
- The dry mine floor for each of the excavations will maintain a depth of 10 feet above the underlying water table.
- All surface water will drain through the gravel floor of the mine sites – no surface water will drain directly to the Samish River.
- The mine sites are located in an area logged during the 1990's by a previous landowner. No processing now other industrial activity will occur in any of the project area.
- The aggregate extraction will be done at a relatively low volume level. The area contiguous to the berm will be mined first and reclaimed pursuant to a reclamation plan to be approved by DNR. The ultimate goal of the reclamation plan is to return the site to forest or low density residential which are also low or moderate land use intensities respectively.
- The project will utilize an interior road system except as aggregate is hauled to other sites. Mitigation measures were also submitted.

45. Another GBA report dated April 18, 2017, and entitled "Addendum to Fish and Wildlife Site Assessment" (Ex6) noted that, "with the exception of identification of critical habitat associated with the [Oregon Spotted Frog] OSF, no additional endangered, threatened or sensitive species or habitats were identified. Application of the standard riparian buffer requirement established under SCC 14.24.530 is generally recognized as the preferred method of avoiding project impacts consistent with the mitigation sequence listed under SCC 14.24.080-(5)-(b).

46. In December of 2021 a dual "critical area assessment (wetland delineation and fish and wildlife conservation area [HCA])" and "impact assessment and mitigation plan" (Ex 8) was prepared by Northwest Ecological Services (NES).

47. The report by NES recognized that no direct impacts would occur by gravel truck usage and even the minor indirect impacts were already the subject of a recommended series of mitigation measures.
48. Under SCC 14.16.440(10)(i) the mining site resource designation allows "unlimited hours of operation". The HEX may limit hours of operation as deemed necessary to address potential "significant adverse impacts" to adjacent land uses less than one-quarter of a mile from the above listed designated lands.
49. The site for the three separate mining extractions does not fall within an area one quarter of a mile from any existing Rural Intermediate, Rural Village, or urban growth area designated lands.
50. The applicant has agreed to abide by the Monday through Friday 7:00 a.m. to 5:00 p.m. operating limitations.
51. The MDNS was open to public hearing as well as submitted to the Skagit County Critical Areas/Shoreline staff and Skagit County Public Health. Those comments from the agencies were incorporated as mitigation measures in the currently issued MDNS.
52. The proposal allows for one or two employees who will be supplied with potable water and portable toilets. A water truck will be brought in for dust suppression and will obtain water off site.
53. A portable double walled diesel fuel tank may be brought on site. Mitigation requirements including "best management practices" from the Department of Ecology, a stormwater control plan including BMPs for fueling of vehicles and heavy equipment, a spill cleanup plan and a NPDES permit from DOE or discharge permit from PDS surface water division may also be required.
54. Chapter 173-60 WAC specifies the maximum allowable noise level to be emitted from the instant property which is designated a Class C EDNA property. The level allowed is 60 decibels and a

reduction of 10 decibels between the hours of 10:00 p.m. and 7:00 a.m. must be observed. A noise level report shows that the applicant can easily stay within those requirements.

MINING SPECIAL USE PERMIT

55. The SUP is requested under SCC 14.16.430 Rural Resource-Natural Land and SCC 14.16.440 Mineral Resources Overlay. The decision to grant or deny rests with the HEX and is processed as a Level II permit under SCC 14.06.

56. The criteria for approval or disapproval are found in SCC 14.16.900 which provides as follows:

14.16.900 Special use permit requirements.

(1) Special Uses.

(a) Purpose. To provide a means to recognize and approve land uses not specifically identified as allowed uses. A special use permit must demonstrate that the proposed activity will not adversely affect or prevent those uses normally allowed within the respective district.

(b) Process/Authority for Special Use Permit.

(i) Administrative special uses shall be reviewed as a Level I permit, pursuant to Chapter 14.06 SCC.

(ii) Hearing Examiner special uses shall be reviewed as a Level II permit, pursuant to Chapter 14.06 SCC.

(iii) The Hearing Examiner shall have authority to order that a special use permit be revoked, suspended, or modified based on a finding that the conditions have not been satisfied by the applicant. The Administrative Official or party of record may request a review by the Hearing Examiner on a special use permit pursuant to a Level II action, pursuant to Chapter 14.06 SCC.

(iv) The approving authority's decision may be to grant or to deny an application.

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

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

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

(C) The proposed use will not create undue noise, odor, heat, vibration, air and water pollution impacts on surrounding, existing, or potential dwelling units, based on the performance standards of SCC 14.16.840.

- (D) The proposed use will not generate intrusions on privacy of surrounding uses.
- (E) The proposed use will not cause potential adverse effects on the general public health, safety, and welfare.
- (F) For special uses in Industrial Forest—Natural Resource Lands, Secondary Forest—Natural Resource Lands, Agricultural—Natural Resource Lands, and Rural Resource—Natural Resource Lands, the impacts on long-term natural resource management and production will be minimized.
- (G) The proposed use is not in conflict with the health and safety of the community.
- (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 special use permit shall be reviewed and considered for cumulative impacts.

57. The applicant bears the burden of proof to show all requirements and all criteria are met.

58. The Legislature established the importance of Natural Resource Lands (NRL) by the enactment of the Growth Management Act (GMA) RCW 36.70A. The GMA required that Skagit County designate and protect NRLs.

59. NRLs under the Skagit County Comprehensive Plan (CP) and development regulations (DRs) provide that NRLs are the “cornerstone of Skagit County’s economy, community and history” and contain policy emphases to “preserve and use the natural resources and *protect them* against incompatible land uses.” CP at page 104-105, SCC 14.16.430(1).

60. The Legislature also enacted RCW 78.44, the “Surface Mining Act” (SMA). That statute sets forth the policy of the legislature that determined that surface mining:

“...is an essential activity making an important contribution to the economic wellbeing of this state and nation. It is not possible

to extract minerals without producing some environmental impacts.”

61. Likewise, the DRs generally describe mining as “an essential economic activity” and that it is not possible to extract mineral resources without environmental impacts. SCC 14.16.440 provides:

14.16.440 Mineral Resource Overlay (MRO).

(1) Purpose. The purpose of the Mineral Resource Overlay (MRO) is to maintain and enhance natural resource-based industries by conserving mineral resource lands, allowing continued operation of existing legally established uses, and by assuring that use of adjacent lands does not interfere with the extraction and quarrying of minerals. A MRO overlays Natural Resource Lands (NRL) zoning districts and imposes regulations in addition to those normally required in the underlying NRL zoning district. Mineral extraction and processing activities are allowed as a Hearing Examiner special use, and must comply with the Surface Mining Act, Chapter 78.44 RCW. The MRO recognizes those areas that are designated to protect long-term, commercially viable mineral Natural Resource Lands and recognizes that mineral resources must be in close and economic proximity to the market to be served.

(2) Designation Procedure. The MRO represents those areas that are designated as Mineral Resource Overlay (MRO) on the Skagit County Comprehensive Plan Map adopted by Ordinance 16550, or as thereafter amended. Unless otherwise restricted by ordinance, new Mineral Resource Overlay areas may be designated by complying with Chapter 36.70A RCW, the Comprehensive Plan amendment procedures of the Skagit County Comprehensive Plan, and Chapter 14.08 SCC.

(3) Pre-Existing Designated and Undesignated Mining Operations.

(a) Except as allowed in Subsection (3)(b) of this Section, or as allowed pursuant to SCC 14.16.410(3)(d), 14.16.420(2)(f), 14.16.430(2)(k) and 14.16.430(4)(d), no new mining uses shall be allowed outside of the designated Mineral Resource Overlay.

(b) Commercial mining operations lying outside of a designated MRO that are permitted and legally existing at the time of adoption of the ordinance codified in this Section may continue to operate on the permitted mining site. Expansion of the existing operations beyond the geographical and/or operational limits imposed by the existing approval is allowed, provided the owner applies for and receives a new mining special-use permit issued under this Section that covers the expanded operation area. Any expansion shall not extend beyond the legal parcel on which the legally existing, permitted use is located.

(c) Commercial mining operations lying within a designated MRO that are permitted and legally existing at the time of adoption of the ordinance codified in this Section may continue to operate on the permitted mine site. Expansion of the existing operations beyond the geographical and/or operational limits imposed by the existing approval is allowed, provided the owner applies for and receives a new mining special-use permit issued under this Section that covers the expanded operation and/or area.

(4) Removal of Designation Status. A petitioner may seek removal of designated Mineral Resource Lands and the associated Mineral Resource Overlay on the Official Zoning Map

through the Comprehensive Plan amendment process, pursuant to Chapter 14.08 SCC, and by demonstrating 1 or more of the following:

(a) The mineral resource is depleted to a point that it is no longer economically feasible to continue mining on the site.

(b) New or updated geological data no longer indicates the potential for mineral resources of regional or long-term commercial significance on the site.

(c) The Mineral Resource Overlay was designated based on a technical mapping error.

(5) Permitted Uses. All uses permitted in the underlying zone are allowed in the MRO.

(6) Accessory Uses. All accessory uses permitted in the underlying zone are allowed in the MRO.

(7) Special Uses.

(a) Any other special use permitted in the underlying zoning district is likewise permitted in the MRO.

(b) The following uses are permitted as a Hearing Examiner Special Use in the Mineral Resource Overlay subject to the requirements of this Section and the restrictions contained in the underlying zone. Uses under this Section must comply with Chapter 78.44 RCW, Surface Mining Act, Chapter 90.48 RCW, the Water Pollution Control Act, and all other applicable laws and regulations:

(i) Activities associated with mining or quarrying operations, including blasting and use of equipment in connection with an extraction operation, maintenance of mineral extraction equipment, maintenance of roads, traffic control, sorting, crushing, cleaning and loading;

(ii) On-site processing including asphalt or concrete batching and asphalt or concrete recycling;

(iii) Surface or underground mining or quarrying of mineral deposits or building materials from rock, stone, gravel, sand, and earth together with associated structures and equipment; and

(iv) Temporary dwellings for a caretaker or superintendent and their family.

(8) Application For Mining Special Use Permit. An applicant for a mining operations special use permit shall submit:

(a) The following information on maps in an 11-inch by 17-inch format size:

(i) 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;

(ii) A pre-mining map drawn to scale with an appropriate scale bar showing the permit area and buffers, elevations and contours, natural slopes and other drainage patterns, boundaries of municipalities, boundaries of property ownership, names and addresses of adjacent property owners, locations of nearby mines, locations of all railroads, bridges, utility lines or other rights of way, locations and names of any streams and natural or artificial drain ways on or adjacent to the site, locations of parks and other significant features;

- (iii) A reclamation sequence map drawn to scale with an appropriate scale bar covering the same area as the pre-mining map showing the permit area border and buffers, excavation areas, location of all proposed access roads to be built, location of types of setbacks and beams, numbered segments and the direction of the sequence of mining, soil storage areas and sequence of stripping, storing and replacement of mined segments, overburden storage areas and sequence of stripping, storing and replacement of overburden on mined segments, waste rock piles and how they will be reclaimed and stabilized, operation plant and processing areas, measures to be taken to adjacent surface area to prevent slumping or landslides on adjacent lands, location and description of stormwater and erosion control systems, including drainage facilities and settling ponds and estimated runoff served by individual facilities; and
 - (iv) A final reclamation map drawn to scale with an appropriate scale bar covering the same area as the pre-mining map permit area and buffers, final elevations and contours, adjacent natural ground slopes, reclaimed drainage patterns, general topography, locations and names of any roads, utility lines, rights-of-way, streams, bridges, lakes, springs, wetlands, location and depth of topsoil to be replaced after seedbed preparation, permanent drainage and water control systems, area to be re-vegetated and proposed species, 2 cross-sections (at right angles) with horizontal and vertical scales the same that show the original and final topography and the water table.
- (b) A report by a qualified geologist, hydrogeologist or licensed engineer characterizing the area's ground water including, but not limited to, the following information:
- (i) A description of the geology and hydro-geology of the area including the delineation of aquifer, aquitards, or aquicludes (confining layers), hydrogeologic cross-sections, porosity and horizontal and vertical permeability estimates;
 - (ii) Determination of the direction and velocity of ground water movement, water table contour and potentiometric surface maps (for confined aquifers), if applicable; and
 - (iii) A map containing the limits of the mine, buffer zones, location of all ground water wells within 1 mile distance down gradient from the property boundaries, location of all perennial streams and springs, and definition or specification of locations of aquifer recharge and discharge areas.
- (c) The estimated quantities of all materials to be extracted.
- (d) Identification of any possible Scientific Resource Sites that may be located on the proposed site. Scientific Resource Sites include unique or rare occurrences of rocks, minerals, or fossils that are of outstanding scientific significance. These areas must be delineated on the map in Subsection (8)(a)(ii) above and the proposal for preservation of the identified area(s) must be addressed.
- (e) An on-site study to determine appropriate mitigation requirements for noise, vibration and dust levels. The study should specify what levels the applicant deems satisfactory to mitigate off-site disturbances.
- (f) An operations proposal detailing estimated frequency of blasting, estimated truckloads per day, what provisions for screening and fencing are proposed, and estimated hours of operation.
- (g) Identification and description of those critical areas designated and regulated by Chapter 14.24 SCC, together with any critical areas studies that may be required by Chapter 14.24 SCC.
- (h) A completed environmental checklist.

(i) A review from Skagit County Public Works Department or Washington State Department of Transportation demonstrating that roads or bridges are capable of sustaining the necessary traffic for the proposed mineral extraction operation, and that the proposed operation meets level-of-service, safety, and other standards as outlined in the Skagit County Transportation Systems Plan, the Skagit County Comprehensive Plan, and applicable State and local regulations.

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

(a) When reviewing an application for mining operations special use permit, the Hearing Examiner should recognize that surface mining is an essential economic activity and that it is not possible to extract minerals without producing some environmental impacts. The Hearing Examiner shall consider all relevant evidence and conditions that will mitigate detrimental impacts to the environment and conditions that protect the general welfare, health and safety. The permit shall be granted if the impacts are mitigatable. The burden of proof shall be on the applicant. Mitigating conditions shall be performance-based, objective standards that:

(i) Are directly and proportionately related to limiting surface mining impacts;

(ii) Are reasonable, practicable and generally capable of being achieved by the mine operator; and

(iii) Take into consideration existing and available technologies applicable to mining operations.

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

(c) Appropriate site-specific conditions shall be required to mitigate existing and potential incompatibilities between the mineral extraction operation and adjacent parcels. Such limitations shall reflect the differences in potential impacts based on the mineral extraction operation's location in resource, rural or urban growth areas and recognize that the purpose of designating mineral resource lands is to conserve mineral resource lands, allow continued operation of existing legally established mining operations, and assure that use of adjacent lands does not interfere with the extraction of minerals. The Hearing Examiner shall take into consideration the January 1996 publication *Best Management Practices for Reclaiming Surface Mines in Washington and Oregon*, published jointly by the Oregon Department of Geology and Mineral Industries and the Washington State Department of Natural Resources, Ch. 3, Operation and Reclamation Strategies, in determining appropriate mitigation requirements for operational impacts.

(d) Appropriate site-specific conditions shall be required to mitigate stormwater runoff and erosion impact. The Hearing Examiner shall take into consideration the January 1996 publication *Best Management Practices for Reclaiming Surface Mines in Washington and Oregon*, published jointly by the Oregon Department of Geology and Mineral Industries and the Washington State Department of Natural Resources, Ch. 2, Storm Water and Erosion Control, and the National Pollutant Discharge Elimination System (NPDES) Surface Water Protection requirements in determining appropriate conditions for mitigating stormwater and erosion impacts.

(e) The Hearing Examiner shall consider public interests such as fishing, boating, hiking and camping when reviewing a mining operations special use permit, and may impose mitigating measures as necessary and appropriate.

(10) Operating Standards or Requirements.

(a) Site Area and Width. When the activity includes both extraction and on-site mineral crushing or mineral processing including asphalt or concrete batching and asphalt or concrete recycling, the site area shall be a minimum, of 20 acres. There shall be a minimum lot width of 500 feet for crushing or processing activities. Operations that are limited to extraction and transportation shall comply with dimensional standards of the underlying zone.

(b) Buffers.

(i) A minimum 200-foot buffer shall be required between on-site crushing, processing, or recycling activities and adjacent properties for the site as a condition for the issuance of a mining operations special use permit.

(ii) Adjacent properties are required to maintain a 200-foot buffer from the mineral resource designated land or sign a nuisance waiver to reduce the 200-foot buffer. In the case of a pre-existing structure located in the buffer of adjacent property, the required buffer shall be established on the mineral resource designated land.

(iii) A minimum 100-foot buffer shall be required for the site where operations are limited to the extraction and transportation of minerals. Once the extraction and transportation operations have been completed, the material in the buffer may be utilized during reclamation.

(c) Maximum Permissible Noise Levels. Maximum permissible noise levels shall be according to the provisions of the Chapter 173-60 WAC, Maximum Environmental Noise Levels.

(d) Blasting. Blasting shall be restricted to daylight hours when the mineral extraction operation is within 1/4 mile of a residential area with a greater density than 1 dwelling unit per 10 acres. The Hearing Examiner may otherwise set blasting hours and conditions based on site-specific circumstances. Except in the case of emergencies declared by civil authorities, blasts should be scheduled for regular and predictable times.

(e) Vertical Limitations/Aquifer Protection.

(i) Surface mining shall be vertically limited to only 1 aquifer unless approved by the Washington State Department of Ecology. Hydrological barriers separating aquifers shall not otherwise be disturbed.

(ii) Activities related to mineral extraction and processing operations in the vicinity of aquifers must provide safeguards including containment to prevent direct contamination to the open aquifers and indirect contamination through infiltration of mining operation pollutants.

(iii) Imported material shall not be used as a backfill for mine sites where an aquifer has been breached.

(iv) Disturbed aquifers should be reclaimed as ponds or lakes and/or wetlands.

(v) Additional buffers and setbacks may be required beyond those listed in Subsection (10)(a-b) above, if necessary, to prevent over-excavation when mining in an aquifer.

(vi) All relevant provisions of the Critical Areas Ordinance, Chapter 14.24 SCC, for aquifer protection shall be met.

(f) Surface Water Protection. All mineral and aggregate sites shall meet the minimum requirements of Chapter 14.32 SCC, as well as all pertinent requirements of the Washington State Department of Ecology, the Department of Natural Resources, Department of Fish & Wildlife and other State and Federal regulations regarding surface water protection.

(i) Storage pond systems for holding processing waters shall be designed to preclude untreated discharge to natural streams or surface waters, unless the discharges are otherwise regulated and allowed by a State or Federal government agency.

(ii) The flow of natural runoff from extraction sites shall be dispersed or regulated such that soil erosion on receiving lands is prevented.

(g) Bench/Terrace. Benches shall be back-sloped and shall be established at not more than 40-foot intervals to control surface drainage and debris. Swales or ditches on benches shall have a maximum gradient of 5%.

(h) Reclamation. Reclamation of surface mining sites shall be in accordance with the requirements of the State Department of Natural Resources. Reclamation activities shall not allow land filling unless sites comply with Chapters 173-304 and 173-351 WAC, Chapter 12.16 SCC, other relevant State, and Federal regulations. If the operation is not subject to the State Department of Natural Resources permitting requirements, the following minimum standards shall apply. All reclaimed slopes shall:

(i) Have a varied steepness;

(ii) Have a natural appearance in both profile and plan view;

(iii) Have no large rectilinear topographic elements;

(iv) Not exceed 2 horizontal to 1 vertical except as necessary to blend with natural adjacent slopes;

(v) Be compacted if significant back-filling is required to produce the final reclaimed slope;

(vi) Provide measures to establish a beneficial wetland where a lake pond or swamp is created; and

(vii) Place topsoil and re-vegetate as necessary to stabilize slopes and controls erosion.

(i) Hours of Operation. Hours of operation shall vary according to the location of the site as stated below and may be shortened by the Hearing Examiner based on site-specific circumstances:

(i) Within designated natural resource lands, the hours of operation may be unlimited. The Hearing Examiner may limit hours of operation to daylight hours or to such other reasonable limitation deemed necessary to address potential significant adverse impacts to existing adjacent land uses, on any portion of the mining site where mining activity is proposed to occur less than 1/4 mile from existing Rural Intermediate, Rural Village, or Urban Growth Area designated lands;

(ii) Within rural lands, the hours of operation shall be from dawn to dusk;

(iii) Within urban growth areas and rural villages, the hours of operation shall be from 8 a.m. to 5 p.m., Monday through Saturday; and

(iv) During emergencies, restrictions on hours of operation can be suspended by the Board of County Commissioners pursuant to the lawful procedures for declaring an emergency.

(j) Chemical Leach Mining. Chemical leach mining shall not be allowed.

(k) Responsibility. The landowner(s) and operator(s) shall be held jointly responsible for the operation of a mineral extraction site.

(l) Metals mining shall be regulated by Chapter 78.56 RCW, Metals Mining and Milling Act.

(11) Additional requirements related to this zone are found in SCC 14.16.600 through 14.16.900 and the rest of the Skagit County Code. (Ord. O20110007 Attch. 1 (part); Ord. O20090010 Attch. 1 (part); Ord. O20070009 (part); Ord. 17938 Attch. F (part), 2000)

62. At page 19 of the SUP staff report and concluding at the top of page 28, sets forth the staff analysis of compatibility with the CP Natural Resource Lands element and the appropriate ordinances that are consistent with the goals and policies of the CP, the GMA and the SMA. That analysis is adopted herein as though fully set forth.

63. A significant amount of fact finding and analysis generally concerning traffic safety and impacts were submitted, testified, cross-examined and argued throughout this case. The applicant provided thorough analysis through its expert DN. Because a SEPA analysis was required for this application, a Level I Traffic Analysis was required. DN operating traffic expert Gary Norris completed that study and in fact went beyond the Level I analysis required by SCC. There was a study concerning available crash data (required for Level II analysis) as well as the additional evaluation of the potential for traffic to "crossover" in the tightest areas. This analysis was sent to the county engineering department, reviewed by Forest Jones and essentially all mitigating requirements were agreed upon with the applicant.

64. Grip and Prairie Roads do not meet current standards for new roads. As Mr. Jones testified, that puts them into a category of about 90% of the roads in Skagit County.

65. Applicant Miles agreed to a condition to upgrade crossover portions on Prairie Road before the hearing started. During the evidence presented in the hearing the applicant acknowledged that there are crossover locations on Grip Road that needed improvement. Applicant has agreed to fund those insufficiencies as well.

66. There has been and still is a sight distance deficiency at the intersection of Grip and Prairie Roads. Some years ago, the county

made sight improvements in its right of way to lessen the deficiency. The county has required, and the applicant has agreed to install a beacon sign system that will warn other travelers that a truck has approached the intersection and is going to make the turn. The sight distance defect at the project entrance will also have a beacon system to provide flashing alerts to drivers.

67. School buses traverse roads in all parts of the area reviewed in this case. Both Burlington School District and Sedro Woolley School District provide services to members of the public. Neither school district commented on any aspect of this project. When school buses pick up or discharge riders, all traffic in both directions comes to a complete stop until street crossings have been completed.
68. The location also encounters bicycle riders, both individuals and as an organized group. There are narrow and, in some instances, non-existing shoulders as shown by Ex A-29. There was very little evidence that the cyclists would be impacted in any significant way by the granting of the SUP. There are daylight times in the summer that exceed the restriction of 5:00 p.m. for operations. There are also both days of the weekend that are free from any gravel trucking activity.
69. Under the very limited extraction rate and the mitigations of the MDNS, the medium land use impact under SCC is the one that is applicable to this case. The PDS staff report has adopted a medium use impact analysis and decision. It is entitled to substantial weight. The facts of this case with regard to the SUP likewise dictates a decision of medium impact.
70. The appellant has not sustained its burden of proof to show the MDNS was in error. The applicant has sustained its burden of showing that the criteria and standards for the issuance of a SUP for mining activities have been met.

CONCLUSIONS OF LAW

1. Initially Andrew Reeves had jurisdiction over the parties and the subject matter of this case. Seven remote public hearings were held, exhibits were admitted, pleadings and briefings were submitted, and testimony and cross examination were completed. The undersigned has reviewed all of that material in establishing this final decision.
2. Mr. Reeves, by his conduct and refusal to complete the final decision, lost jurisdiction over this case subsequent to the submission of final briefs on or around October 28, 2022. The letter of February 1, 2024 did not constitute a final decision under SCC requirements.
3. On March 4, 2024, the undersigned was appointed by the BOCC to be the HEX for this case and complete it. The undersigned has jurisdiction to enter findings, conclusions and a final decision.
4. The public hearing notice requirements of SCC 14.06.150(3) were met.
5. The appellant CSVN has the burden to demonstrate that the MDNS does not comply with SEPA and associated County environmental requirements. This burden must be established under the clearly erroneous standard. Under SCC 14.06.160(3)(a) the responsible official's decision is entitled to substantial weight.
6. The appellant must leave the HEX with a firm and definite conviction that a mistake has been made. That burden has not been met under the evidence in this case.
7. As CSVN and Cougar Peak have pointed out, the applicant Miles Sand and Gravel has the burden of demonstrating compliance with the CP and DR's concerning the mining application. Properly conditioned as noted below, the applicant has sustained that burden.
8. Properly conditioned, the application meets the requirements and policies of Skagit County. The following conditions apply to the SUP:

1. The applicant shall comply at all times with these conditions and mitigation requirements of the MDNS.
2. The applicant must obtain all necessary approvals from Federal, State and local governments. Copies of those permits shall be provided to PDS.
3. Extraction and transportation of gravel shall be limited to the hours of 7:00 a.m. to 5:00 p.m. Monday through Friday. The extraction shall be limited by a low number of employees and a low amount of equipment used. The applicant may request extended hours for special circumstances. That extension shall be limited and only upon approval by PDS. Conditions of approval by PDS for that extension may be established.
4. Prior to operation of any mining operation the applicant shall record a title notification required by SCC 14.16.870.
5. The applicant will develop and implement
 - a) a spill and prevention control plan; and
 - b) a stormwater prevention plan.
6. The applicant will comply with WAC 173-60 allowable noise levels from this Class C EDNA property onto a Class A EDNA property.
7. Dust control emissions established by the Northwest Clean Air Agency (NWCAA) shall be complied with. The "fugitive dust control plan" previously submitted herein shall be implemented. The NWCAA "reasonably available control technology" requirements shall be utilized.
8. Any slopes from the mining operation that exceed 50% shall be fenced or otherwise marked to prevent access. Under the provisions of SCC 14.16.440(10)(b)(iii) a 100-foot buffer around

the perimeter of the mining site shall be established but may also be used for reclamation activities. A 50-foot setback from the north, south and west perimeter of the mining area shall be established.

9. A 200-foot shoreline and critical area buffer is required on the east perimeter of the subject site. Applicant must also enter a "protected critical area" (PCA) contract with the county. These areas will be established by the submission of a "revised site plan" that establishes their location.

10. Compliance with Skagit County's Public Health requirements are mandated especially with regard to any reported spills and cleanup. Contact with Skagit County Environmental Public Health is required. Compliance with Skagit County Public Health Standards and required permits for portable toilets to be used on site is required.

11. The requirements of the Skagit County Fire Marshal's office and the county's building department require compliance.

12. All required internal and external improvement from PDS and from Public Works shall be permitted, approved and inspected prior to use of the site for mining extraction. Applicant shall enter into a road maintenance agreement with Skagit County for the Haul Road. Best Management Practices shall be used at all times.

13. In order to rectify the site distance deficiencies at the project entrance and at the intersection of Prairie and Grip Roads, a traffic-activated beacon system providing flashing alerts to drivers shall be installed at both locations.

FINAL DECISION

The appeal of the Mitigated Determination of Non-Significance dated February 22, 2022 is denied. The Special Use Permit for mining operations as mitigated and conditioned is approved.

Decision issued this 11th day of June 2024

 /s/William H. Nielsen
Wm. H. Nielsen
Appointed Hearing Examiner