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**BEFORE THE BOARD OF
SKAGIT COUNTY COMMISSIONERS**

IN RE CONSOLIDATED APPEAL OF
HEARING EXAMINER APPROVAL OF
CONCRETE NOR'WEST
GRIP ROAD GRAVEL MINE

SPECIAL USE PERMIT PL16-0097;
FOREST PRACTICES PERMIT PL16-0098

CASE NOS.:
PL24-0224, PL24-0222

STIPULATED MOTION FOR
BOARD DECISION VACATING A
DECISION AND DIRECTING A
NEW HEARING AND DECISION

13 The undersigned parties move the Board of Skagit County Commissioners (Board) to
14 hold a closed record public hearing on this stipulated motion and issue a decision forthwith, as
15 follows:

16 1. Background.

17 1.1 The parties who have appeared in the consolidated appeals to date are as
18 follows:

- 19 (a) Planning and Development Services (PDS), by and through its legal counsel,
20 Jason D'Avignon, Deputy Prosecuting Attorney;
- 21 (b) The Applicant, Concrete Nor'West/Miles Sand & Gravel (Applicant), by and
22 through its legal counsel Bill Lynn, Gordon Thomas Honeywell;
- 23 (c) The Appellant in Case No. PL24-0224, Cougar Peak LLC and the McLeod
24 Family (Cougar Peak), by and through legal counsel Tom Ehrlichman and
25 Richard Aramburu; and
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1 (d) The Appellant in Case No. PL24-0222, Central Samish Valley Neighbors
2 (CSVN), by and through their legal counsel Kyle Loring, Loring Advising;
3 (Parties).

4 1.2. On June 11, 2024, Examiner Nielsen issued a decision approving Special Use
5 Permit No. PL16-0097, approving Forest Practices Permit No. PL16-0098, and dismissing
6 CSVN's appeal under the State Environmental Policy Act, RCW ch. 43.21C ("SEPA") under
7 PL22-0142 ("Decision").

8 1.3 On November 1, 2024, Cougar Peak filed a motion with the Board requesting
9 an order vacating the Decision and designating a new hearing examiner for issuance of an
10 impartial decision in the matter of Special Use Permit No. PL16-0097, citing numerous
11 alleged errors (Motion).

12 1.4. The Cougar Peak appeal (-0224) and CSVN appeal (-0222) have been
13 consolidated into this single appeal before the Board by order of the Clerk (appeals).

14 1.5 CSVN's appeal includes an appeal of PL16-0098 (Forest Practices permit) and,
15 separately appeals the SEPA Mitigated Determination of Nonsignificance (MDNS) issued by
16 PDS for those two permits, under PL22-0142. The parties agree the MDNS is not appealable
17 to the Board and is not part of these appeals.

18 1.6. The parties bring this motion seeking a Board decision vacating the Nielsen
19 Decision and directing a new hearing and decision by the County's sitting Hearing Examiner,
20 as set forth herein.

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23 2. Non-Waiver of Claims or Defenses.

24 2.1 The parties recognize that this case has spanned multiple years and has involved
25 and may still involve multiple levels of litigation. No party to this motion is waiving any
26 rights, claims or defenses it may have now or in the future concerning PL16-0097, PL16-
27 0098, or PL22-0142.

1 2.2 To the extent the requested decision by the Board does not specifically address
2 and decide Cougar Peak’s claims with respect to violations of law involving issuance of PL16-
3 0097, or CSVN’s claims with respect to its appeal of the MDNS under the State
4 Environmental Policy Act, RCW ch. 43.21C (SEPA), appellants respectively reserve their
5 claims and defenses and the County and Applicant reserve all defenses and/or counterclaims.

6 3. Request for Hearing and Decision.

7 3.1 The parties respectfully request that the Clerk provide notice and schedule a
8 closed-record appeal hearing for the specific and limited purpose of hearing this motion and
9 receiving comment from parties of record, in compliance with the procedures of Skagit
10 County Code § 14.06.170 (Type II Closed Record Appeal). All citations to County code in
11 this Stipulation are to the code as it existed on the day the appeals were filed.

12 3.2 The parties agree to limit their participation at hearing and in any writings to
13 support for this motion as their respective sole presentations without further argument on the
14 merits of the appeals or Cougar Peak’s motions. The parties agree that this Stipulation serves
15 the purpose of the required PDS staff report and waive the preparation of any further such
16 report. If the Commissioners deny this stipulated motion and instead contemplate issuing a
17 decision either approving or remanding the Nielsen Decision, the parties agree that this matter
18 should be scheduled for hearing on a later day with all parties having the right to present oral
19 argument and briefing on the appeals and Cougar Peak’s motion

20 3.3 This motion requests issuance of a decision under SCC § 14.06.170(10)(b)
21 vacating the Nielsen Decision (June 11, 2024) in its entirety and replacing it with findings and
22 conclusions and a decision consistent with the draft Resolution attached hereto as Exhibit 1.

23 3.4 In light of the fact the Nielsen Decision is being vacated and replaced, the
24 parties concur that this Decision is not a “remand” as contemplated by
25 SCC § 14.06.170(10)(a).
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1 3.5 The parties request that the Decision make clear that the Nielsen Decision was
2 clearly erroneous based on procedural flaws and none of the parties hereto were the
3 “prevailing party” for purposes of any subsequent appellate determinations.

4 4. Entirety of Each Party’s Position.

5 4.1 This motion contains the entirety of the understandings reached between the
6 parties with respect to the subject matter herein.

7 4.2 Nothing herein is intended to limit further discussions between the parties
8 potentially resolving issues that will be before the Hearing Examiner pursuant to the requested
9 decision.
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11 4.3 In the attached resolution, the parties request that the Board direct the Hearing
12 Examiner to review the exhibits and transcribed testimony from the 2022 hearing, and to
13 conduct a supplemental public hearing pursuant to the Hearing Examiner Rules for
14 predecision open record hearings and a combined administrative appeal of the MDNS. The
15 purpose of this process is to have the Examiner issue a written decision meeting the
16 requirements of law with such decision based on a complete and sufficient record under
17 applicable law. The parties have agreed that the Examiner shall, at a minimum, hear
18 supplemental traffic and transportation testimony, because traffic and transportation were
19 significant issues at the 2022 hearing and because some expert traffic and transportation
20 testimony was not recorded and transcribed. The parties agree that the Rules authorize the
21 Hearing Examiner to manage testimony under appropriate circumstances.

22 Respectfully submitted this 20th day of December, 2024,

23 [Signatures on following pages 5-8]
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1 FOR APPELLANTS COUGAR PEAK LLC AND THE MCLEOD FAMILY:

2 DYKES EHRLICHMAN LAW FIRM

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7 Co-counsel
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9 LAW OFFICES OF J. RICHARD ARAMBURU

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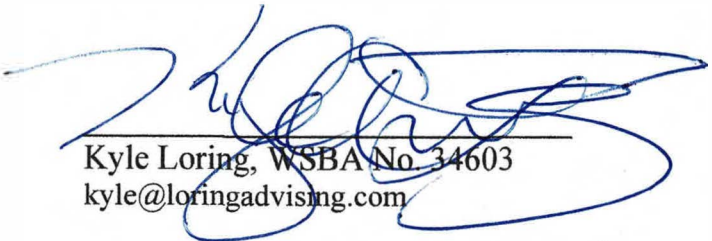
12 per authorization for

13 J. Richard Aramburu, WSBA No. 466
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FOR APPELLANT CONCERNED SAMISH VALLEY NEIGHBORS:

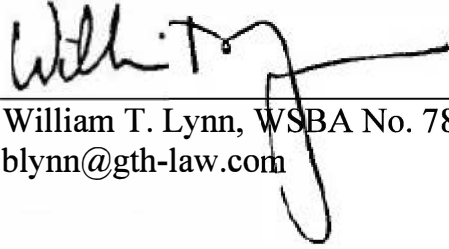
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1 FOR APPLICANT CONCRETE NOR'WEST/MILES SAND & GRAVEL:

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1 FOR SKAGIT COUNTY PLANNING AND DEVELOPMENT SERVICES:

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4 FOR SKAGIT COUNTY

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6 Jason C. D'Avignon, WSBA No. 44259
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STIPULATED MOTION TO VACATE THE
DECISION OF HEARING EXAMINER NIELSEN
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EXHIBIT 1
DRAFT PROPOSED RESOLUTION

DRAFT RESOLUTION # _____

A resolution pertaining to the closed record appeals before the Skagit County Board of County Board of Commissioners of the Hearing Examiner’s decision regarding special use permit applications PL16-0097 and PL16-0098 and regarding SEPA appeal PL22-0142.

WHEREAS, Central Samish Valley Neighbors and Cougar Peak, LLC (“Appellants”) timely filed separate closed record appeals to the Board of Skagit County Commissioners (the “Board”), Appeal Nos. PL24-0222 and PL24-0224 (the “Appeals”); and

WHEREAS, the appeals were filed pursuant to chapter 14.06 of the Skagit County Code (as was in effect at the time the appeals were filed), challenging the Skagit County Hearing Examiner’s Decision dated June 11, 2024, (the “Decision”) approving Special Use Permit PL16-0097 and PL16-0098 (collectively the “Permit”); and

WHEREAS the Decision also denied an appeal of the State Environmental Policy Act or “SEPA” Mitigated Determination of Significance (“MDNS”) associated with the Permit, and that appeal, PL22-0142, (the “SEPA Appeal”) was heard in the same open record hearing with the Permit as required by law; and

WHEREAS a challenge to the decision on the SEPA appeal is not to the Board but to the Superior Court upon a final decision on the Permit by the County, including resolution of any appeals to this Board on the Permit; and

WHEREAS, the Permit authorizes Miles Sand and Gravel/Concrete Nor’ West (“Applicant”) to develop and operate a 50-acre gravel mine adjacent to the Samish River for the extraction (only) and transport of mined material across Swede Creek and along Grip Road and other County roads to be processed at the Applicant’s facility next to the Samish River and I-5; and

WHEREAS, SCC 14.06.170(10)(a)–(b) limits the action the Board may take in response to the Appeals to one of the following actions:

- (1) Deny the appeal and affirm the decision of the Hearing Examiner;
- (2) Find the Hearing Examiner’s decision clearly erroneous, adopting its own findings, conclusions and decision based on the record before it; or
- (3) Remand the matter for further consideration by the Hearing Examiner; and

WHEREAS, the original hearing examiner who presided over the open record proceedings refused his duty to issue a decision and only issued a very brief decision after being found in contempt of court; and

WHEREAS, the Board took action concerning that decision in Resolution No. R20240048 (March 4, 2024), citing noncompliance with SCC 14.06.190(9), and requiring the County to engage another hearing examiner to issue the Permit Decision described above based on either reconsideration or new proceedings; and

WHEREAS, the Board has considered the record submitted by Planning and Development Services on October 2, 2024, the objections of various parties to that submittal, the

EXHIBIT 1
DRAFT PROPOSED RESOLUTION

pleadings on file, testimony at hearing and the arguments of the parties, as well as the stipulated motion which serves as the Departmental staff report; and

WHEREAS, the second examiner did not conduct a new hearing but instead was provided a large portion of the records and transcripts from the first Hearing Examiner proceeding, and thus did not consider the entire record as required by law prior to issuing his decision on June 11, 2024 (Decision); and

WHEREAS, it has become known that the second examiner issued his Decision without first requiring transmittal to him of the entirety of the record created at the first Hearing Examiner proceeding, and thus the Decision rendered by him was not based on an accurate statement of the facts as required under SCC 14.06.160(9); and

WHEREAS, Appellant Cougar Peak has filed a motion requesting an order vacating the decision of the second hearing examiner and a hearing before a new Hearing Examiner in order to create a complete record supporting the new Permit decision; and

WHEREAS, RCW 36.70B.020(3), RCW 36.70C.120(1) and SCC 14.06.160(9) all require that a hearing examiner issue a written decision containing findings and conclusions based on the record developed at a single, open-record predecision hearing; and

WHEREAS, the Board concludes that the best way to protect the rights of the public and the parties, to minimize expense of all involved, and to create a clear path forward on any appeals is to issue a decision vacating the decision of the second hearing examiner and sending this matter back to the County's current Hearing Examiner for a decision based upon a record comprised of all previous exhibits and testimony submitted by any party of record during the hearings held in 2022 involving the Permit and the SEPA Appeal, together with the record from a supplemental public hearing conducted by the current Hearing Examiner;

WHEREAS, the Board and Department agree that the decision should address all matters presented in the open record hearing, including the SEPA Appeal since there was a single open record hearing and a single hearing examiner decision, and that single decision should be based on the entire record;

WHEREAS, the Board has received a stipulated motion from the parties appearing in this matter, asking the Board to resolve the consolidated Appeal Nos. PL24-0222 and PL24-0224 and the motion from Appellant Cougar Peak LLC and the McLeod Family filed on November 1, 2024; and

WHEREAS, the appeals have merit, as does the stipulated motion, and SCC 14.06.170(10)(b) authorizes the Board to issue this Decision, with findings and conclusions, vacating the decision issued in error by Examiner Nielsen on June 11, 2024.

WHEREAS, on January __, 2025, the Board held a closed record appeal hearing on the stipulated motion of the appellants, the applicant and the Department of Planning and Development Services, pursuant to SCC 14.06.170 (appeal of Type II permit decision by the Hearing Examiner), after providing required notice and affording all parties of record an opportunity to be heard.

EXHIBIT 1
DRAFT PROPOSED RESOLUTION

NOW, THEREFORE, BE IT RESOLVED:

1. The stipulated motion of the parties appearing in this matter through legal counsel is **granted**.
2. Pursuant to SCC 14.06.170(10)(b), the June 11, 2024, Decision is found to be clearly erroneous and therefore is **vacated** and the sitting Skagit County Hearing Examiner (not Examiner Nielsen) is directed to issue a new decision based upon further proceedings consistent with this Resolution.
3. The Hearing Examiner is authorized and directed to render a decision that is consistent with all legal requirements, after holding a supplemental single open record public hearing combining a predecision hearing on the Permit and a hearing on the SEPA Appeal to develop a single consolidated record. The Hearing Examiner shall develop a record comprised of the supplemental public hearing and the documents and testimony from the hearings in 2022.
4. To ensure a complete record, the Hearing Examiner shall hold a supplemental hearing that shall include at a minimum updated testimony on road safety, traffic and necessary mitigation concerning the Grip Road travel route for the proposed mine. Prior to holding that supplemental hearing and issuing a decision on the Permit and SEPA Appeal, the Hearing Examiner shall hold an initial conference at which they will hear from the parties and the public as to what the record from the 2022 hearings contains and any argument pertaining to the state of the record or positions of the parties following this Decision. Following the initial conference, the Hearing Examiner shall certify a record comprising the 2022 hearing evidence and testimony and take such measures as necessary to ensure any gaps in that record are addressed.
5. The Hearing Examiner shall fully weigh the evidence in the record and issue written decisions with findings and conclusions consistent with the requirements of law for the Permit application and SEPA Appeal. The decision shall document that the record upon which the decision is based is comprised of the record created by supplemental proceedings combined with the Hearing Examiner's certified record from the hearings in 2022. The decision shall include a listing of parties of record to the decision, the names of all witnesses, and an exhibit list of all records submitted by any party concerning the Permit and concerning the SEPA Appeal.
6. To assist the Hearing Examiner in certification of the record from 2022 and from the supplemental proceedings, Central Services is hereby directed, prior to the initial conference, above, to ensure that the Office of Hearing Examiner or the Hearing Examiner's own office has the professional capacity to compile an accurate record of all proceedings (both from 2022 and the present day) conducted up to the date of the Hearing Examiner decisions, including but not limited to maintaining copies of all notices and mailing labels, and cataloguing all exhibits, witness appearances, correspondence, briefing, and orders.

EXHIBIT 1
DRAFT PROPOSED RESOLUTION

7. Following issuance of the new decision by the Hearing Examiner, and upon issuance of a Notice of Decision by the Department, the Department is directed to provide the Hearing Examiner's Office with an affidavit of service listing the parties of record served with the Notice of Decision.

SIGNED this _____ day of _____, 2025.

**BOARD OF COUNTY
COMMISSIONERS
SKAGIT COUNTY, WASHINGTON**

Peter Browning, Chair

Lisa Janicki, Commissioner

Attest:

Ron Wesen, Commissioner

Clerk of the Board

Approved as to form:

Civil Deputy Prosecuting Attorney