



February 6, 2020

Rian Skov LG, LEG
Chief Reclamation Geologist
Washington Geological Survey
Washington Department of Natural Resources
1111 Washington St. NE
Olympia, WA 98504
(sent via email: rian.skov@dnr.wa.gov)

Re: Enforcement Request, DNR Permit No. 70-013120, Liden Land Development & Excavation, Inc.

Dear Mr. Skov;

Thank you for your recent correspondence with City staff regarding the mining and reclamation site on Bainbridge Island, commonly referred to as the "Triangle Property," currently operated by Liden Land Development and Excavation, Inc. ("Liden"). The City of Bainbridge Island has significant concerns regarding compliance with project conditions of approval, including but not limited to impacts that mining activities may have on the groundwater supply if monitoring standards are not complied with. The City is seeking direct and timely action by DNR on the enforcement items described in further detail below.

Background

Although mining is a "Conditional Use" under the City's zoning code (BIMC Title 18), the site at issue was determined by the City's Hearing Examiner in 2008 to be an existing non-conforming use. The City's current critical area regulations designate the entirety of Bainbridge Island as a Critical Aquifer Recharge Area. Although the site is recognized as an existing non-conforming use, it is noteworthy that new mines are prohibited in Critical Aquifer Recharge Areas.

In 2008, the City issued a Grade and Fill Permit to Nelson Wood & Glass for proposed excavation and grading on the Triangle Property (BLD14930 GAF). The permit included a SEPA Mitigated Determination of Nonsignificance with five mitigating conditions. The SEPA determination was based on the applicant's site plan and SEPA checklist, which proposed up to 22,000 cubic yards of excavation on the westerly (Fletcher Bay Road) portion of the site, and approximately 32,000 cubic yards of imported fill to the site. The applicant indicated in the SEPA checklist that the proposed project timing was September 2007 - December 2010.



It is my understanding that a determination was made by DNR in 2008, based on the size and activities on the site, that DNR had permitting authority related to the activities at issue and that those activities would be permitted under a DNR Mining and Reclamation Permit rather than a City grading permit. DNR issued a permit to Nelson Wood & Glass in 2009 (File No. 70-013120). In 2014, Nelson Wood & Glass transferred the permit to Liden. The permit contained 13 conditions of approval. Liden has conducted mining activities intermittently since that time, including recent sand mining activity associated with two local school construction projects.

As you are aware, concerned residents living in the mine vicinity have expressed concerns to the City, DNR, and possibly other agencies (e.g., DOE) regarding whether the mining activities are in compliance with applicable permit conditions, and whether the activity is causing harm to the aquifer recharge area, which supplies local wells.

In January 2020, DNR conducted its annual site inspection, and subsequently hosted a meeting at Bainbridge City Hall with the concerned residents, City staff, and a representative from DOE. At the meeting, the concerned residents outlined specific concerns with regard to current mining and reclamation activities, including but not limited to lead agency responsibilities regarding enforcement of SEPA conditions and potential impacts to the aquifer.

It is my understanding that DNR has confirmed that it regards DNR as the SEPA lead agency, and that DNR utilized the City's original 2008 MDNS to satisfy SEPA requirements for the 2009 DNR permit. Among the concerns that have been raised, for example, is a concern about SEPA mitigating Condition No. 1 from the 2008 MDNS, which states:

All construction activities shall be in accordance with the approved SWPPP and grading plans, and the recommendations of the geotechnical evaluation by Aspect Consultants date stamped September 14, 2007 and the supplemental information date stamped January 4, 2008, March 19, 2008, and March 28, 2008.

Among the City's concerns is a concern that mining and reclamation activities are not in compliance with this condition. It is my understanding that the applicant has not been required to demonstrate – through monitoring or otherwise – that all construction activities are being conducted in accordance with the approved plans and with the recommendations of the geotechnical evaluations prepared by Aspect Consultants.

It is important to note that the approved plans referenced in the 2008 MDNS differ from the site plan approved under the 2009 DNR permit, which expanded the approved site activity area to approximately four acres. The original MDNS and SEPA checklist should be revised to describe the larger project area and potential adverse environmental impacts associated with that larger area of operation.



Requested Actions

The City is seeking action by DNR related to the following areas of concern to ensure compliance with applicable project conditions. These actions by DNR will help to ensure protection of the City's designated critical aquifer recharge area:

1. Issue a revised SEPA determination that addresses current activities and conditions on the site. Supporting documentation should include, at a minimum, a revised or amended SEPA checklist describing adverse environmental impacts that may result from the larger site activity area and any updated reports as needed to mitigate such impacts. Additionally, there needs to be clarity regarding the SEPA determination as to any SEPA conditions that refer to "recommendations" as opposed to requirements to make clear what specifically is required of the applicant.
2. Require the applicant to submit a Clean Soils Report to document the source of imported fill materials. It is the City's understanding that DNR has requested such a report, and the applicant has offered to supplement the report with onsite soil testing in accordance with DNR specifications.
3. Formally determine whether a violation on the site has occurred related to the depth of mining activities relative to the limits established in the DNR permit.
4. Formally determine if any other potential violations of DNR's permit conditions have been violated on the site based on information provided by the City, concerned neighbors, or otherwise.

The City appreciates DNR's timely attention to this matter. Should you have any questions, please contact Planning Manager David Greetham at 206.780.3765 or dgreetham@bainbridgewa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Morgan Smith', written in a cursive style.

Morgan Smith, City Manager

Cc: Heather Wright, Planning Director
David Greetham, Planning Manager
Chris Wierzbicki, Public Works Director
Joe Levan, City Attorney