

1 SPOKANE COUNTY HEARING EXAMINER

2
3 SEPA APPEAL OF DNS RE: ZONE
RECLASSIFICATION APPLICATION

4 SAPPL ZW-01-22

5 ZONE RECLASSIFICATION FROM RURAL
6 CONSERVATION (RCV) TO MINERAL
LANDS (M) ON APPROXIMATELY 155.63
7 ACRES FOR THOSE USES ALLOWED IN
THE MINERAL LANDS (M) ZONE

FINDINGS, CONCLUSIONS, AND
DECISION AFTER REMAND

8 FILE NO. ZW-01-22

9 APPLICANT: POE ASPHALT PAVING,
INC.

10 APPELLANT: HANSKUTT HILLS
11 NEIGHBORHOOD GROUP

12 I. SUMMARY OF DECISION

13 **Hearing Matter:** Application for a Zone Reclassification from Rural
14 Conservation (RCV) to Mineral Lands (M) on approximately 155.63 acres for those
uses allowed in the Mineral Lands (M) zone and an appeal of the Determination of
15 Non-significance (DNS) regarding Spokane County Building and Planning
Department ("Department") File No. ZW-01-22.

16 **Summary of Decision:** The SEPA appeal is denied. The application is
17 approved subject to *revised* conditions

18 II. FINDINGS AND CONCLUSIONS

19 **Procedural Matters:**

20 On January 11, 2022, Poe Asphalt Paving, Inc., the Applicant, submitted a
reclassification application to the Spokane County Building and Planning
21 Department in File No. ZW-01-22 for a Zone Reclassification from Rural
Conservation (RCV) to Mineral Lands (M) on approximately 155.63 acres for mining
22 uses related to the removal of rock and gravel. On February 1, 2022, the Department
issued a Determination of Completeness regarding the Zone Reclassification
23 application.

1 On April 13, 2022, the Hearing Examiner convened a consolidated open record
2 public hearing regarding the Zone Reclassification Application and associated appeal
of the DNS.

3 On May 9, 2022, the Hearing Examiner issued a written decision remanding
4 the matter back to the Department for further action: to wit – collect and evaluate
5 additional information regarding historical and cultural resources and reissue a
SEPA threshold determination; provide additional information regarding compliance
6 with the development regulations.

7 A Notice of Application was mailed by the Department on February 2, 2022
(Certification of Mailing by Martha Thornton dated February 2, 2022) and posted at
8 the site on February 3, 2022 (Affidavit of Posting signed by Brian Poe, February 3rd,
2022) in compliance with SCC 13.500.102 et. seq.

9 Notice of hearing regarding the Zone Reclassification Remand was mailed on
June 28th, 2022 and posted at the site on July 5, 2022. Affidavit of Mailing, Martha
10 Thornton dated June 28th, 2022; Affidavit of Posting, Brian Poe dated July 5th, 2022.
11 On July 5, 2022, a Notice of Hearing was published in the Spokesman-Review
newspaper. Affidavit of Publication, E. Jennifer Evans dated July 7, 2022.

12 On June 8th, 2022, the SEPA threshold determination issued on March 29,
13 2022, was withdrawn by the Department. On July 5, 2022, a new threshold SEPA
determination of Non-Significance (DNS) was issued by the Department regarding
14 the proposed Zone Reclassification, with a comment and appeal period ending on July
15 19, 2022. Department File. On July 19, 2022, Hanskutt Hills Neighborhood Group,
the Appellant, filed a timely appeal of the DNS pursuant to Section 11.10.170(8) of
16 the Spokane County Code (SCC). Notice of Appeal dated July 19, 2022.

17 On July 20, 2022, the Hearing Examiner convened a consolidated open record
public hearing regarding the Zone Reclassification Application and associated appeal
18 of the DNS. Pursuant to the Hearing Examiner's decision issued on May 9, 2022, the
July 20 hearing was a continuation of the hearing held on April 13, 2022. The notice
19 requirements for the public hearing, set forth in SCC Chapter 13.700 were met.

20 The Hearing Examiner heard the application and appeal pursuant to the
Spokane County Hearing Examiner Ordinance, codified in SCC Chapter 1.46; the
21 Spokane County Hearing Examiner Rules of Procedure, adopted by Resolution No.
22 96-0294; and SCC Section 11.10.170. The hearing was conducted in person and via
Zoom internet conferencing platform pursuant to the Spokane County Hearing
23 Examiner Rules of Procedure Section 19.

1 The Hearing Examiner visited and viewed the site and the surrounding area
2 on April 25, 2022.

3 The following persons were present at the remand hearing and testified under
4 an oath administered by the Hearing Examiner:

5 Tammy Jones
6 Building and Planning Department
7 1026 W. Broadway Avenue
8 Spokane, WA 99260
9 TMJones@spokanecounty.org

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7 Zachary Griefen
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The following persons were present at the remand hearing and did not testify under an oath administered by the Hearing Examiner:

David Istrate
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Terry Huber
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Walter Green
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The following exhibits were submitted during the hearing:

Appellant Exhibits:

Exhibit 1: Ex. HH1- Google Earth Rezone Area Aerial (1 page)

Exhibit 2: EX. HH2- WBZElevation (1 page)

Exhibit 3: Ex. HH3- APPLICATION (5 pp.)

Exhibit 4: Ex. HH4- Habitat-Management-Plan (18 pp.)

Exhibit 5: Ex. HH5- Project Narrative (9 pp.)

Exhibit 6: Ex. HH6-SEPA DNS (File No. ZW-01-22) (18 pp.)

Exhibit 7: Hanskutt Hills SEPA Notice of Appeal (25 pp.)

Exhibit 8: Staff Report for ZW-01-22 (24 pp.)

Exhibit 9: Letter and Response - ZW-01-22 Findings and Conclusions and Order of Remand (100 pp.)

Exhibit 10 RE_ Poe Asphalt Remand Hearing (Brian Poe email of June 16 re scheduling) (2 pp.)

Exhibit 11: Remand Staff Report (28 pp.)

The record includes the electronic recording of the open public hearing, the documents in the application file at the time of the commencement of the hearing, all

1 items provided to the Hearing Examiner as exhibits for the hearing, and any items
2 taken notice of by the Hearing Examiner in this decision and at the hearing.

3 The Hearing Examiner takes notice of the Spokane County Comprehensive
4 Plan ("Comprehensive Plan"), the Spokane County Zoning Code (SCZC), the Spokane
5 County Code (SCC), and other applicable development statutes and regulations, and
6 previous land use decisions for the site and area.

7 **Description of Site and Proposed Project:**

8 The subject site is located east of S. Grove Road and north of Cheney-Spokane
9 Road in the N ½ of Section 15, Township 24 North, Range 42 EWM, and in the SW¼
10 of Section 10, Township 24 North, Range 42 EWM Spokane County, Washington.

11 The subject property consists of 4 parcels of land totaling approximately 156
12 acres in size, is undeveloped, and is located east of Grove Road and adjacent to the
13 existing 70-acre Poe Asphalt sand and gravel quarry. The site moderately slopes to
14 the west and contains areas of scattered ponderosa pine, native grasses, and shrubs.
15 Access to the subject site is via an un-paved gated, commercial-width gravel
16 approach off of Grove Road. Surrounding uses include mining uses to the west of the
17 site, undeveloped land, and a railroad right- of-way. The townsite of Marshall is
18 located on the south side of Cheney-Spokane Road.

19 A Geohazard Evaluation was prepared by Budinger & Associates, dated
20 November 17, 2021. According to the evaluation, geologic hazards were found in the
21 form of 30% slopes and erodible soils along the south property line that encumber
22 portions of Parcel Numbers 24156.9088 and 24154.9024. These areas of geologic
23 concern along the south property line are not part of the proposed operation and will
24 have a 50-foot buffer between the edge of the geohazard zone and the quarry.

25 A Cultural Resource Survey was prepared by Plateau Archaeological
26 Investigations, LLC, dated May 20, 2022. The results of the Survey found that the
27 proposed use of the site will result in 'No Historic Properties Affected' and
28 recommends that no further archaeological investigations are necessary. The
29 Cultural Resource Survey was circulated to the Washington State Department of
30 Archaeology and Historic Preservation (DAHP) for review and comments. A comment
31 letter from DAHP was received by the Department on May 24, 2022, concurring with
32 the results and recommendations made within the Survey, and requesting that an
33 inadvertent discovery plan be submitted as part of a construction permit.

34 Drainage from the subject site is generally to the west-southwest. This consists
of excess precipitation and snow melt that does not infiltrate when the ground is
frozen or saturated. The U.S. Fish & Wildlife Service's National Wetland Inventory

1 (USFW-NWI) has indicated an emergent wetland on the property, which exists along
2 the property line of Parcel Number 24103.9059 in the form of a ditch. A Wetland
Delineation Report, prepared by Tom Duebendorfer, Wetland Scientist, states that:

3 " The National Wetland Inventory (NWI) mapped an emergent wetland on the
4 property. This extends south off property as a riverine wetland (riverine,
intermittent, streambed, seasonal flooding). Hydrology was not observed on
5 the property, however topography indicates the ditch could have potential
short-term seasonal ponding." In addition, Mr. Duebendorfer states "I
6 determined that the ditch identified on the NWI would not be considered a
jurisdictional wetland (vegetation if non-hydrophytic, and soils do not show
7 hydric indicators). It is possible that short-term seasonal ponding could occur
8 given topography. If so, I would consider this ditch as a water conveyance
feature hydrologically charged by runoff and/or snowmelt."

9 Based on mapping provided by the Washington Department of Fish and
10 Wildlife, areas of the four parcels are indicated to potentially contain Sagebrush-
Steppe. However, after review by the Applicant's retained biologist consultant, Mr.
11 Dubendorfer, no Sagebrush-Steppe was found to be onsite. In addition, based on
Critical Areas mapping for Priority Habitat Species, the northern boundary for Rocky
12 Mountain Elk habitat slices through Parcel Number 24156.9088 and includes Parcel
Numbers 24151.9054 and 24154.9024. The Applicant's biologist consultant, Mr.
13 Dubendorfer, did not find any current or past presence of elk on site. *See* Washington
14 State Priority Habitat Evaluation and Habitat Management Plan for Poe Asphalt.

15 The proposed land use action consists of a Zone Reclassification from Rural
16 Conservation (RCV) to Mineral Lands (M) on approximately 156 acres for mining
uses related to the removal of rock and gravel. It is the Applicant's intention to not
17 produce asphalt on the subject site. The Applicant intends to utilize valuable topsoil
materials to establish a perimeter buffer strip along the parcel boundaries, and in
18 specific areas well inside of the property's limits, which may be unsuitable for
resource extraction. For areas along the perimeter, the soils will be placed starting at
19 or near the property line and extended into the Applicant's property. This material
20 will be rounded and track-walked to a height of 8-12 feet and seeded using a native
seed mix. The Applicant will further enhance the barrier of the property with a 6-foot
21 high chain link style fence, which will be placed along the property line, or
temporarily along any portion of the site in which active operations exist and/or are
22 not yet rehabilitated. The Applicant does not intend to construct any structures
onsite. Support facilities will be maintained on the adjacent parcels which are
23 currently zoned Mineral Lands (M). The buffer will act as a natural visual barrier as
24 well as a noise deflector. Crushing and processing operations are currently

1 contracted out and crushing and processing equipment will not be located onsite
2 year-round.

3 Depending on rock integrity, drilling will be done to a depth of approximately
4 20 feet so that rock can be blasted for further processing. Mining will not proceed
5 below Elevation 2110 Mean Sea Level (MSL), which will result in an overall mining
6 depth of 180 to 220 feet. According to Surface Mine Reclamation Permit No. 70-
012896 (DNR form SM-BA and form SM-9) declared groundwater residing, with no
fluctuation, at Elevation 2080 MSL. Therefore, the mining activity will occur 30 feet
above known groundwater in that area.

7 It is not the Applicant's intent to strip the entire property but to work in
8 phases. As depicted in the Site Plan-Overview of Current and Proposed Development,
9 the entire project area from current activity to the 30-year phase of the mining area
10 is laid out. Current activity is shaded in blue, followed by the 10-year phase shaded
11 in yellow, the 20-year phase shaded in purple, and the 30-year phase shaded in
green.

12 The Operations Plan identifies the proposed use to include the excavation,
13 screening, stockpiling, grading, crushing, blasting, drilling, and hauling of materials
14 from the site. Dust will be controlled by an onsite water truck. Hours of operation
15 will occur Monday thru Saturday during general daylight hours. The duration of the
activity will be based upon market demands, and the site will be reclaimed in phases
as materials are removed consistent with a reclamation plan to be approved by the
Washington State Department of Natural Resources.

16 As established by the previous site owners, a reclamation plan in good
17 standing (DNR Reclamation Permit No. 70-012896) has been filed with and approved
18 by the Washington Department of Natural Resources. It is the Applicant's plan to
19 take ownership of this reclamation plan prior to the commencement of operations in
the Spring of 2022. The Applicant will modify the existing plan with DNR to
20 accommodate variations to the permit area, estimated annual production, and total
21 quantity to be mined as well as reclamation tactics to better cater to geologic
conditions.

22 Reclamation will be in an iterative process that will take place when an area is
23 no longer active. Upon completion of mining, the Applicant will vary the landscape
24 from terraced highwalls through areas of competent bedrock to gradual slopes with
steepness between 2 horizontal to 1 vertical (2:1), and 3 horizontal to 1 vertical (3:1).
The terraced highwalls will be done so that a variable height bench of approximately

1 10-foot wide exists vertically approximately every 10-20 feet with an overall slope of
2 approximately ¾ horizontal to 1 vertical. Prior to descending deeper into the pit,
3 topsoil will be spread, which will be sloped slightly into the highwalls, onto these
4 benches and will seed them with native grasses. Pit floors will be varied in elevation,
left rough, and covered with available topsoil and overburden to a depth of about 6-

5 The quarry operation expects to average 476 tons of material per day with a
6 total annual tonnage of 150,000 tons. The Applicant has indicated that the Grove
7 Road Pit will operate at the same efficiency and capacity as other Poe Asphalt-
8 operated facilities. During a typical weekday, the pit is expected to generate 60
9 truckload trips (in/out) and 10 employee trips (in/out) of the facility. The Grove Road
10 Pit is expected to generate 10 net new trips to the surrounding roadway network
during AM peak hour and 10 net new trips during the PM peak hour. 50% of the net
new trips will go to/come from areas south of the site, and 50% of the net new trips
will go to/come from areas north of the site via S. Grove Road.

11 **Land Use Designations and Conditions for Site and Neighboring Land:**

12 The subject site contains slopes in excess of 30% and erodible soils. Spokane
13 County Critical Areas Maps do not identify wetlands on the subject site. The subject
14 site is located approximately 800 feet north of Cheney-Spokane Road and 400 feet
east of Grove Road. The Spokane County Arterial Road Plan identifies Cheney-
Spokane Road as a Rural Major Collector and Grove Road as a Rural Minor Collector.

15 The subject property is located within a Critical Aquifer Recharge Area
16 (CARA) identified as having Moderate Susceptibility. Spokane County Critical Areas
17 Maps identify Rocky Mountain Elk habitat on and in the area of the subject site.
18 Application materials were circulated to the Washington State Department of Fish &
Wildlife for review and comment. There is no mapped floodplain on or associated
with the subject site.

19 Zoning to the north, south, and east of the site is Rural Conservation (RCV)
20 established January 15, 2002. Land use north and east of the site includes single
family residences on acreage parcels and rural uses. Land use south of the site
21 includes railroad tracks and the Cheney-Spokane Road. Zoning to the west of the site
is Mineral Land (M) originally established in 1967. Land use west of the site includes
22 a mining operation. There is additional Mineral Land located to the southwest of the
23 site, which was established by a Zone Reclassification (file no. ZW-10-02), in 2002.

24 The proposed action does not require a potable water source.

1 **Agency/Public Comments:**

2 Agency comments received were in the form of recommended conditions of
3 approval for the proposed Zone Reclassification. Comments from the Washington
4 State Department of Natural Resources state that a new or expanded DNR Surface
5 Mine Reclamation Permit will be required prior to onsite mining-related disturbance.
6 Comments were also received from the Washington State Department of Archaeology
7 and Historic Preservation requesting an inadvertent discovery plan be included as a
8 condition.

9 A significant number of comment letters were received from neighboring
10 property owners expressing opposition to the proposed Zone Reclassification.
11 Concerns expressed by neighboring property owners include noise, pollution, dust,
12 odor, fumes, impacts of blasting on groundwater, impacts to wildlife and habitat loss,
13 impact to Marshall Creek Watershed, the safety of school children with increased
14 truck traffic, devaluation of property, and incompatibility with rural character. The
15 public also requested additional studies be performed prior to the issuance of a
16 decision by the Hearing Examiner. The comments submitted by the public generally
17 address the same set of issues raised in the SEPA appeal submitted by the Hanskutt
18 Hills Neighborhood Group.

19 **Consistency with Comprehensive Plan and Zoning:**

20 **Mineral Lands:**

21 The subject property is located within the Mineral Land designation of the Natural
22 Resources Chapter, Chapter 4, of the Spokane County Comprehensive Plan. The
23 Mineral Land designation was established December 28, 2020, through resolution
24 updating the Comprehensive Plan Map. Mineral resource lands must meet criteria of
quality, quantity, and accessibility for commercial viability in order to be designated.
Mineral land areas are primarily devoted to sand, gravel, rock, or clay production.
Related products such as concrete, asphalt, and brick are also produced. Agricultural
uses may be conducted on mineral resource lands, but residences are generally limited
to caretaker residences associated with mining or related industry.

Goals and Policies of the Natural Resource Lands Chapter include the following:

NR.1.1 - Natural resource lands of long-term commercial significance shall be
designated on official maps and adopted by the Board of County Commissioners
through a comprehensive planning process.

NR.4.2 - Agricultural, forest and mining operations shall be allowed on natural
resource lands when carried on in compliance with applicable regulations, even
though they may impact nearby residences.

1 NR.4.3 - Natural resource lands shall be managed, conserved and protected while
2 used for natural resource production and restored to a natural state or developed
in conformance with the Comprehensive Plan once resource use has stopped.

3 The application has been reviewed for compliance with governing regulations.

4 NR.4.11 Recognize that mineral resources are site-specific and not subject to
5 relocation.

6 NR.4.12 Mining shall be allowed on rural lands as well as lands designated as
7 mineral and other natural resource lands if environmental protection and
compatibility with adjacent land uses is assured.

8 NR.4.14 Approval of proposed mining operations will include conditions that:

9 a) The extraction proposal meets all applicable zoning requirements;

10 The proposed mining use is generally consistent with the development
11 regulations of the requested Mineral Lands (M) zone.

12 b) The proposed extraction operation is buffered from existing or potential
13 developments within the vicinity of the proposed operation;

14 A minimum buffer of 50 feet and berm will be maintained along the north,
15 west and south boundaries of the subject site.

16 c) A permit, which includes a reclamation plan and performance bond, is
17 obtained through the Washington State Department of Natural Resources;

18 d) Provide for protection of groundwater and surface water, including
19 wetlands, during and after operation;

20 There are no wetlands or surface water on the subject site and groundwater is
21 proposed to be protected by retaining a minimum of a 30-foot layer of rock in areas of
22 excavation.

23 e) Mining shall not be allowed to penetrate the elevation 10 feet above the
24 highest known elevation of an aquifer;

The Applicant is proposing to leave a minimum 30 foot layer of rock in place
above the ground surface.

f) The monitoring and clean-up of contaminants should be ongoing;

Requested conditions of approval have been submitted addressing disturbance
of any landfill area.

g) A permit, when applicable, from DOE for coverage under the Sand and
Gravel General Permit.

1 As proposed, the Zone Reclassification from Rural Conservation (RCV) to
2 Mineral Lands (M) is generally consistent with the Goals and Policies of the
Comprehensive Plan.

3 **Zoning:**

4 The zoning of the subject site is Rural Conservation (RCV) and the Applicant is
5 requesting a Zone Reclassification from Rural Conservation (RCV) to Mineral Lands
6 (M) with the activity limited to 156 acres for sand and gravel removal. Section
7 14.604.500, Table 604-1 identifies that the Mineral Lands (M) zone is the only
implementing zone classification for the Mineral Lands designation of the
Comprehensive Plan.

8 The Mineral Lands (M) zone is provided to allow for quarrying, blasting,
9 reduction, processing, and mining of minerals or materials in urban, industrial,
10 rural, and resource areas. The Mineral Lands (M) zone is intended to ensure
11 continued development of natural resources through the inclusion of deposits of
minerals and materials reserved for their development and production, and to assure
that mining activities do not detrimentally impact the environment or surrounding
land uses.

12 Existing zoning in the area of the site includes Rural Conservation (RCV) to
13 the north and east, Mineral Lands (M) to the west, and Rural Conservation (RCV)
14 and Rural Traditional (RT) to the south.

15 **Site Plan:**

16 The Site Plan of Record identifies the boundaries of the subject site and the
17 currently active mining area to the west. Access to the site crosses through the active
18 mining area from the west and connects to Grove Road. The site plan identifies the
19 expansion of the mining operation in a 10-30-year timeframe. The site plan
20 illustrates the location of the required 50-foot operations setback from the north,
east, west, and south boundaries of the site. The site plan identifies that rock
removal will begin at the northwest end of the property and progress to the east and
south in phases. Application materials also propose the construction of berms to be
located along the north, south, east, and west borders of the site.

21
22 **Site Plan Data**

23 Proposed Use: Rock and gravel removal, excavation, screening, stockpiling, grading
24 and crushing.

1	Lot Area:	Approx. 156 acres	
2		<u>Proposed</u>	<u>Permitted in M zone</u>
3	Mining Setbacks:	50' from PL	50' from PL
4	Minimum Lot Area:	156 acres	5 acres
5	Fencing:	6' high cyclone around active operation	6' high fence around active operation

Zoning Code & Development Regulations:

14.620.240 Mining Operations

Conditions for the approval of a proposed mining operation include but are not necessarily limited to the following:

1. The extraction proposal meets all applicable zoning requirements.

The proposed Zone Reclassification to Mineral Lands (M) is generally consistent with the development standards of the Spokane County Zoning Code.

2. The proposed extraction operation is buffered from existing or potential developments within the vicinity of the proposed operation.

The location of the proposed quarry is within a rural area with residential uses located directly north and east of the subject site. The proposed operations setback of 50 feet from property lines and the construction of berms will help to buffer impacts of the proposed use from the nearby residential uses.

3. An applicant shall prepare and provide an acceptable reclamation plan to the Washington State Department of Natural Resources (DNR) prior to obtaining a reclamation permit. The plan shall be prepared with the standards set forth in RCW 78.44. DNR shall have the sole authority to approve reclamation plans.

As established by the previous site owners, a reclamation plan in good standing (DNR Reclamation Permit No. 70-012896) has been filed with and approved by the Washington State Department of Natural Resources. The Applicant will update this plan with the Washington State Department of Natural Resources before commencing any activity on the property.

4. After July 1, 1993, no miner or permit holder may engage in surface mining without having first obtained a reclamation permit from DNR. The permit holder shall comply with the provisions of the reclamation permit unless waived and explained in writing by DNR.

1 The Applicant will obtain a reclamation permit from DNR as detailed above.

2 5. Provide for protection of groundwater and surface water, including wetlands,
3 during and after operation.

4 Spokane County Critical Areas maps do not identify wetlands or surface
5 water, other than the stormwater pond, on the site and the site plan states that the
6 depth of the mining will be no closer than 30 feet to any groundwater.

7 6. Mining shall not be allowed to penetrate the elevation 20 feet above the
8 highest known elevation of an aquifer within the Spokane Valley-Rathdrum
9 Prairie Aquifer area.

10 The site is located outside of the Spokane Valley-Rathdrum Prairie Aquifer,
11 but within a Critical Aquifer Recharge Area (CARA). Application materials
12 submitted by the Applicant state the depth of the use will be no closer than 30 feet to
13 any groundwater.

14 7. The monitoring and cleanup of contaminants should be ongoing.

15 The Applicant intends to continuously monitor for and clean up any and all
16 contaminant spills immediately if a spill happens to occur.

17 8. A sand and gravel permit shall be obtained, when applicable, from the
18 Washington State Department of Ecology.

19 The application does not state whether a sand and gravel permit has been
20 obtained. Prior to any site disturbance, the Applicant shall obtain a sand and gravel
21 permit from the Washington State Department of Ecology if applicable.

22 9. A sufficient amount of topsoil or suitable material shall be retained on-site for
23 revegetation/rehabilitation purposes.

24 The Applicant intends to salvage as much topsoil and suitable material as
possible for use in reclamation.

10. The operators shall comply with all existing water quality monitoring
regulations of the Washington State Department of Ecology and the Spokane
County Health District.

The Applicant has indicated that all State and local regulations will be met.

22 14.620.250 Environment

23 1. Sound pressure levels, as measured on properties adjacent to Mineral Lands
24 property, shall conform to the provisions of Washington Administrative Code

(WAC) Section 173-60-040 Maximum Permissible Environmental Noise Levels for noise originating in a Class C EDNA.

2. Provisions of Spokane County Air Pollution Control Authority (SCAPCA) shall be adhered to in the development of Mineral Lands property. Specifically reference SCAPCA Regulation 1, Section 6.04 Odors and Nuisances; Section 6.05, Particulate Matter and Preventing Particulate Matter from Becoming Airborne; and Section 6.06, Emission of Air Contaminants or Water Vapor, Detriment to Persons or Property.

The Applicant has indicated that the sound pressure levels hypothesized within the initial application materials were based on a worst-case scenario assuming the decibel levels produced at 50 feet from a rock-crushing plant and based upon travel across a flat surface with no barriers. With the addition of the recess of the pit and the provision of seeded topsoil stockpiles, sound levels at the property line will be below the Maximum Permissible Environmental Noise Levels for a Class C EDNA property. Additionally, rock crushing activity will only occur long enough to create a stockpile for the year, and actual drilling and blasting will only occur for a limited number of days each year.

The Applicant has indicated that the proposed mining activity will not produce nuisance odors and that water application shall be used to prevent any airborne particulates from the mining activity as required by Spokane Clean Air.

14.620.260 Reclamation Standards

In order to ensure a further use of land used for mining subsequent to the removal of native materials, the following provisions covering land rehabilitation or reclamation shall be conformed to.

1. Mined excavations must be reclaimed consistent with the reclamation plan submitted and approved by DNR under the provisions of RCW 78.44. Reclamation shall proceed simultaneously with surface mining and upon the permanent abandonment of the quarrying, mining or processing operation.
2. Upon the exhaustion of minerals or materials or upon the permanent abandonment of the quarrying, mining or processing operation, all buildings, structures, apparatus or appurtenances accessory to the quarrying or mining operation shall be removed or otherwise dismantled. All demolition must be consistent with chapter 3 of the County Code. A maintenance building may be permitted to remain or be constructed on sites used for storage of road maintenance materials.
3. The legal owner or his agents shall provide the Division with copies of the

1 following documents prior to development or use of the property.

- 2 a. Permits/approved reclamation plans filed with the Department of
Natural Resources.
- 3 b. Bonds as required by the Department of Natural Resources.

4 The applicant intends to maximize the use of available topsoil to create
5 vegetated benches where basalt highwalls will allow and to leave behind a small
6 section of talus slopes to provide habitat for rodents and raptors. The seeding plan
will be focused on recreating natural sagebrush-steppe habitat.

7 16.620.270 Standards for Mining Within the Spokane Valley-Rathdrum Prairie
8 Aquifer Area

9 In addition to those provisions listed in sections 14.620.220 through 14.620.260
the following provisions shall apply.

- 10 1. Excavation into the aquifer is prohibited within the Spokane Valley-
11 Rathdrum Prairie Aquifer area as determined by the Division of Utilities.
A minimum of 10 feet of undisturbed material shall remain above the
12 highest known level of the aquifer. If excavation into any aquifer outside
this area is allowed, the operator shall stockpile a sufficient quantity of fill
13 material to backfill a minimum of 10 feet above the highest known aquifer
elevation.
- 14 2. The owners of small surface mining sites (as defined in RCW 78.44), in
15 areas of high aquifer susceptibility, shall obtain the required grading
permits from Spokane County.
- 16 3. A drainage channel shall be constructed around the active gravel pit area
17 to keep surface runoff from outside the pit excavation from entering the
pit area.
- 18 4. Fuel storage areas and service facilities shall incorporate provisions to
19 prevent lubricants and petroleum products from contaminating either the
pit area or drainage channels.
- 20 5. No liquid, asphalt, cement, or water used in mixing and truck washing
operations shall be disposed of in the bottom of the pit.
- 21 6. A protective 8-foot-high berm or retaining wall shall be required adjacent
22 to property lines where the edge of the pit is within 100 feet of a street or
railroad right-of-way.
- 23 7. The use of fertilizers, pesticides, herbicides, and critical materials shall
24 not be allowed within 100 feet of an active pit.

1 The Applicant does not intend to mine below elevation 2110 with groundwater
2 understood to exist at elevation 2080, providing a minimum separation of 30 feet
3 which exceeds the minimum separation standard of 20 feet for mining above the
4 Spokane Valley-Rathdrum Prairie Aquifer Area. The Applicant's proposed project
5 plan is consistent with the requirements of SCZC 14.620.270.

6 16.620.280 Pit Reclamation and Allowable Land Uses

7 In addition to those standards listed in sections 14.620.220 through 14.620.270
8 the following standards shall apply.

9 1. Reclamation plans for mining sites shall include:

- 10 a. The depth of remaining materials between the aquifer high-water
11 mark and the final grade of the reclaimed site, for surface mining
12 sites inside the Spokane Valley-Rathdrum Prairie Aquifer area.
13 b. The depth of remaining or backfilled materials between the aquifer
14 high-water mark and the final grade of the reclaimed site, for
15 surface mining sites outside the Spokane Valley-Rathdrum Prairie
16 Aquifer area.
17 c. Physical barriers, as required in section 14.620.270 shall remain.
18 d. Provisions shall be made for limitation of access to, and activities
19 within, the rehabilitated site until the use of the land is changed.

20 2. Subsequent land uses in reclaimed gravel pits within Spokane County
21 may be limited or specifically conditioned.

22 The Applicant indicates that the final depths of remaining or backfilled
23 materials will remain at 30 feet or more above the highest known aquifer location.
24 Topsoil stockpiles will be removed upon complete reclamation. The Applicant's
response does not include a copy of the reclamation plan on file with the Department
of Natural Resources, however, all reclamation activities will be subject to the SCZC
standards.

25 16.620.290 Development Standards

26 Prior to the issuance of a building permit, evidence of compliance with
27 provisions of this Section shall be provided.

28 1. **Lot Standards:** Lot standards are illustrated in table 620-2 as follows:

Table 620-2 – Lot Standards for Mineral Lands

Permitted uses	
Minimum lot area	5 Acres
Minimum Frontage	No Requirement (a)
Minimum yards	
For Mining/Quarrying	50 feet – To property lines (b) (c)
For Structures/Buildings	100 feet – From residential zone 50 feet – To property line(s)

- a. There is no minimum frontage for permitted uses on Mineral Lands, but all required access permits shall be obtained from the County Engineer prior to use of the site.
 - b. Provided that such mining or quarrying does not impair lateral or subjacent support or cause earth movements or erosions to extend beyond the exterior boundary lines of the mining zoned property.
 - c. If a mining or quarry operation is located adjacent to another mining or quarry operation, the mining or quarry operation shall be permitted up to the property line.
2. **Parking, Signage, and Landscaping Standards:** Parking, signage and landscaping standards shall be as provided in chapter 14.802, Off Street Parking and Loading Standards; chapter 14.804, Signage Standards; and chapter 14.806, Landscaping and Screening Standards.
3. **Storage Standards**
- a. The storage of materials and equipment normally associated with farm and agricultural activities is permitted.
 - b. All storage (including storage of recyclable materials) on lots not qualifying as a primary agricultural parcel shall be entirely within a building, or shall be screened from view from the surrounding properties, and shall be accessory to the permitted use on the site. There shall be no storage in any of the front yard or flanking street yards.
 - c. The private, noncommercial storage of 2 junked vehicles shall be allowed, provided they are completely sight-screened year-round from a non-elevated view with a fence, maintained Type I or II landscaped area or maintained landscaped berm. Storage of additional junked vehicles shall be within a completely enclosed building with solid walls and doors. Tarps shall not be used to store or screen junked vehicles. Vehicle remnants or parts must be stored inside a vehicle or completely enclosed building, including doors.

1 Fences over 6 feet in height require a building permit and/or a
2 zoning variance.

3 4. **Fencing:** Six-foot fencing shall be provided and maintained in good
4 condition at all times in the following locations.

5 a. Exterior boundary of any portion of any site on which active
6 operations exist.

7 b. Exterior boundary of any portion of the site which has been mined
8 and not yet rehabilitated.

9 The Applicant indicates that site use will be consistent with Lot Standards as
10 listed within Table 620-2, including minimum setbacks for operations, no parking or
11 business signs will be posted on the site, and all storage standards will be met.
12 Fencing will be provided and maintained in good condition consistent with specified
13 requirements.

14 14.402.060 Site-Specific Zone Reclassification Criteria for Approval

15 A site-specific zone reclassification may be approved when all of the following criteria
16 are met.

17 a. The zone reclassification bears a substantial relationship to the public
18 health, safety, or welfare.

19 The Hanskutt Hills Neighborhood Group argues that the testimony and public
20 comments provided by their members and other neighbors regarding the impacts of
21 the proposed Zone Reclassification demonstrated that the proposal does not bear a
22 substantial relationship to public health, safety, or welfare. Response Brief of
23 Hanskutt Hills Neighborhood Group (Response Brief), pg. 5. They further assert that
24 this standard cannot be met because of the other uses that could potentially occur
under this zone reclassification. *Id.*, pg. 6-7. The briefing specifically points to the use
of the property as an asphalt plant, landfill, or sewage sludge land use as being
detrimental to public health, safety, and welfare. *Id.*, pg. 8. These arguments fail to
consider that the impacts referenced by the neighbors are already occurring in this
area and the potential detrimental uses they cite to are permitted to occur in this
area because of the areas which are currently zoned as mineral lands. It is
uncontested in the record that mining in this area has been occurring for more than
five decades. *See* Testimony of Tammy Jones from Remand Hearing, July 20, 2022.
In reviewing the comments and testimony provided by neighbors of this project, it is
evident that the impacts they are concerned about, noise, traffic, etc., are already
occurring from the existing mining operations in the area. *See generally* public
comments. The record does not reflect that these impacts are likely to increase with

1 approval of the application, rather the impacts will shift from the current location
2 onto the adjacent property as the Applicant moves through the phases of their
3 proposed project. Similarly, the potential uses of the property that could be permitted
4 by virtue of a zone reclassification to mineral, including a landfill or sewage sludge
5 land application, are currently permitted to the same degree on land in the
6 immediate vicinity, which is already zoned mineral. Additionally, many of these
7 other uses permitted on mineral lands are limited under the zoning code or require a
8 conditional use permit, which necessitates the use be made compatible with the
9 surrounding land uses before approval. *See*, SCZC 14.620.210, Table 620-1.

7 The materials submitted by the Applicant provide information identifying the
8 site as containing a prime, long-term resource to aid in the production of asphalt for
9 off-site projects throughout the region, which was recognized at the time Spokane
10 County approved a Comprehensive Plan Amendment changing the designation from
11 Rural Conservation to Mineral Lands. The Applicant indicates that the proposed
12 project will produce an average of 476 tons of material per day, with an annual
13 tonnage of 150,000. Poe Asphalt Paving, Inc.'s Brief in Support of Application on
14 Remand, pg. 9. The proposed use will be required to comply with all development
15 standards of Chapter 14.620, Mineral Lands, of the Spokane County Zoning Code in
16 order to protect the health and safety of the public. The Application materials detail
17 the numerous safeguards that will be implemented in order to address public health,
18 safety, and welfare. In addition, the application has been reviewed by the
19 Department for potential impacts and conditions of approval have been
20 recommended to mitigate those impacts.

- 16 b. The zone reclassification implements that Comprehensive Plan, or a
17 substantial change in circumstances has occurred since the subject parcel
18 was last zoned.

18 As described in the Comprehensive Plan analysis above, the proposed zone
19 reclassification implements the goals and policies of the Mineral Land designation
20 and the Natural Resources Lands Chapter of the Comprehensive Plan.

20 Therefore, the Hearing Examiner finds that the application is consistent with
21 the requirements of the Spokane County Zoning and Development regulations.

22 **SEPA Appeal**

23 On March 29, 2022, the Department issues an initial DNS regarding the
24 proposed Zone Reclassification, with a comment and appeal period ending on April
12, 2022. On April 12, 2022, Hanskutt Hills Neighborhood Group filed a timely

1 appeal of the DNS pursuant to SCC Section 11.10.170(8). The appeal was heard at
2 the open record consolidated hearing on April 13, 2022. Following the hearing, the
3 matter was remanded for further action by the Applicant and Department. On June
4 8, 2022, the Department withdrew the SEPA DNS that was issued on March 29. On
5 July 5, 2022, a new threshold SEPA DNS was issued for the proposed Zone
6 Reclassification, with a comment and appeal period ending on July 19, 2022. The
7 Hanskutt Hills Neighborhood Group timely filed an appeal of the new threshold
8 DNS. The July 19 appeal filed by the Appellants challenged the DNS on the same
9 grounds as the initial appeal, the briefing filed by the Appellants was an identical
10 copy of their initial appeal brief.

11 The standard of review for an appeal of a SEPA threshold determination is
12 whether the agency's action is clearly erroneous. *Norway Hill Pres. & Prot. Assn. v.*
13 *King County Council*, 87 Wn.2d 267, 274, 552 P.2d 674 (1976); *Sisley v. San Juan*
14 *County, supra*; *Lands Council v. Wash. State Parks & Recreation Comm'n*, 176 Wn.
15 App. 787, 795, 309 P.3d 734 (2013). A decision is clearly erroneous if, after reviewing
16 all the evidence, the trier of fact is left with the firm conviction that a mistake has
17 been committed. *Lands Council v. Wash. State Parks & Recreation Comm'n, supra*,
18 795. The decision of the agency issuing the threshold decision is to be given
19 substantial weight. RCW 43.21C.090; *Norway Hill Pres. & Prot. Assn. v. King*
20 *County Council*, 87 Wn.2d 267, 275, 552 P.2d 674 (1976); *Boehm v. City of Vancouver*,
21 111 Wn. App. 711, 716, 47 P.3d 137 (2002).

22 A SEPA threshold determination must be based upon information reasonably
23 sufficient to evaluate the environmental impacts of the proposed action, in this case,
24 the application for Zone Reclassification. WAC 197-11-040(4)(c). An environmental
review must begin by review and consideration of an environmental checklist. WAC
197-11-060 (2)(b); WAC 197-11-330 (1)(a). To determine whether an Environmental
Impact Statement will be necessary a threshold determination is made by the lead
agency for the environmental review. In making a threshold determination, the
responsible official shall consider any mitigation measures required by development
regulations, comprehensive plans, or other existing environmental rules or laws.
WAC 197-11-330. A Determination of Non Significance (DNS) may be issued if the
lead agency finds that the proposed action will not have a probable significant,
adverse environmental impact. RCW 43.21C.031; WAC 197-11-330; WAC 197-11-340.
To defeat the appeal in this matter, the record produced by the Department in
support of its threshold determination of DNS, relative to the Application for Zone
Reclassification, must demonstrate that environmental factors were considered in a
manner sufficient to amount to prima facie compliance with the procedural

1 requirements of SEPA. *Sisley v. San Juan County*, 89 Wn.2d 78, 84 – 85, 569 P.2d
2 712 (1977).

3 The content of the environmental review depends on each particular proposal, on
4 the agency's existing planning and decision-making processes, and on the time when
5 alternatives and impacts can be most meaningfully evaluated. WAC 197-11-060
6 (2)(a). A phased review of proposals is appropriate when the sequence is from a non-
7 project document to a document of narrower scope such as a site-specific analysis.
8 WAC 197-11-060 (5)(c)(i). The timing of environmental review can be difficult to
9 determine, however postponing the environmental review too long or failing to
10 recognize that future land use proposals may be exempt from environmental review
11 could result in the loss of opportunity for said review. *Lands Council v. Wash. State*
12 *Parks & Recreation Comm'n*, 176 Wn. App. 787, 803 – 804, 309 P.3d 734 (2013). The
13 responsible official must determine when environmental analysis will be most
14 effective in providing sufficient information to the decision maker to make an
15 informed decision regarding whether to adopt the proposal or not. WAC 197-11-330
16 (2)(b). A threshold determination shall not balance whether the beneficial aspects of
17 a proposal outweigh its adverse impacts, but rather, whether a proposal has any
18 probable significant adverse environmental impacts under the rules stated in WAC
19 197-11-330. To determine whether an impact is "significant" an agency should look at
20 the context and intensity of any impacts. WAC 197-11-794. "The context may vary
21 with the physical setting. Intensity depends upon the magnitude and duration of an
22 impact." *Id.*

23 1. Sufficiency of Information

24 The appellants first allege that the Department lacked sufficient information
to reach a reasoned SEPA threshold determination. The appellants claim the
Department lacked sufficient information regarding the impact on cultural resources,
the depth of extraction and quantities or source of fill materials, air quality impacts,
wildlife impacts, impact to groundwater and residential wells, and the impact from
noise and vibration.

a. Cultural Resources

The Appellants assert that the Applicant provided false and incomplete
information on their SEPA checklist regarding the presence and protection of
historical and cultural places or objects that may be on the site. Question 13(a) of the
SEPA checklist asks, "[a]re there any places or objects listed on or proposed for
national state or local preservation registers *known* to be on the site?" (*emphasis*
added). In response to this question, the Applicant indicated none, not applicable.

1 See, SEPA checklist. Question 13(c) asks for any proposed measures to reduce or
2 control impacts, the Applicant indicated “not applicable.” *Id.*

3 At the hearing on April 13, 2022, the Applicant asserted that at the time the
4 SEPA checklist was submitted, they were not aware of the Archaeological site on the
5 neighboring property until the letter from the Washington Department of
6 Archaeology and Historic Preservation (DAHP) was provided to them by the
7 Department. *See*, testimony of Brandon Johnson. Once they learned of the nearby
8 site, they contracted with a professional agency to conduct a survey of the site. *Id.* It
9 is understandable that the Applicant might not be aware of historic or cultural
resources on or near their property until they were informed of such. Therefore, the
Hearing Examiner does not find that the Applicant’s answers to questions regarding
known historic or cultural places or objects on the site were false or incomplete at the
time they were submitted.

10 Upon receiving the SEPA checklist from the Applicant the Department
11 circulated the checklist to numerous state agencies including DAHP. In their
12 response to the initial notice of DNS, DAHP informed the department that “there is a
13 high probability of encountering cultural resources within the proposed project area
14 in fact there is an historic archaeological site located immediately adjacent to the
proposed project area which suggests additional sites may be present.” *See*, February
14, 2022, letter from DAHP.

15 The Hearing Examiner’s decision, issued May 9, 2022, remanded this matter
16 back to the Department and Applicant to collect and evaluate additional information
17 on environmental impacts regarding possible historical and cultural resources at the
18 site. Subsequently, the Applicant commissioned Plateau Archaeological
19 Investigations, LLC, to conduct a cultural resources survey of the project area. The
20 cultural resources survey submitted by the Applicant concluded that the proposed
21 Zone Reclassification will not affect any historic properties and recommends that no
22 further archaeological investigations are necessary. *See* Cultural Resources Survey,
dated May 20, 2022. The cultural resources survey was reviewed by the Department
and circulated to DAHP. In response, DAHP sent a letter, dated May 24, 2022,
indicating that they concurred with the results of the cultural resources survey and
requesting that the applicant implement an inadvertent discovery plan for their
proposed project. *See* Letter from DAHP, dated May 24, 2022.

23 The Hearing Examiner finds that the information submitted by the Applicant
24 on remand regarding historical and cultural resources at the site provided the

1 Department with information reasonably sufficient to evaluate the associated
2 environmental impacts.

3 b. Depth of Extraction and Quantities or Source of Fill Material

4 The Appellants argue that the Department had insufficient information
5 regarding the proposed depth of extraction and quantities or source of fill material to
6 make a threshold determination. In response to the Department's notice of DNS
7 feedback was provided by the Washington Department of Natural Resources. In an
8 email sent to the Department on February 7, 2022, a representative from DNR
9 requests additional information regarding the proposed depth of extraction for the
10 project and the quantities and source of fill material to be used in the project. *See*,
11 February 7, 2022, email from DNR. The Department subsequently followed up with
12 the Applicant on the issues raised by DNR. On February 28, 2022, the Department
13 received a document entitled "Project Narrative – Grove Road Pit Zone
14 Reclassification (Revision 1)" and a map entitled "Site Plan – Overview of Current
15 and Proposed Development." The revised "Project Narrative" document contains a
16 section titled "Reclamation," which includes a description of the quantities and
17 source of fill materials the Applicant proposes to use. The "Project Narrative" also
18 notes that the Applicant has a "reclamation plan in good standing" which was filed
19 with and approved by DNR. The "Site Plan" map, submitted by the Applicant,
20 includes the information that "[m]ining would not extend beyond Elev. 2110 MSL."
21 The map also notes that the ground water elevation was indicated to be "Elev. 2080
22 MSL."

23 The Hearing Examiner finds that the information submitted by the Applicant
24 regarding the depth of proposed extraction and reclamation activities provided the
Department with information reasonably sufficient to evaluate the associated
environmental impacts.

18 c. Air Quality Impacts

19 The appellants next assert that the department had insufficient information
20 regarding the impacts of the proposed project on air quality in the surrounding area.
21 The Appellants cite to the Applicant's response in the SEPA checklist regarding
22 emissions created by the proposed development as being insufficient information on
23 which to base a threshold determination. *See*, SEPA checklist. In the SEPA checklist,
24 the Applicant state that there is a chance dust will be created and note that all
emissions from their processing plants will be regulated by an air quality permit. The
department followed up on this response requesting additional information regarding
mitigating dust from the mining operation. *See*, February 25, 2022, letter from Junso

1 Consulting Group. The Applicant addresses dust mitigation in their revised project
2 narrative, stating that dust mitigation will be controlled through the use of an on-site
3 water truck. *See*, Revised Project Narrative. The water used to control the dust will
4 be sourced from the storm water basin on the parcel that is currently being mined.
5 *Id.* Additionally, the Applicant proposes to surface the roads within the proposed site
6 with crushed stone in order to minimize the dust created by vehicles working within
7 the site. *Id.*

8 The Appellants further claim that the Applicant failed to address the odors
9 and noxious fumes that will occur from the proposed asphalt processing. The
10 Appellants state that asphalt processing is “well- known to have serious air quality
11 impacts, especially with regarding to noxious, unhealthy fumes and odors,” Notice of
12 Appeal by Hanskutt Hills Neighborhood Group, at 8. The Applicant’s plan for the site
13 is to include the crushing of recycled asphalt, a process which they state does not
14 create noxious fumes and is regulated by air quality control permits. *See*, February
15 25, 2022, letter from Junso Consulting Group. The Applicant asserts that the
16 Appellants are conflating asphalt crushing with asphalt generation, which they do
17 not intend to conduct on the site. *Id.* The Appellants do not cite to or provide evidence
18 to support their contention that the Applicant’s activities will create noxious fumes,
19 odors, or cause serious air quality impacts.

20 The Hearing Examiner, therefore, finds that the Department had sufficient
21 information regarding the air quality impacts upon which to make a SEPA threshold
22 determination.

23 d. Wildlife

24 The Appellant’s next argument is that the information regarding the Rocky
Mountain Elk habitat on the site was insufficient to support a SEPA threshold
determination. The parties agree that the Spokane County Critical Areas Map
identifies Rocky Mountain Elk habitat on the site. The Applicant’s SEPA checklist
also indicates that Elk are known to be on or near the site. *See*, SEPA checklist.

The Applicant hired a professional biologist, Tom Duebendorfer, to conduct a
Washington State Priority Habitat and Species Evaluation and Habitat Management
Plan for the site. *See*, PHS Evaluation and Habitat Management Plan. The
evaluation and management plan concludes that while Elk habitat covers the areas
of the proposed development, “no evidence of elk use (tracks, scat, bedding areas)”
were observed by Mr. Duebendorfer, and as a result, the site was determined to be
“low quality habitat for the plant and animal species identified as needing
protection.” *Id.* This report was provided to the Department, which in turn forwarded

1 it on to the Washington Department of Fish and Wildlife (WDFW) for review and
2 comment. WDFW indicated that based upon the evaluation conducted by Mr.
3 Duebendorfer, "it appears that the existing habitat is marginal" and that it made
4 sense to allow new mineral operations next to existing ones. *See*, February 10, 2022,
5 email from WDFW. WDFW also endorsed the proposed restoration plan in Mr.
6 Duebendorfer's evaluation. *Id.*

7 Appellants argue that the findings in Mr. Duebendorfer's evaluation are
8 erroneous based upon the testimony and comments of members of the Hanskutt Hills
9 Neighborhood Group that elk are regularly observed on the site. There are numerous
10 written comments and testimony in the record from the public indicating that elk are
11 frequently observed on the site. However, the comments from the public regarding
12 wildlife sightings at the site are colloquial in nature and were not observed in the
13 context of a professional or scientific evaluation. Further, Mr. Duebendorfer's
14 conclusion is not that Elk are never present on the site because he did not personally
15 observe evidence of their presence during his visit to the site. Rather, the conclusion
16 is that the elk habitat on the site is of low quality based upon the lack of evidence of
17 elk presence and the nature of the vegetation that was observed on the site. The
18 inference that flows naturally from Mr. Duebendorfer's report and the comments
19 submitted by WDFW is that the loss of this low-quality elk habitat would not have a
20 significant impact on the elk population in the area. As such, the Department's
21 reliance on the habitat evaluation and management plan and comments from WDFW
22 in making a threshold determination was not clearly erroneous.

23 e. Groundwater and Wells

24 Appellants challenge the sufficiency of the information regarding groundwater
resources relied upon by the Department to make the SEPA threshold determination.
In materials provided to the Department by the Applicant, indicate that the
groundwater level at the site is at elevation 2080 above Mean Sea Level (MSL). This
information is derived from a DNR Surface Mine Reclamation Permit. *See*, February
25, 2022, letter from Junso Consulting Group. The Applicant plans to mine down to
elevation 2110 MSL, which equates to a depth that is 180-220 feet below ground
level. *See, Id.*

In written comments submitted prior to the hearing and testimony from the
public, many individuals expressed concerns that the mining activities would have
significant impacts on their residential wells. Appellants presented testimony from
Kevin Freeman, a professional geologist with extensive experience in groundwater
hydrology. *See*, Testimony of Kevin Freeman. Mr. Freeman presented a map of the

1 area, on which he had indicated the general locations and depths of a number of
2 residential wells surrounding the site. *See*, Exhibit HH2. The map indicates that
3 residential wells in the area draw their water from depths that vary between 28 feet
4 deep, at the shallowest, to 228 feet deep, at the deepest. *Id.* Mr. Freeman testified
5 that the wells in the area draw their water from water-bearing zones that exist
6 between layers of basalt, which Mr. Freeman likened to a layered cake. *See*,
7 Testimony of Kevin Freeman. Mr. Freeman indicated that were the proposed mining
8 pit to intersect with one of these water-bearing zones the water from that zone would
9 drain freely into the mining pit. *Id.* He also indicated that the proposed blasting at
the site has the potential to cause additional fracturing of the basalt rock, which
could affect the water-bearing zones. Based upon the elevations of the residential
wells that Mr. Freeman mapped in the area and the proposed depth of the mining
activities, Mr. Freeman concluded that it is more likely than not that the Applicant's
mining activities would intersect with a water-bearing zone in the area. *Id.*

10 It is undisputed that mining in this area has been ongoing for over five
11 decades. There are multiple active mining sites in the area, including a pit owned by
12 the Applicant that adjoins the proposed site. Prior to the Applicant's ownership of the
13 active mining site, it was owned and operated as a mining operation by another
14 mining company. Mr. Freeman indicated in his testimony that the wells he mapped
15 were all active and producing water at rates sustainable for residential use. *See*,
16 Testimony of Kevin Freeman. A number of the wells that are closest in proximity to
17 the active mining sites also draw water from the shallowest depths. For example,
18 well number 17 indicates a depth of 44 to 140 feet and well number 1 indicates a
19 depth of 28 to 60 feet. *See*, Exhibit HH2. Both of these wells are in close proximity to
20 the active mining site owned by the Applicant. Mr. Freeman's conclusion that the
21 Applicant's proposed mining activities are likely to impact the surrounding
22 residential wells is difficult to reconcile with the fact that mining has been ongoing in
23 the area for more than five decades and yet there are numerous wells adjacent to
24 these mining activities which have not been impacted. The testimony and documents
presented by the Appellants clearly show that it is *possible* the proposed mining
activities could have adverse impacts on the residential wells in the area. However,
based upon the long history of mining in the area and the proximity of residential
wells to these ongoing mining activities, the Hearing Examiner cannot conclude that
the proposed mining activity would have a *probable* significant adverse
environmental impact on the wells and groundwater such that the Department
needed additional information prior to reaching a threshold determination.

1 f. Noise and Vibration

2 Lastly, Appellants assert that the Department lacked sufficient information to
3 analyze the adverse effects of noise and vibration impacts necessary to reach a
4 threshold determination. Appellants presented testimony from Adam Jenkins, a
5 professional engineer with extensive experience in acoustics. *See*, Testimony of Adam
6 Jenkins. Mr. Jenkins testified that noise is regulated by WAC chapter 173-60, and
7 that the proposed zone reclassification in this matter would allow for a substantial
8 increase in the permissible noise on the site. Specifically, Mr. Jenkins the current
9 maximum allowable noise level is 60 decibels, the proposed zone reclassification
10 would allow for up to 75 decibels. Mr. Jenkins testified that an increase of this
11 amount is substantial and would have a substantial impact on the surrounding
12 properties. *Id.*

13 In his testimony, Mr. Jenkins correctly notes that the noise limitations are not
14 strictly tied to the zone classification but rather to the type of use of the property.
15 WAC chapter 173-60 has three classes of noise regulations depending upon the type
16 of use. Class A applies to land uses such as residential, recreational, and community
17 service uses; class B applies to commercial and retail type uses; and class C applies to
18 industrial and agricultural type uses. WAC 173-60-030. The maximum permissible
19 noise levels in each class are: 60 decibels in class A, 65 decibels in class B, and 70
20 decibels in class C. WAC 173-60-040. The SCZC permits various types of uses within
21 each zoning classification. *See*, SCZC. Currently, the subject site and surrounding
22 property is zoned Rural Conservation (RCV). The RCV zone allows for uses that fall
23 within all three classes of noise regulation under the WAC. The RCV zone presently
24 allows for uses including a personal airstrip or heliport, agricultural processing
plant, dairy, feed mill, and general agricultural use. SCZC 14.618.220. All of these
uses would fall under the class C noise regulation laid out in the WAC. None of these
uses which are permitted in the RCV zone have any additional noise regulation in
the SCZC. *See*, SCZC 14.618.230.

19 The Applicant has indicated that noise levels at the property line will be in the
20 range of 30 to 50 decibels. *See*, SEPA checklist. The Applicant also details the ways
21 in which noise will be mitigated through both natural dissipation and the strategic
22 placement of berms. *See*, Project Narrative. The Applicant operates other mining
23 sites and thus has experience with the noise levels that are created by these
24 activities. Additionally, as previously discussed, there are already a number of sites
in the immediate area that are active mining sites. Based upon these factors and the
relevant state and local regulations, the Hearing Examiner finds that the

1 Department was provided sufficient information regarding the impacts of noise and
2 vibrations to make a threshold determination.

3 2. Available Alternatives Analysis

4 Appellants also assert that the Department failed to analyze available
5 alternatives, specifically the “no action” alternative. Appellants rely on RCW
6 43.21C.030(2)(e) and the Supreme Court’s decision in *Wild Fish Conservancy v.*
7 *WDFW* in support of this argument. 198 Wn.2d 846, 502 P.3d 359 (2022).

8 The Supreme Court in *Wild Fish Conservancy* held that:

9 an alternatives analysis is appropriate when a proposal involves a
10 competition over the use of a resource whereby selecting one manner of
11 using the resource will preclude all other uses. These competing uses
12 cannot be theoretical. The choice is between different uses
13 of *available* resources. The competing options for how to use the
14 resource must concern a resource that is actually capable of being used
15 to accomplish its relative purpose. Finally, this competition must be
16 unsolved, unsettled, or, in other words, actively in dispute.

17 *Id.* at 864-65. In *Wild Fish Conservancy*, similar to this matter, the appellant asked
18 the court to find that the lead agency had clearly erred by failing to analyze a “no
19 action” alternative. The Supreme Court determined that there was no authority to
20 support the requirement that a lead agency conduct a “no action” analysis prior to
21 making a threshold determination. *Id.* at 869. “While it is undeniably useful to
22 establish a baseline environmental condition with which to compare a proposal’s
23 impact, nothing in SEPA’s statute, regulations, or cases requires a “no action”
24 baseline analysis in arriving at a threshold determination.” *Id.* at 871-72.

Here, the Appellants have not provided any evidence of competing uses of a
resource that would support a requirement for an alternatives analysis in this
matter. The argument that a “no action” alternative analysis is required prior to
making a threshold determination is categorically rejected by the Supreme Court’s
holding in *Wild Fish Conservancy*. Therefore, the Hearing Examiner finds that the
Department did not clearly err in not conducting a “no action” alternatives analysis.

3. Maximum potential development

Appellants next assert that the Department failed to determine the maximum
potential development of the proposed zone reclassification before reaching a SEPA
threshold determination. Appellants specifically allege the Department should have
considered the other possible uses of the site that could occur if the zone

1 reclassification is approved. *See*, Notice of Appeal. In support of this argument, the
2 Appellants cites to numerous cases which define and describe the required scope of
review for SEPA determination on nonproject actions. *Id.*

3 Appellants' argument on this issue challenges the scope of review employed by
4 the Department in making the threshold decision in this matter. The threshold
question on this issue is whether the application for a zone reclassification at issue is
5 a project or nonproject action. The requirements for environmental review vary based
upon whether the action at issue is a project action or a non-project action. *Heritage*
6 *Baptist Church v. Cent. Puget Sound Growth Mgmt. Hr'gs Bd.*, 176 Wn.App.2d 737,
7 751, 413 P.3d 590, 598 (Div. I, 2018). "A project action involves a decision on a
specific project, such as a construction or management activity located in a defined
8 geographic area." WAC 197-11-704(2)(a). "Nonproject actions involve decisions on
policies, plans, or programs," including "[t]he adoption or amendment of
9 comprehensive land use plans or zoning ordinances." WAC 197-11-704(2)(b)(ii); *see*
10 *also* WAC 197-11-774.

11 While an area-wide rezone or zoning ordinance change would be considered a
nonproject action, a site-specific rezone that is authorized by an existing
12 comprehensive plan is considered to be a project permit application. *See, Spokane*
13 *County v. E. Wash. Growth Mgmt. Hearing Bd.*, 176 Wn.App. 555, 309 P.3d 673 (Div.
III, 2013). A site-specific rezone is *not* a project permit application when it is
14 processed concurrently with a comprehensive plan amendment. *See, Id.* Additionally,
for purposes of local project review, a "project permit application" is specifically
15 defined as including "site-specific rezones authorized by a comprehensive plan or
subarea plan but excluding the adoption or amendment of a comprehensive plan,
16 subarea plan, or development regulations..." RCW 36.70B.020(4). A site-specific
rezone requires three factors: (1) a specific tract of land, (2) a request for a
17 classification change, and (3) a specific party making the request. *Schnitzer W., LLC*
18 *v. City of Puyallup*, 190 Wn.2d 568, 576, 416 P.3d 1172, 1177 (2018). Here, the
property at issue was the subject of a comprehensive plan amendment, adopted in
19 December 2020, that changed the site from Rural Conservation to Mineral Lands.
20 *See*, Spokane County Resolution 20-0982. The Applicant's request for a zone
reclassification meets the requirements of a "site-specific rezone," as it is a request
21 for a classification change to a specific tract of land requested exclusively by the
22 Applicant.

23 Comparing the definitions of "project action" and "nonproject action," as
24 defined by WAC chapter 197-11, it is apparent that a site-specific rezone resembles a
project action, as it is located within a defined geographic area and involves a specific

1 proposed project. The Applicant's proposed mining project has already gone through
2 a nonproject action review, when in 2020, the comprehensive plan map was amended
3 from rural conservation to mineral. Based upon these factors, the Hearing Examiner
4 finds that the scope of review employed by the Department in reaching a threshold
determination was adequate and was not required to include the maximum potential
development for a mineral land designation.

5 4. Unmitigable Impacts

6 Finally, the Appellants assert that the Department's DNS was clearly
7 erroneous, and based upon five impacts, that they contend "cannot be mitigated into
8 nonsignificance," the Department should have issued a Determination of Significance
9 (DS). Notice of Appeal, at 20. Appellants assert that the effects from the loss of the
10 site as a buffer; the noise; the effects of potential flyrock; odors from the site; and
11 traffic created by the mining warrant the issuance of a DS. The issue of noise was
12 addressed previously and does not need to be repeated here.

13 The record indicates that the Applicant conducted a Trip Generation and
14 Distribution report. *See*, Project Narrative. This report was based upon the
15 Applicant's other mining site. This appears to be a reasonable basis to use for the
16 report, as the Applicant indicates the proposed site will be operated in the same
17 manner. The report was provided to Spokane County Public Works for review and no
18 objections were raised to it, in part due to the fact that a Mitigated Determination of
19 Nonsignificance (MDNS) was issued during the SEPA review for the related
20 comprehensive plan update, requiring the Applicant to install a turn lane and
21 signage to account for the increased traffic. *See*, Staff Report.

22 The record also indicates that the Applicant will not be producing asphalt at
23 the site, which is the alleged source of the odors referred to by the Appellants.
24 Rather, the Applicant intends to crush asphalt and rock on the site. *See*, Project
Narrative. There is no evidence in the record indicating these activities create any
odor that would amount to a significant impact.

25 The Applicant also addressed the measures they will be using that mitigate
26 the potential for flyrock. *See*, February 25, 2022, letter from Junso Consulting Group.
27 These measures include the fact that blasting will only occur once the mining pit has
28 been established, thus allowing the pit walls to prevent any flyrock from leaving the
29 pit. Additionally, the Applicant will be employing blasting specialists to ensure the
30 operations are conducted in a safe manner. *Id.*

1 The proposed site is currently undeveloped land, the Appellants correctly note
2 that putting the land to use will bring the effects of that use closer to those properties
3 that lie to the east¹. However, the fact that the land is proposed to be put to use and
4 the undeveloped property will no longer act as a buffer, does not negate the
5 mitigation measures the Applicant is employing to address the issues Appellants
6 assert require a buffer to mitigate. As discussed above, the Applicant has provided
7 evidence demonstrating the mitigation measures they intend to implement, which
8 address the impacts to neighboring property owners from the loss of this property as
9 a buffer. The record does not support a finding that the loss of the site as a buffer
10 creates any significant adverse impacts that are not addressed by the proposed
11 mitigation measures.

12 Based upon the record, the Department had sufficient information to evaluate
13 these factors and did consider them in a manner sufficient to amount to prima facie
14 compliance with the SEPA requirements. As such, the Department's threshold
15 determination with regard to these factors was not clearly erroneous.

16 Any finding of fact above that is a conclusion of law is deemed a conclusion of
17 law. Any conclusion of law above that is a finding of fact is deemed a finding of fact.

18 Based on the above findings and conclusions the Hearing Examiner enters the
19 following:

20 III. DECISION

21 A. SEPA Appeal

22 Based on the findings and conclusions above, it is the decision of the Hearing
23 Examiner that the Department's SEPA threshold DNS was based upon information
24 reasonably sufficient to evaluate the environmental impacts of the proposed zone
reclassification and the record reflects that the environmental factors were
considered in a manner which amounted to prima facie compliance with the
procedural requirements of SEPA. Therefore, the appeal of the SEPA threshold
determination is denied.

¹ Under the Applicant's plan, mining activities will progress in phases across the property. As the project moves from one phase to the next, the Applicant indicates that the previous phase will be reclaimed and mining activity in that area will cease. This will result in mining activities and their associated effects on the surrounding properties moving closer to some neighboring properties and further from others, while not significantly increasing in intensity.

1 **B. Zone Reclassification Application**

2 Based on the findings and conclusions above, it is the decision of the Hearing
3 Examiner to approve the proposed Zone Reclassification of 155.63 acres from Rural
4 Conservation to Mineral Lands subject to the following *revised* conditions.

5 Any conditions of approval of public agencies that have been added or
6 significantly altered by the Examiner are *italicized*. This approval does not waive the
7 applicant's obligation to comply with all other requirements of other public agencies
8 with jurisdiction over land development.

9 Minor revisions should be made to the conditions of approval to ensure proper
10 formatting, clarity, and consistency with the findings of fact above.

11 **Conditions of Approval:**

12 **Spokane County Building and Planning Department:**

- 13 1. All conditions imposed by the Hearing Examiner shall be binding on the
14 "Applicant", which term shall include the owner or owners of the property,
15 agents, heirs, assigns and successors.
- 16 2. The Zone Reclassification applies to the property currently referenced as County
17 tax parcel no. 24103.9059, 24156.9088, 24151.9054 & 24154.9024
- 18 3. The development of the site shall comply with the Mineral Lands (M) zone and
19 all applicable provisions of the Spokane County Zoning Code, as amended.
- 20 4. The applicant shall develop the subject property substantially in accordance with
21 the Site Plan of Record dated February 28, 2022, as presented to the Hearing
22 Examiner. Variations, when approved by the Director of Planning/designee, may
23 be permitted, including but not limited to building location, landscape plans and
24 general allowable uses of the permitted zone. All variations must conform to
regulations set forth in the Spokane County Zoning Code, and the original intent
of the development plans shall be maintained.
5. Approval is required from the Director of Planning/designee of a specific lighting
and signing plan for the described property prior to the release of any building
permit.
6. Direct light from any exterior area lighting fixture shall not extend over the
property boundary.
7. The legal owner or his agent shall provide to the Department of Building and
Planning with copies of the following documents prior to development or use of
the property.

- a. Permit/approved reclamation plans filed with the Department of

1 Natural Resources.

2 b. Any bonds as required by the Department of Natural Resources.

3 8. The Building and Planning Department shall prepare and record with the
4 Spokane County Auditor a Title Notice noting that the property in question is
5 subject to a variety of special conditions imposed as a result of approval of a land
6 use action. This Title Notice shall serve as public notice of the conditions of
7 approval affecting the property in question. The Title Notice should be recorded
8 within the same time frame as allowed for an appeal and shall only be released,
9 in full or in part, by the Building and Planning Department. The Title Notice
10 shall generally provide as follows:

11 3. "The parcel of property legally described as [insert legal description] is the
12 subject of a land use action by a Spokane County Hearing Examiner on August
13 15, 2022, imposing a variety of special development conditions. File No. ZW-01-
14 22 is available for inspection and copying in the Spokane County Building and
15 Planning Department."

16 **Washington State Archaeology and Historic Preservation:**

17 1. *The Applicant shall prepare an inadvertent discovery plan prior to any ground
18 disturbing activities.*

19 **Washington State Department of Natural Resources:**

20 1. Per RCW 78.44.081 a new or expanded DNR Surface Mine Reclamation
21 Permit will be required prior to onsite mining related disturbance, as
22 described in RCW 78.44.03 1(5), exceeding the threshold parameters outlined
23 in RCW 78.44.031(17).
24

DATED this 15th day of August, 2022

SPOKANE COUNTY HEARING EXAMINER


Christopher A. Anderson, WSBA #45361

1 **NOTICE OF FINAL DECISION AND NOTICE OF RIGHT TO APPEAL**

2 Pursuant to SCC Chapter 1.46 (Hearing Examiner), the decision of the
3 Hearing Examiner on an application for a preliminary plat is final and conclusive
4 unless within twenty-one (21) calendar days from the issuance of the Examiner's
5 decision, a party with standing files a land use petition in Superior Court pursuant to
6 RCW Chapter 36.70C.

7 Pursuant to RCW Chapter 36.70C, the date of issuance of the Hearing
8 Examiner's decision is three (3) days after it is mailed, counting to the next business
9 day when the last day for mailing falls on a weekend or holiday.

10 On August 15, 2022 a copy of this decision will be mailed by first class mail to
11 the Applicant, and by e-mail to other parties of record. The date of issuance of the
12 Hearing Examiner's decision is August 18, 2022.

13 **THE LAST DAY FOR APPEAL OF THIS DECISION TO SUPERIOR COURT**
14 **BY LAND USE PETITION IS SEPTEMBER 8, 2022.**

15 The complete record in this matter, including this decision, is on file during
16 the appeal period with the Office of the Hearing Examiner, Third Floor, Public Works
17 Building, 1026 W. Broadway Avenue, Spokane, Washington, 99260-0245, (509) 477-
18 7490. The file may be inspected Monday through Friday of each week, except
19 holidays, between the hours of 8:00 a.m. and 4:00 p.m. Copies of the documents in the
20 record will be made available at the cost set by Spokane County.

21 Pursuant to RCW 36.70B.130, affected property owners may request a change
22 in valuation for property tax purposes notwithstanding any program of revaluation.
23
24