



By Email

August 10, 2021

Hillary Franz
Commissioner of Public Lands
Washington State Department of Natural Resources
1111 Washington St. SE
Mail Stop 47007
Olympia, WA 98504
cpl@dnr.wa.gov

Re: SEPA File No. 20-092802—public trust undermined

Dear Commissioner Franz,

I've been asked by Skagit River Alliance ("Alliance") first to thank the Department of Natural Resources ("DNR") for withdrawing the ill-advised Determination of NonSignificance ("DNS") issued for the Cascade Big Bear Mine and, second, to express several significant concerns that arose through DNR's handling of that State Environmental Policy Act ("SEPA") review. My clients are community-minded residents of the Marblemount area who appreciate the environmental importance of the upper Skagit River area and who live near the project site and would have been directly and adversely impacted by its approval. I submit these comments both to reflect the frustrations they experienced with DNR's process and to request that DNR ensure a better process in the future.

My client's primary concern is that DNR issued a DNS for the Cascade Big Bear Mine in an ecologically and culturally significant landscape without adequate information about its environmental impacts and without proper public notice. In fact, even though the Alliance had actively participated in the review of a previous incarnation of the project, they learned about this version partway through the SEPA comment period only after reaching out to DNR about the earlier version. They then learned that DNR was not in a position to issue the DNS based on available information. Even before DNR quietly issued the DNS in September 2020, the agency was fully aware of the asbestos site conditions that caused DNR to ultimately withdraw the DNS. Because DNR had been involved in a mine proposal on the same property the previous year, it should have requested the asbestos information before issuing a threshold determination that the project would not cause significant environmental impacts. We believe this was a known issue and readily preventable error, and that members of the public should not have been forced to correct the path for DNR's SEPA review.

Against this backdrop, we write to identify some of the missteps along the way and to request that DNR commit to ensuring that any future review evaluates all of the potential environmental impacts and involve the public early in that process. Those missteps include:

- Lead agency status. DNR should not have relied on a 45-year-old conditional use permit (“CUP”) by Skagit County to take lead agency status under SEPA. This had the detrimental effect of blocking a proper review of the project’s operational impacts. Further, after months of inquiries, including numerous public records requests, the Alliance still has been unable to obtain any documentation showing that Skagit County confirmed that the project fell within the narrow contours of that CUP. Because DNR reviews the environmental impacts of only reclamation, and not project operations, it should conduct a thorough process to ensure that the operations have been evaluated before assuming lead agency status;
- Difficulty obtaining information. When DNR provided notice on May 7, 2021 that its action on the DNS was delayed (“Notice Delay”), the agency helpfully provided a list of actions taken to review the project. However, even then DNR did not make referenced documents and communications readily available to the public. As a result, it was necessary for Alliance members to file multiple public records requests that still did not ultimately lead to the disclosure of all of the materials referenced in the Notice Delay, which is antithetical to the purpose of Washington’s Public Records Act, Chapter 42.56 RCW;
- Opaque asbestos review. Since the initial comment period had almost passed by the time the Alliance learned of the proposal, we are confident that DNR would not have withdrawn the DNS based on asbestos concerns if the Alliance had not diligently continued to raise this important substantive issue and then communicated this information to the public. DNR’s participation in the Kiewit proposal to mine rock that included the same rock subject to the Cunningham application should have made DNR aware of the likely existence of asbestos materials on-site prior to the issuance of the DNS. The application materials process by DNR acknowledged a generally-understood geologic fact about the region -- that the project included the mining of Shuksan greenschist, which can contain asbestos (actinolite). Yet DNR issued the DNS notwithstanding that information. Further, although DNR stated in the timeline that accompanied the Notice Delay that “DNR received the requested additional information from the applicant characterizing the geologic context of the site with regard to the potential for asbestos,” DNR did not reveal to the public that this information confirmed the likely presence of asbestos in the rock to be mined.

DNR compounded this egregious omission by failing to make the report publicly available so that the community could learn that the applicant had discovered asbestos in the material to be mined. Ultimately, interested members of the public were forced to submit a public records request for that document, and then disclosure of the report was delayed for five (5) weeks. The Alliance and the public interpreted this lack of serious transparency about a significant environmental impact as a substantial lack of concern over their health, safety, and well-being;

- Unwillingness to study site’s geologic instability identified earlier as necessary by DNR. On June 6, 2011, DNR’s Rian Skov sent a letter about a mining proposal at the site that discussed talus removal, followed by quarrying the hillside, and stated that after observing the site’s geology, DNR had determined that “a thorough geotechnical slope stability study will be required along with the standard materials for a reclamation permit application...if mining is to be conducted on site.” The 2011 letter expressly identified the talus removal (the same type of mining for which DNR issued the recent DNS) as the reason for the need for the study, stating that “[t]he slope stability requirement comes from the complex structural nature of the site coupled with a mining plan which proposes removal of slope restraining force as the initial phase of mining.” (emphasis added). Consequently, the study was to detail the geologic structure of the site, address mining impacts on its stability, and recommend operations to minimize destabilization. A 2019 email from John Bromley, who had participated with Mr. Skov in the site visit that led to the 2011 letter, stated that “[t]he rock wall at the site is jointed and fractured” and notes that the 2011 letter “describes these features and potential risk to miners should mining resume.” He mentions that DNR had requested that “the joint sets be mapped and analyzed for adverse bedding conditions.” Based on repeated, unfulfilled public records requests for this study, we’ve had to conclude that it was never conducted.
- Lack of complete and accurate information. In communications to the public, DNR staff provided incomplete and inaccurate information in contrasting the current proposal with a previous proposal. For example, officials stated that the material would be used for local projects and transported by standard dump truck, but subsequent records requests unearthed email correspondence between the applicant and DNR that implied that the project likely was going to mine large jetty stone for use across the region, which likely would have required heavy hauling trucks. They also stated that no blasting of the rock face was proposed, but the project did propose high elevation blasting of large boulders. While there were clear distinctions between the two projects, it was notable that DNR sought to contrast

them in a way that appeared to be intended to alleviate concerns about the current project.

This is not a comprehensive list of concerns about the mining project itself, but rather a sampling of the more egregious flaws in the SEPA review process encountered by the Alliance. We offer them not just out of frustration, but in the hope that they can be lessons learned for the agency and that no other community will experience a similar situation. Absent a diligent, sustained, and reasoned effort by the Alliance, who happened by accident upon the flawed SEPA notice in the first instance, these impacts likely never would have fully come to light. The fact that these issues were well known to DNR before it issued the DNS compels us to request that DNR do better in the future, regardless of the amount of pressure brought to bear on the agency by interested parties.

Consequently, we ask that you take the necessary steps to institute a SEPA training program that ensures that DNR officials follow the proper lead agency process, understand the proper scope of environmental review that must occur prior to issuing a threshold determination, and reaffirm their commitment to public transparency and the letter and spirit of public records disclosure to impacted communities.

Thank you for your time and your careful consideration on this important topic.

Sincerely,



Kyle A. Loring
Counsel for Skagit River Alliance

Cc: Jose Vila, Skagit River Alliance