LAW OFFICE OF
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YAKIMA, WASHINGTON 98901
(509) 248-9084
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CHARLES C. FLOWER
PATRICK ANDREOTTI

July 21, 2009

Julie Kjorsvik
Clerk of the Board
Kittitas County Commissioners
Kittitas County Courthouse
Room 110
Ellensburg, WA 98926

Re: SEPA Appeal of Brent and Heidi Sny
Stampede Sand & Gravel, CU-09-00002

Dear Ms. Kjorsvik:

Enclosed for filing with the Board of County Commissioners is the above-described SEPA appeal.

Based on your 7/16/09 email, the appeal is submitted without the $500.00 filing fee which was paid with the previous appeal in the above-numbered proceeding.

Please file stamp the enclosed copy of the appeal indicating its receipt and return the copy to me in the stamped, self-addressed envelope which is also enclosed.

Please let me know if you have questions.

Sincerely,

PATRICK ANDREOTTI

PA:pk
Enclosures

cc: Dan Valoff
Kittitas County Development Services
411 North Ruby Street, Suite 2
Ellensburg, WA 98926

Mr. and Mrs. Brent Sny

RECEIVED
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1st ___ 2nd ___ 3rd ___
KITTITAS COUNTY BOARD OF COMMISSIONERS

LAW OFFICE OF
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CHARLES C. FLOWER
PATRICK ANDREOTTI

July 21, 2009

Kittitas County Board of Commissioners
Kittitas County Courthouse
Room 110
Ellensburg, WA 98926

Re: Appeal of Revised Determination of Non-Significance
Stampede Sand & Gravel, CU-09-00002

Dear Commissioners:

This appeal is submitted pursuant to Kittitas County Code ("KCC") Chapter 15A.07.

1. Decision being appealed:

7/13/09 Determination of Non-Significance ("DNS") issued by the Kittitas County Community Development Services ("CDS") of the Stampede Sand & Gravel Application No. CU-09-00002 for a Conditional Use Permit for temporary asphalt and concrete batch plants. This "DNS" is a minor "revision of the DNS for the project issued 6/18/09.

2. Name, address and interest of Appellant:

Brent and Heidi Sny
2202 Wilson Creek Road
Ellensburg, WA 98926

Appellant's interest is stated in the 6/30/09 appeal of the 6/18/09 DNS for the project filed with the County Commissioners 7/02/09 which is attached and incorporated herein as Exhibit "A".

3. Appellant's Representative:

Charles C. Flower and Patrick Andreotti
Flower & Andreotti
303 East "D" Street #1
Yakima, WA 98901
Telephone: 509-248-9084

4. Grounds for appeal:

A. Background:

The background for the appeal is fully described in Exhibit "A", page 2, attached and incorporated herein.

B. Notice of Application and Environmental Review for the project were and are inadequate:

The 7/13/09 "Revised Notice of Decision SEPA Action" and 7/13/09 DNS are inadequate and deficient for the reasons specified on Exhibit "A", pp. 3-4, attached and incorporated herein.

The only change in the Revised Notice and 7/13/09 DNS from the 6/18/09 Notice and DNS is to include "concrete batch plants" in the project description.

This late revision to correctly describe the project also fails to cure the defect in the 5/26/09 "Notice of Application" which described the project as consisting only of an asphalt plant.

The defect in the "Notice of Application" was also noted in Appellant's 6/09/09 comments on the Environmental Checklist and again in their 7/02/09 appeal.

The "Notice of Application" violates KCC 15A.03.060(2) by failing to give an adequate description of the actual proposed project action.

Correction of the project description in the 7/13/09 "Notice of Decision" and "DNS" issued after all opportunity for comment and pre-hearing participation has expired clearly does not cure the defect in the "Notice of Application".

C. Environmental Checklist is inadequate and cannot be the basis for issuance of a DNS:

Section C of the 7/02/09 appeal, Exhibit "A", pp. 4-7, attached and incorporated herein, fully specifies the defects in the Environmental Checklist for the project which preclude the issuance of a DNS.

D. Relief Requested:

The DNS issued for Application CU-09-00002 must be reversed and this case remanded to the SEPA Responsible Official with directions:

(1) No threshold determination be issued until adequate notice and compliance with applicable public notice provisions of the KCC has been given; and

(2) The SEPA Responsible Official develop adequate environmental information to make an informed threshold determination in this case and, if another DNS is issued rather than an Environmental Impact Statement being prepared, the DNS require mitigation of obvious, significant, probable adverse environmental impacts related to air and water quality, wildlife habitat and migration, traffic and recreational uses in the Stampede Pass area.

The Order of Remand should also specifically require the environmental analysis be conducted to consider the cumulative impact of the proposed asphalt and concrete batch plants with the impacts from the existing sand and gravel mining and crushing operations and DOE's transportation of dredge material from Lake Kachess.

Pursuant to the 7/16/09 email from Julie Kjorsvik, Clerk of the Board of County Commissioners, attached and incorporated herein as Exhibit "B", no filing fee is required for this appeal.

Respectfully submitted,

FLOWER & ANDREOTTI,
Attorneys for Brent and Heidi Sny.

Charles Flower

CHARLES C. FLOWER, WSBA #143.

Patrick Andreotti

PATRICK ANDREOTTI, WSBA #7243.

LAW OFFICE OF
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CHARLES C. FLOWER
PATRICK ANDREOTTI

June 30, 2009

Kittitas County Board of Commissioners
Kittitas County Courthouse
Room 110
Ellensburg, WA 98926

Re: Appeal of Determination of Non-Significance
Stampede Sand & Gravel, CU-09-00002

Dear Commissioners:

This appeal is submitted pursuant to Kittitas County Code ("KCC") Chapter 15A.07.

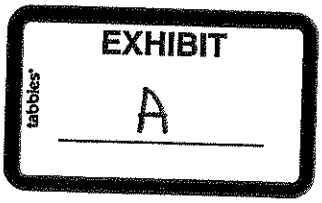
1. Decision being appealed:

6/18/09 Determination of Non-Significance issued by the Kittitas County Community Development Services ("CDS") of the Stampede Sand & Gravel Application No. CU-09-00002 for a Conditional Use Permit for a temporary asphalt plant and concrete batch plant.

2. Name, address and interest of Appellant:

Brent and Heidi Sny
2202 Wilson Creek Road
Ellensburg, WA 98926

Mr. and Mrs. Sny own residential recreational property located at 50 Roaring Creek Court, Easton, Washington, Kittitas County Parcel No. 105835. The Sny property is located near the Stampede Sand & Gravel project site. The Snys use their Roaring Creek Court property on a weekly basis during the summer and early fall months for recreational purposes. The Sny property is accessed over the same roadway which will be used to transport gravel, crushed and river rock, liquid asphalt, asphalt pavement, bulk cement and concrete (collectively "material") to and from the project site and they will be adversely impacted by asphalt and concrete operations and associated traffic as well as the cumulative impacts from the proposed new operations and the existing gravel mining, crushing and hauling operations conducted on the project site.



3. Appellant's Representative:

Charles Flower and Patrick Andreotti
Flower & Andreotti
303 East "D" Street #1
Yakima, WA 98901
Telephone: 509-248-9084

4. Grounds for appeal:

A. Background:

On 4/23/09, Stampede Sand & Gravel ("Stampede") filed a Zoning Conditional Use Application and Environmental Checklist with the CDS requesting a Conditional Use Permit for an asphalt plant and concrete batch plant.

On 5/26/09, CDS issued a Notice of Application stating the proposal was for a "Conditional Use Permit to operate a temporary asphalt plant". The Notice of Application did not disclose the application included a request for a Conditional Use Permit for a concrete batch plant.

The Notice of Application stated CDS expected to issue a Determination of Non-Significance.

A visual inspection by Mr. Sny of the access roadway to the project site and project site entrance on 6/27/09 disclosed no Notice of Application or other posting had been made on the access roadway or at the project site entrance disclosing the property was subject to environmental review and an Application for Conditional Use Permit.

The project site contains an existing sand and gravel mining and crushing operation which predates both the KCC Land Use Code and State Environmental Policy Act ("SEPA") and is not subject to any land use controls or conditions of operations to mitigate significant adverse impacts on the environment.

The project site is accessed over Forest Service Road 5400, an unpaved, poorly maintained, narrow road which not only provides access to the project site but to Appellant's property, the property of numerous other owners of recreational residences in the Stampede Pass area, and access to the Stampede Pass area for recreational activities including cross-country skiing, hiking, camping, berry picking and mushroom hunting.

On 6/10/09, Appellant filed comments on Stampede's Environmental Checklist, which are attached and incorporated herein as Exhibit "A". Comments were also filed by the Department of Ecology. The DOE comments are attached and incorporated herein as Exhibit "B".

B. Notice of Application and Environmental Review were and are inadequate:

(1) KCC 15.04.160, providing for public notice of environmental review, provides in relevant part:

> "Whenever possible, Kittitas County shall integrate the public notice required under this section with the notice procedures for non-exempt permits or approvals pursuant to Title 15A of this Code."

***

KCC 15A.03.060, applicable environmental review pursuant to KCC 15.04.160, requires in relevant part:

***

> "2. The Notice of Application shall include the following:
>
> ***
>
> "A description of the proposed project action and a list of the project permits included in the application and, if applicable, a list of any additional studies requested to complete the application."
>
> ***

The Notice of Application issued by the CDS on the Stampede application stated only the application was for a Conditional Use Permit for an asphalt plant. In fact, however, the Stampede application clearly states it is for both an asphalt plant and concrete batch plant.

The Notice issued by CDS in this case violates KCC 15A.03.060 because it fails to give an adequate description of the actual proposed project action and is, therefore, misleading to both property owners, recreational users of the area, and members of the public who are entitled to notice of the proposed action and an opportunity to participate in the proceedings.

KCC 15A.03.110 requires posting notice of the project at the project site unless the development application is processed administratively. The Stampede application is not processed administratively and, therefore, is subject to the posting requirements.

KCC 15A.03.110 requires signs be posted on each frontage road and be clearly visible and accessible, the signs be posted and on-site prior to the issuance of the Notice of Application, and remain on-site until fifteen (15) days after expiration of the notice of decision appeal.

In this case, the project site was not posted as required by 15A.03.110.

Posting in this case was essential to give the majority of people who would be environmentally, significantly, adversely affected and impacted by the proposed asphalt and concrete batch plants notice of the proposed action.

The majority of persons who own recreational residential property accessed by Forest Service Road 5400 do not own property within 500 feet of the boundary of the project site and live outside Kittitas County on the west side of the Cascades so they would not receive actual notice of the application through mailing or publication in the Ellensburg Daily Record.

The only practical manner in which the residential recreational property owners as well as disbursed recreational users would receive notice of the Stampede application is through posting the site as required by KCC 15A.03.110.

The inaccurate and misleading description of the proposed project in the Notice of Application and the failure to provide notice of the application by posting denied the public and affected property owners and other persons using the Stampede Pass area of the opportunity to comment on the significant adverse environmental impacts of the project rendering the 6/18/09 Determination of Non-Significance invalid and requiring the project application be remanded to CDS for issuance of a new threshold determination after adequate notice and an opportunity to comment.

C. Environmental Checklist is inadequate and cannot be the basis for issuance of a DNS:

Richard Settle, the lead commentator on SEPA, has noted:

***

> "Both the statute [RCW Chap. 43.21C] and SEPA rules recognize the dual purpose of the threshold determination. Most obviously it resolves the question of whether detailed environmental analysis is required. But, in addition, where the determination is negative, it provides documentation, primarily through the 'Environmental Checklist' of the threshold environmental analysis to guide decision makers toward actions consistent with SEPA's substantive policies." Settle, Washington State Environmental Policy Act, Section 13, p. 93 (1994). (Emphasis added)

The Environmental Checklist submitted for the Stampede application contains virtually no information about the proposed project, its operations or environmental impact and completely fails to provide the information necessary for a SEPA Responsible Official to conduct an adequate environmental analysis of the proposed project and its probable significant, adverse environmental impacts before issuing a threshold determination.

The 6/10/09 comments on the Environmental Checklist submitted by Flower & Andreotti in behalf of Appellant-Sny (Exhibit "A" attached and incorporated herein) details, by Environmental Checklist section, substantial deficiencies and additional information required to enable the SEPA Responsible Official to conduct an adequate environmental analysis of the project before making a threshold determination. Those deficiencies include but are not limited to:

(1) Failure to adequately disclose existing site conditions including soils analysis for the overburden.

(2) Specifications about the proposed filling to take place as part of the project.

(3) There is no information about the location of the proposed plant sites within the project site which information is required to determine whether there will be vegetation removal and the adverse impacts of that removal.

(4) The Environmental Checklist fails to disclose any information about the size or type of asphalt and concrete batch plants to be installed on the project site. The adverse impacts from asphalt and concrete batch plant operation vary significantly by the size, type and age of the plant and what, if any, after market additions have been made to the plants to reduce or control noise and dust. Without this information, the SEPA Responsible Official can have absolutely no idea about the probable significant impacts of the project and cannot make any determination about necessary mitigation measures.

(5) The Environmental Checklist contains no information about the current source of water, if any, used for dust control on the project site, the source of water proposed to control dust from the new operations, and whether or not Stampede has a State water right for the water.

(6) A survey of the project site attached to Stampede's application (Exhibit "C" attached and incorporated herein) discloses the Yakima River provides the Northeast boundary of the property and the project site contains numerous and relatively extensive wetland areas. The proposed asphalt plant, concrete batch plant and diesel generator will require the use of substantially more petroleum products and chemicals than are presently used on the project site. The use and location of petroleum products and other chemicals in proximity to wetlands in the Yakima River creates a probable, significant, adverse impact on the wetlands and river from spills. The Environmental Checklist fails to disclose the location within the project site of either the asphalt plant or concrete batch plant or material storage areas so the relationship of those areas to the wetlands and the Yakima River cannot be determined. In addition, the Environ-

mental Checklist contains no information about any proposed containment plans for petroleum or chemical spills.

(7) The Yakima River along the Northeast corner of the project site provides habitat for an endangered species, Bull Trout, and a threatened species, Steelhead. The Environmental Checklist fails to acknowledge the existence of the Yakima River as a property boundary, the fact the river provides habitat for threatened and endangered species, and fails to provide any information to establish the proposed new operations will not have a probable, significant, adverse impact on the Yakima River and the threatened and endangered species which occupy and require it.

(8) The Environmental Checklist fails to provide any information about the additional traffic to be generated from the proposed operations of the asphalt and concrete batch plant and fails to even acknowledge there will be cumulative impacts from traffic generated by the project and the transportation of spoils from Lake Kachess by DOT which will be occurring over the same Forest Service Road 5400 which provides access to the proposed project site and to Appellant-Sny's and other recreational property.

(9) The Environmental Checklist contains no information about the proposed hours of operation, days of operation or seasons of operation which are essential to determine and mitigate impacts on recreational use within the area as well as wildlife mating and migration.

(10) The Environmental Checklist completely fails to provide any information about the cumulative impacts from the operation of the proposed asphalt and concrete batch plant with the currently existing sand and gravel mining and crushing operation. The existing operations predate the Kittitas County Land Use Code and SEPA and are unregulated. Adequate information must be provided about current operations including noise, dust, pollution and traffic generated to enable the SEPA Responsible Official to make an informed decision about the cumulative, probable, adverse impacts of the project.

The Department of Ecology, in its comments on the Environmental Checklist (Exhibit "B" attached and incorporated herein), noted several permitting requirements for the proposed asphalt and concrete batch plant.

The DOE comments also raised several other issues which, if ignored, would result in significant, probable, adverse impacts on the environment:

(1) The necessity of having a fugitive dust control plan containing elements specifically identified in the DOE comments.

(2) Water quality issues related to the concrete batch plant.

(3) Potential off-site discharge and the requirement of a Storm Water Pollution Prevention Plan (Erosion Sediment Control Plan).

(4) The requirement Applicant have a surface water or ground water permit for use of water for dust control.

Although the Environmental Checklist submitted by Stampede was incomplete and inadequate on its face and those inadequacies were pointed out to CDS by both Appellants and DOE, CDS failed to require Stampede provide adequate environmental information to enable the SEPA Responsible Official to make an informed environmental decision, and completely disregarded the comments on the Environmental Checklist submitted by Appellants and DOE.

The SEPA Responsible Official acting on this application has completely abdicated his responsibilities.

D. Relief Requested:

The DNS issued for Application CU-09-00002 must be reversed and this case remanded to the SEPA Responsible Official with directions:

(1) No threshold determination be issued until adequate notice and compliance with applicable public notice provisions of the KCC has been given; and

(2) The SEPA Responsible Official develop adequate environmental information to make an informed threshold determination in this case and, if another DNS is issued rather than an Environmental Impact Statement being prepared, the DNS require mitigation of obvious, significant, probable adverse environmental impacts related to air and water quality, wildlife habitat and migration, traffic and recreational uses in the Stampede Pass area.

The Order of Remand should specifically require the environmental analysis be conducted to consider the cumulative impact of the proposed asphalt and concrete batch plants with the impacts from the existing sand and gravel mining and crushing operations and DOE's transportation of dredge material from Lake Kachesse.

Respectfully submitted,

FLOWER & ANDREOTTI,
Attorneys for Brent and Heidi Sny.

Charles Flower

CHARLES C. FLOWER, WSBA #143.

Patrick Andreotti

PATRICK ANDREOTTI, WSBA #7243.

June 9, 2009

Dan Valoff, Staff Planner
Kittitas County Community Development Services
411 North Ruby Street, Suite 2
Ellensburg, WA 98926

Re: Stampede Sand & Gravel Conditional Use Permit (CU 09-00002)

Dear Mr. Valoff:

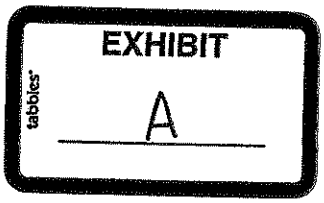
The following comments on the above-numbered Conditional Use Permit application and SEPA checklist for the application are submitted in behalf of Brent and Heidi Sny. Mr. and Mrs. Sny reside at 2200 Wilson Creek Road, Ellensburg, Washington, 98926, and own residential recreational property near the proposed project site at 50 Roaring Creek Court, Easton, Washington, Parcel No. 105835.

The gravel mining operation conducted on Parcel No. 750236, the parcel for which the Conditional Use Permit is proposed, has been in operation since before adoption of the Kittitas County Zoning Code and, it appears, is not subject to any limitations or conditions with regard to dust, noise or traffic, and only subject to operational conditions, if any, imposed by the NPDES Sand and Gravel General Permit issued by the Washington State Department of Ecology ("DOE").

Because the gravel mining operation is conducted without any environmental controls or mitigating conditions, it is extremely important the SEPA Responsible Official identify, quantify, evaluate and mitigate the cumulative, adverse, significant environmental impacts which will result from the mining operations in conjunction with the proposed asphalt plant and concrete batch plant.

The above-numbered application is for a Conditional Use Permit for both an asphalt plant and concrete batch plant. Although concrete batch plants are not mentioned anywhere in the Kittitas County Zoning Code, previous interpretations and applications of the Code have determined concrete batch plants are similar to asphalt plants and may be permitted and conditioned in the same zones as asphalt plants.

The 5/26/09 "Notice of Application" issued by the Kittitas County Community Development Services ("CDS") states the application is for an asphalt plant but does not disclose the application is also for a Conditional Use Permit for a concrete batch plant. The Notice is,



therefore, inaccurate and inadequate. No action on the application, including the issuance of an Environmental Threshold Determination may be taken until CDS has issued an accurate and legally sufficient Notice of the application. All proceedings in this case must be suspended until an appropriate, complete, correct Notice is issued and the interested parties have had an opportunity to comment after being advised of the actual contents of the application.

Without waiving their objection to continued proceedings in this matter, Mr. and Mrs. Sny submit the following comments on the 4/23/09 SEPA Environmental Checklist ("EC") submitted for the above-entitled application. The comments are numbered by EC section.

Background:

A.8. Applicant indicates there is previously prepared environmental information for an "Original Sand & Gravel Permit". Applicant has a reclamation permit from DNR and an NPDES permit from DOE. There is no evidence of an existing Kittitas County Conditional Use Permit or any environmental review as part of an existing Conditional Use Permit, the Reclamation Permit or NPDES Permit.

Based on presently available information, the current sand and gravel operation is an "unpermitted use" which pre-dates the Kittitas County Zoning Code and for which no environmental review was conducted and no conditions or environmental mitigation have been imposed.

A.10. No mining or crushing permit is included with the application. As stated above, Mr. and Mrs. Syn believe no permit for the mining and crushing operations has been issued.

Environmental Elements:

1c. The EC indicates only sand and gravel are located on the site. The site obviously contains overburden which must be described by soil type and depth. The east portion of the parcel contains, or is adjacent to, the Yakima River. There may be wetland type soils associated with the creek which must be identified and fully delineated.

1e. Filling must be precluded from all wetlands associated with the stream. In addition, the EC indicates there will be off-site filling. The location, quantity and purpose of off-site filling must be stated and all filling of wetlands must be prohibited without an appropriate permit.

1f. It also appears at least forty percent (40%) of the proposed project site remains covered with trees and additional portions of the site contain vegetation capable of preventing erosion of soil. All additional clearing or soil disturbance for the proposed asphalt plant, concrete batch plant, generator and service roads for the proposed new facilities create the potential for erosion which must be described and mitigated.

2a. Existing DNR and DOE permits are unrelated to air quality. Applicant must disclose on the EC:

(1) The nature and extent of current mining and crushing operations, and
(2) Existing dust and noise control measures, if any, for current operations, and
(3) Size, type and anticipated emissions from the proposed concrete batch plant and asphalt plant, and
(4) Proposed mitigation measures for emissions from the new operations, and
(5) Quantification of emissions which will be generated by additional equipment, including the proposed diesel generator, and additional traffic generated by the new operations, and
(6) Cumulative air quality impacts from existing mining and crushing operations and the proposed new operations.

Adequate mitigation measures must be imposed to prevent cumulative, significant adverse environmental impacts from the cumulative, adverse effects of current and proposed operations.

2c. Applicant proposes use of a water truck to provide dust control. Applicant, however, fails to disclose the source of water for dust control. Applicant must establish the actual water source and have an approved Washington State water right for adequate water to control the cumulative, adverse dust impacts from current and proposed project operations.

3a.(4) Dust control on-site will require the use of surface or ground water. See, 2c above.

3a.(6) The proposed operations involve an increased probability of oil and chemical spills which may contaminate the Yakima River on the eastern portion of the project site. Appropriate measures must be taken to mitigate the potential for surface water contamination.

3b.(1) Dust control on-site will require the use of surface or ground water. See, 2c above.

3c.(1) The site is subject to snow melt and spring runoff interacting with and contaminated by petroleum and chemical products stored or spilled on the project site and potential flooding from the river in the eastern part of the site. Applicant must disclose all potential sources of contamination of ground and surface water from snow melt and runoff and adequate mitigation measures must be employed to prevent surface and ground water contamination. Spills of fuel, asphalt oil and concrete component would all enter the ground water if not properly controlled and contained.

3d. Applicant must be required to prepare and implement an appropriately engineered plan to control and retain on-site adverse surface, ground and runoff water impacts.

4a. The Yakima River flows adjacent to, and through, the eastern part of the project site. The EC indicates there are wet soil plants on the site and wetlands which must be protected. If wetlands are to be in any manner impacted, appropriate permits must be obtained from the Army Corps of Engineers.

5a. The Yakima River, which flows adjacent to, and through, the eastern part of the project site, contains populations of endangered species, bull trout, and a threatened species, steelhead. Adequate mitigation measures must be imposed on any manufacturing uses on the project site to insure there is no damage or injury to the threatened and endangered species and their habitat.

5c. The Stampede Pass area appears to include migration routes for deer, elk and other wildlife which will be adversely affected by noise and emissions from the proposed asphalt plant and concrete batch plant as well as the increased traffic generated by the proposed new operations. Appropriate operational restrictions must be imposed to mitigate the adverse, cumulative impacts on wildlife.

6a. The project will also result in increased consumption of fuel for the diesel generator and vehicles transporting finished product as well as additional consumption of oil for asphalt manufacture.

7a. The proposed asphalt plant, oil for asphalt production, diesel generator operation, and equipment operation which are stored on-site all create the potential for fires and explosions which are particularly dangerous in a forested, mountain area such as the proposed project site. Appropriate conditions must be imposed to eliminate the possibility of wild fires originating from or related to the project site.

7b.(2) The proposed new operations in conjunction with the existing mining and crushing operations will create substantial, adverse, cumulative noise impacts which must also be mitigated.

Applicant must disclose and provide adequate information to mitigate the noise impacts, including:

(1) The nature and extent of noise generated by current mining and crushing operations.

(2) Existing noise mitigation measures, if any.

(3) The size, type and anticipated noise generation from the proposed concrete batch plant and asphalt batch plant.

(4) Measures to mitigate additional noise generated by the new operations.

(5) Cumulative noise impacts from existing and proposed operations and methods to mitigate their impacts.

A formal and complete noise study/evaluation of the existing and proposed operations is required to provide the information necessary to appropriately mitigate noise impacts.

The noise impacts which must be considered include, but are not limited to, impacts on wildlife, dispersed recreational uses in the area, and recreational residential uses in the area.

All noise mitigation conditions must include appropriate limitations on days and hours of operation.

7b.(3) When adequate information is obtained, appropriate measures to adequately mitigate noise impacts must be imposed as conditions of granting any Conditional Use Permit.

8h. Applicant acknowledges a portion of the project site is classified as an environmentally sensitive area. The environmentally sensitive area must be identified and properly protected if a Conditional Use Permit is granted.

10. Applicant needs to disclose the height and aesthetic impacts of the asphalt batch plant and concrete batch plant on disbursed recreational uses and recreational residential uses in the area, including but not limited to the aesthetic impacts to anticipated recreational and other users of the roads in the project area.

12. The SEPA Responsible Official needs to consider, determine and mitigate the impacts of the proposed new operations, including but not limited to, air quality impacts, noise impacts and traffic impacts on year-around recreational activities in the area including, without limitation, hiking, skiing, camping and berry picking. The SEPA Responsible Official also needs to consider and mitigate impacts on recreational residential use located within less than one (1) mile of the project site.

14f. Applicant must estimate the additional trips generated and types of vehicles used for additional trips. Access to the project site will be over Stampede Pass Road, including a restricted load bridge. The road and bridge also provide access for the disbursed recreational uses and recreational residences in the Stampede Pass basin and along Lake Keechelus.

The same access road will be used by DOT for transporting and disposing of material excavated from Lake Keechelus as part of the I-90 improvement project.

A traffic study is required to determine the cumulative impacts from the above-described traffic uses and traffic which would be generated by the proposed new uses on the project site so appropriate mitigation measures can be determined and implemented.

Sincerely,

FLOWER & ANDREOTTI,
Attorneys for Brent and Heidi Sny.

CHARLES C. FLOWER, WSBA #143.

PATRICK ANDREOTTI, WSBA #7243.

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
15 W Yakima Ave, Ste 200 Yakima, WA 98902-3452 (509) 575-2490

June 9, 2009

Dan Valoff
Kittitas County Community Development
411 N. Ruby St., Suite 2
Ellensburg, WA 98926

Dear Mr. Valoff:

Thank you for the opportunity to comment during the optional determination of nonsignificance process for the operation of a temporary asphalt plant in the Commercial Forest zoning district, proposed by Schomac Group [CU-09-00002]. We have reviewed the documents and have the following comments.

Air Quality

Portable concrete batch plants need to obtain coverage under the Concrete Batch Plant General Order of Approval. After obtaining coverage under this General Order, the source must notify Ecology's Air Quality Program at least 10-days prior to starting concrete batching activities. If concrete batching operations are anticipated for over one year in the same location, stationary concrete batch plants also need to obtain coverage under the Concrete Batch Plant General Order of Approval.

Portable asphalt plants, which locate temporarily (for one year or less) at a particular site, will either require a Temporary Air Quality Permit or a Notice of Construction (NOC) Air Quality Permit from Ecology. If operations are anticipated for over one year in the same location, an Air Quality NOC permit will be required.

Ecology recommends that the proponent develop a site-specific Fugitive Dust Control Plan (FDCP) before starting this project, and then follow the plan for construction of the

project and duration of activity on property. The FDCP should include, but is not limited to, the following components:

- Identify all potential fugitive dust emission points.
- Assign dust control methods.
- Determine the frequency of application
- Record all dust control activities.
- Train personnel in the FDCP.
- Shut down during windy conditions.
- Follow the FDCP and monitor dust control efforts.

Washington Administrative Code (WAC) 173-400-040 requires that reasonable precautions be taken to prevent dust from leaving the site. Also, dust is prohibited from interfering unreasonably with the use and enjoyment of property, causing health impacts, or damaging property or business.

Please contact Ecology's Air Quality Program for information, Jared Mathey (509) 454-7845 or David Ogulei (509) 454-7899.

Shorelands/Environmental Assistance

Activities within shoreline jurisdiction (typically 200 feet from the Ordinary High Water Mark or the edge of the floodplain) should be consistent with requirements of the Shoreline Management Act (90.58 RCW) and the local Shoreline Master Plan.

If you have any questions concerning the Shorelands/Environmental Assistance comments, please contact Catherine Reed at (509) 575-2616.

Water Quality

Sand and Gravel Operations: All concrete products manufacturers and property owners (or operators) of sand and gravel pits, rock quarries, asphalt and concrete batch plants are required to apply for permit coverage under the Sand & Gravel General Permit. In addition, owners of *portable* crushers, operating at sites that are not permitted for crushing under the Sand & Gravel General Permit, are required to apply for coverage. You may download the application form and instructions from the internet at

http://www.ecy.wa.gov/programs/wq/sand/index.html . If you do not have internet access call Cindy Huwe at (509) 457-7105 for application materials. Ecology must receive your application at least 180 days before the proposed date for starting operations. Mail your completed application to:

Cindy Huwe, Water Quality Permit Coordinator
Washington Department of Ecology
15 West Yakima Avenue #200
Yakima, WA 98902

After you complete the sand and gravel operations, you must submit an application for a wastewater discharge permit if you will use the site for industrial uses (e.g., as a stormwater retention facility). You will also need to submit an engineering report if there will be wastewater treatment components, including piping.

Project Greater-Than 1 Acre with Potential to Discharge Off-Site

An NPDES Construction Stormwater General Permit from the Washington State Department of Ecology is required if there is a potential for stormwater discharge from a construction site with more than one acre of disturbed ground. This permit requires that the SEPA checklist fully disclose anticipated activities including building, road construction and utility placements. Obtaining a permit is a minimum of a 38 day process and may take up to 60 days if the original SEPA does not disclose all proposed activities.

The permit requires that Stormwater Pollution Prevention Plan (Erosion Sediment Control Plan) is prepared and implemented for all permitted construction sites. These control measures must be able to prevent soil from being carried into surface water (this includes storm drains) by stormwater runoff. Permit coverage and erosion control measures must be in place prior to any clearing, grading or construction.

More information on the stormwater program may be found on Ecology's stormwater website at: http://www.ecy.wa.gov/programs/wq/stormwater/construction/ . Please submit an application or contact Lynda Jamison at the Dept. of Ecology, (509) 575-2434, with questions about this permit.

Erosion control measures must be in place prior to any clearing, grading, or construction. These control measures must be effective to prevent soil from being carried into surface water by storm water runoff. Sand, silt, and soil will damage aquatic habitat and are considered pollutants.

Any discharge of sediment-laden runoff or other pollutants to waters of the state is in violation of Chapter 90.48, Water Pollution Control, and WAC 173-201A, Water Quality Standards for Surface Waters of the State of Washington, and is subject to enforcement action.

Best management practices must be used to prevent any sediment, oil, gas or other pollutants from entering surface or ground water.

Water Resources

Information for the applicant:
If you plan to use water for dust suppression at your site, be sure that you have a legal right. A water right permit is required for *all* surface water diversions and for any water from a well that will exceed 5,000 gallons per day. (Chapter 90.03 RCW Surface Water Code and Chapter 90.44 RCW Regulation of Public Ground Waters) If in doubt, check with the Department of Ecology, Water Resources Program. Temporary permits may be obtainable in a short time-period. The concern of Water Resources is for existing water rights. In some instances water may need to be obtained from a different area and hauled in or from an existing water right holder.

If you have any questions concerning the Water Resources comments, please contact Breean Zimmerman at (509) 454-7647.

Solid Waste

The proponent should consider the use of recycled materials in roads for this project. Ground asphaltic roofing (from roofing projects) and crumb rubber (waste tires) have proved to be effective feed stocks in the manufacturing of roadway asphalt. Tire bales are a Washington State Department of Transportation-approved product for lightweight fill. Use of these materials would expand markets for these recycled products and reduce

the use of natural resources needed for road construction. For further assistance contact Gary Bleeker at (509)575-2782 or gble461@ecy.wa.gov .

Sincerely,

Gwen Clear

Gwen Clear
Environmental Review Coordinator
Central Regional Office
(509) 575-2012

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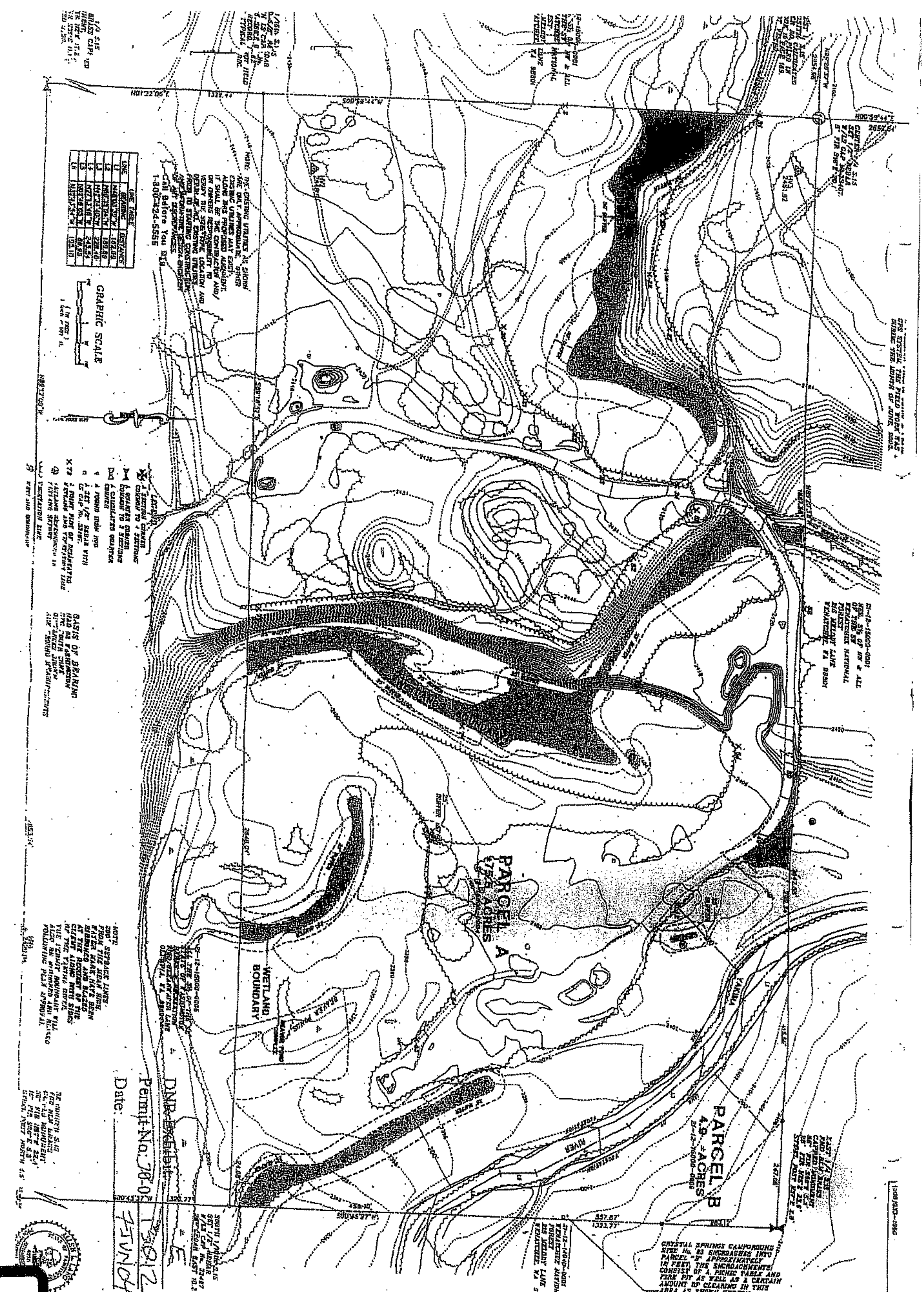

EXHIBIT

C

ENGINEERS - SURVEYORS

EASTSIDE CONSULTANTS, INC.

F2M, LLC, dba
SNOQUALMIE
ROCK PRODUCTS

BOUNDARY &
TOPOGRAPHY

Flower & Andreotti

From: Julie Kjorsvik [julie.kjorsvik@co.kittitas.wa.us]
Sent: Thursday, July 16, 2009 4:28 PM
To: Flower & Andreotti
Cc: Neil Caulkins; Kirk Holmes; Dan Valoff; Mandy Robinson; Catherine Dunn; Alan Crankovich; Paul Jewell; Mark D. McClain
Subject: RE: Stampede Sand & Gravel SEPA Appeal CUP-09-00002

Mr. Andreotti,

I spoke with Civil Deputy Prosecutor Neil Caulkins this afternoon regarding your email below.
He has indicated that you do not need to pay a second filing fee for the revised Notice of Decision SEPA Action and revised DNS.

If you have any additional questions please do not hesitate contacting me at your convenience. Have a great afternoon. ☺

Julie Kjorsvik
Clerk of the Board
Kittitas County Board of Commissioners
509-962-7508
509-962-7679 Fax
http://www.co.kittitas.wa.us/

From: Flower & Andreotti [mailto:flowand2@charter.net]
Sent: Wednesday, July 15, 2009 5:04 PM
To: Julie Kjorsvik
Subject: Stampede Sand & Gravel SEPA Appeal CUP-09-00002

Ms. Kjorsvik:

Attached is a copy of the original 6/18/08 SEPA Notice and Determination for the above application. We filed an Appeal of this decision on 7/2/09 in behalf of our clients Brent and Heidi Sny and paid the $500 filing fee. A copy of your 7/6/09 letter acknowledging receipt of the Appeal is attached.

On 7/13/09 CDS issued a Revised Notice of Decision SEPA Action and revised DNS, a copy of which is attached. The only change from the 6/18/09 Notice and Determination is to add "concrete batch plant" to the description of the project. This addition is a belated and ineffective attempt to correct a defect in the original notice for the project and SEPA review which was noted in both the Sny's 6/9/09 Comments on the Environmental Checklist and 7/2/09 Appeal.

To protect their rights, Mr. and Mrs. Sny will need to file an appeal of the revised DNS. This appeal will simply note the above-described change, the fact it is ineffective to correct the defect in notice for the project and SEPA review and incorporate the previously filed notice of appeal.

Given the above facts it is inequitable to require a second $500 filing fee be paid for the second appeal of the same decision and we request the filing fee be waived for the second appeal.

The second appeal must be filed by 7/27/09 so a prompt decision on the filing fee issue would be appreciated.

Please let me know if you have questions or need additional information.

Pat Andreotti