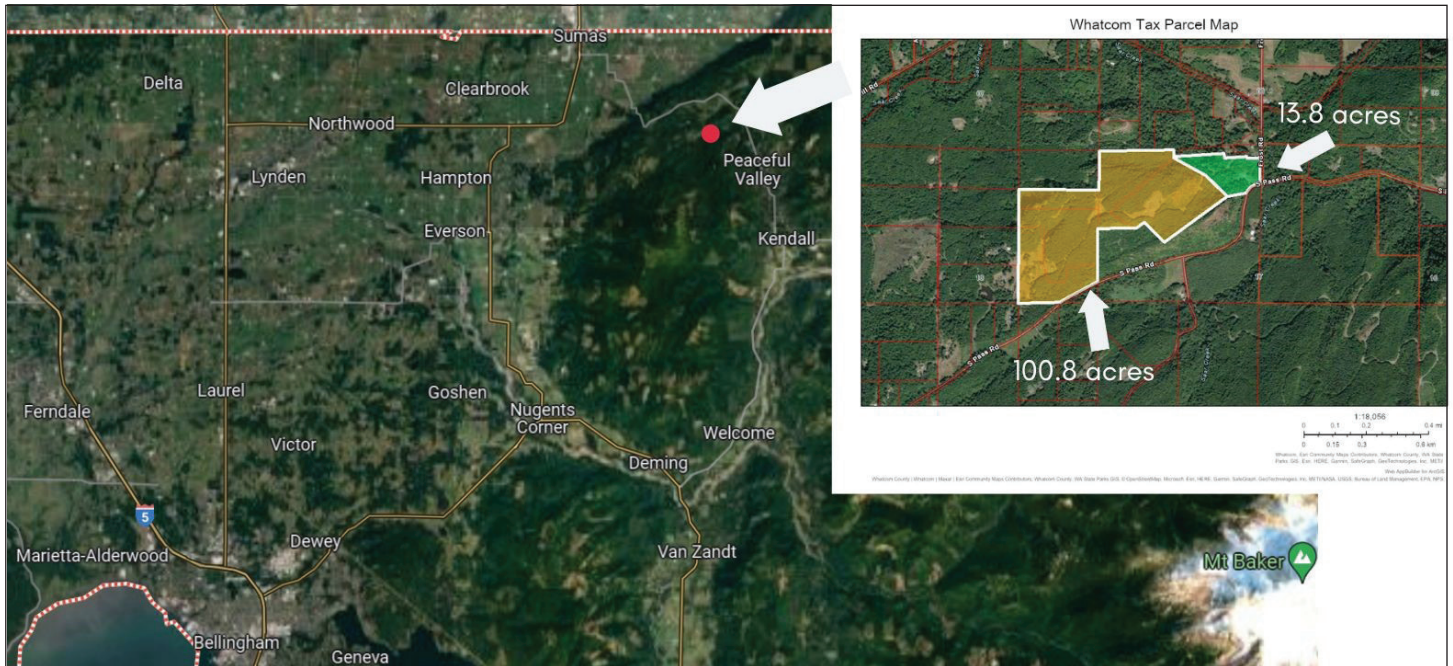


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# Quarry Plan Unsettles Neighbors



Visuals by Luisa Loi

Satellite view of the property where the proposed quarry would be excavated. The five parcels in Cowden's application are within the larger highlighted area on the top right image, with the adjacent area containing the two additional parcels. Maps created with the Whatcom County Tax Parcel Viewer and Google Maps. Surface area estimate calculated with the Whatcom County Tax Parcel Viewer.

by Luisa Loi

Four years after he moved with his wife and one-year-old daughter into a house nestled in rural Whatcom County, Andrew Clarke fears his pleasant lifestyle is being threatened by a proposal for a 70-acre open pit mine in his neighborhood near Peaceful Valley.

"If this project does go through, my family would have to move," Clarke said.

In March 2021, Brent Cowden — owner of Cowden Inc. — submitted a conditional use application to the county's Planning and Development Committee to develop a 70-acre rock quarry that would excavate an estimated 13,743,113 cubic yards of material from this area located southeast of Sumas (2). That would equal the volume of 4,000 olympic swimming pools or about four and a half times the Great Pyramid of Giza (18).

"It would make my property unlivable, at least to my standards, and to the standards of anybody who I could expect to sell my property to," Clarke said.

Cowden is also a member of the county's Surface Mining Advisory Committee (1), an organization that advises the Whatcom County planning and development services and the county council on implementing surface mining regulations in line with the county's comprehensive plan (19).

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The committee's responsibilities include making the regulatory process more efficient and timely while protecting the land use rights of those affected, "[eliminating] unnecessary regulations and permit," and completing a Comprehensive Construction Aggregate Study (CCAS) to document the availability and location of important mineral resources (19).

## Neighbors Disagree

According to Cowden's application, the mine will not have negative impacts on the people and properties in the vicinity of the site (3). However, many neighbors disagree.

"We find this insulting, and it will be disturbing," said Isaac Welch, one of those neighbors, during a meeting with the Whatcom County Planning Commission on March 23 (4). "We're concerned about the destruction of sensitive wetlands, contamination, loss of our family wells, and the overall health of the Sumas River watershed."

"We're still a very sparse population out here, but there's dozens and dozens of properties and homes and families living within very close proximity to this project," Clarke told *Whatcom Watch*.

## Homeowners Opposed to Mine Expansion

As a response to the proposal, a group of neighbors — including Clarke and Welch — came together to form Homeowners Opposed to Mine Expansion (HOME) (5).

The proposal is currently being reviewed by the Whatcom County Planning Department, after which it will be presented to the county hearing examiner. This process might take months or years.

"We're at the beginning of a really long process here," Clarke said.

*Whatcom Watch* contacted Cowden, who declined to comment.

"I would argue that good neighbors don't try to ram through projects like this without consulting the community at all," Clarke said, responding to Cowden's statement that they would "be a good neighbor," as reported by *Cascadia Daily News* on March 28 (6).

"Where is their sense of community?" Clarke said. "How do they expect our lives not to be impacted?"

## Project Posted Quietly

"It came as a huge surprise to everybody," Clarke said. "We were all pretty mad at the planning department because we felt like this project was posted very quietly."

On March 13, 2023, the county sent notice of the proposal to the neighbors living within 1,000 feet of the site. However, on April 4, the county re-noticed the proposal to notify residents living within 2,000 feet.

Additionally, the county's first notice of application, and Cowden's application, stated the project would involve five parcels — which are included in the county's mineral resource lands overlay district, an area zoned for mineral extraction. But, following complaints from the community, the county added the two parcels, through which a private access road connects the pit to South Pass Road (7).

That road happens to run about 50 yards from Clarke's front door.

## Mineral Resource Land

In the 1990s, Whatcom County classified the five parcels — owned by Jerry and Lurlene Hammer — as a mineral resource land (8). At the time, according to Clarke, there were already people residing in the area. His home, for example, was built in the 1970s.

“A case could be made that we should have known that this area was designated as resource land,” Clarke said. “Nobody’s arguing the fact that there are useful minerals up there.”

At the same time, HOME believes that the character of the area has changed during the past three decades.

“We would push the county to revise their mineral resource land overlay here,” Clarke said.

In a letter sent to county officials, HOME wrote that the area should not have been designated for mineral extraction when it sits on top of three critical discharge areas listed as highly vulnerable — Saar Creek, South Saar Creek and the Breckenridge Aquifer Discharge (9).

“Just washing the dirt and contaminants off the trucks before leaving the surface mine area will contaminate groundwater,” HOME wrote. “Best practices as outlined by the state and Whatcom County are not sufficient to protect [...] the surface ground water.”

HOME also cited The Critical Aquifer Recharge document, which states that the local government may use its influence to encourage potentially contaminating facilities to locate in areas where the aquifer would be less susceptible to contamination (9) (20).

## Assessing Potential Risks

Property owner Jerry Hammer, who will lease the property to Cowden, doesn’t share HOME’s concerns.

“We’ve gone through all the studies and paraphernalia to make sure we’re covering all the bases for the rock quarry,” he told *Whatcom Watch*, referring to environmental assessments that Cowden commissioned and submitted to the county. “It’s the ideal spot for a rock quarry. They don’t get much better.”

However, he said he “[wants] to be cooperative and do the best [they] can.”

In December 2022, Northwest Ecological Services (NES) submitted a report where it identified seven wetlands near the property and five within the property, and found all of the streams within the site boundaries to be non-fish bearing. In their opinion, the mine shouldn’t directly impact the wetlands (10).

To comply with the Whatcom County Critical Areas Ordinance and preserve the natural functions of the area, NES recommended including measures to mitigate impacts on site, such as wetland buffer restoration and stream buffer enhancement, and to create ponds, wetlands and buffers to enhance the habitat outside of the site’s boundaries (10).

In April 2022, Element Solutions completed a geologic hazard review of the site. In their opinion, the project generally meets Whatcom County code requirements (11).

“The existing steep slope hazards located within or adjacent to the site do not pose an unacceptable level of risk to the site or surrounding areas, nor do they prohibit the proposed use of the site as a zoned and permitted rock quarry ... either as planned or with adjustments to accommodate adverse conditions,” the review says (11).

During the same year, Canyon Environmental Group LLC conducted an evaluation of



the hydrogeological conditions of the site. Based on their findings, the mine is not likely to significantly impact the Saar Creek Critical Aquifer Recharge Area (CARA) or the South Saar Creek Critical Aquifer Recharge Area, “as long as stormwater is properly managed and operational best management practices are implemented.” (12)

## **Wetlands Within and Adjacent to Property**

The company stated that the designation of the Saar Creek CARA and South Saar Creek CARA should be listed as Low Susceptibility rather than Moderate Susceptibility. Additionally, their findings suggest that the wetlands — within and adjacent to the property — would not be directly impacted, nor would their hydrology (12).

Asbestos, a toxic mineral fiber, was not detected in the samples (12).

According to the Center for Disease Control (CDC), asbestos can be spread through rock crushing and blasting (13).

In 2021, the Washington State Department of Health (DOH) published a study that assessed the rate of lung and bronchial cancer, mesothelioma and asbestosis among people living in the Sumas Mountain and Swift Creek area — which are near the mine’s site. According to their findings, there is no increased risk of developing these illnesses. However, these results are not final due to the study’s several important limitations, and DOH recommends people to limit their exposure to the Swift Creek and Sumas River areas (14). Therefore, concerns remain.

“The state needs to get in there, and they need to do an objective evaluation of whether there might be asbestos or not,” said Rick Eggerth, the chair of the Sierra Club’s Mount Baker Group. “Because if, hypothetically, asbestos was found, I think that pretty much stops [the project].”

## **Legal Arguments**

On April 20, 2023, Bricklin & Newman — the law firm representing HOME — sent a letter to the Whatcom County Planning & Development Services, arguing that the county should deny Cowden’s application for conditional use as it does not meet the qualifications under the county’s development regulations (15).

The firm listed a series of reasons why the proposal should go through a determination of significance under the State Environmental Policy Act (SEPA). According to Law Insider, an agency issues a determination of significance when it finds that a proposal is likely to have a negative impact on the environment, requiring an environmental impact statement (16).

Although Whatcom County’s Comprehensive Plan does encourage mining activity, it is only within the mineral resource lands overlay district, according to the letter. The additional two parcels are not included in the county’s mineral resource lands area.

Surface mining operations outside of a mineral resource lands overlay district are allowed only if the mine is not subject to Washington State’s Surface Mining Act — which it is. Thus, the law firm wrote, the project does not qualify for a conditional use permit.

Surface mining is also allowed only if there are buffers in place to ensure that noise, dust and other impacts to the neighbors meet standards.

“I have double lung cancer,” Robin Cline, a neighbor, said during the meeting on March

23. “If there are particles in the air that I’m breathing, this is going to complicate things for my lungs and maybe for how much time I have to go. I don’t want to be any more miserable than I have to.”

According to Cowden’s application, mining operations — expected to occur six days a week, from 7 a.m. to 7 p.m., for 30 years — will include blasting, rock sorting and crushing, with approximately 25 daily truck trips in and out of the site to carry rocks.

Cowden also did not demonstrate how the project would avoid severe impacts on neighboring residents and natural resources. In his application, Cowden did admit the possibility of excess noise and traffic resulting from mining operations, but assures that “since the proposed mine lies well within the underlying property, will maintain appropriate buffers and is located in an area of sparse rural development, disturbance will be minimal. The site is also setback significantly from the county road” (3).

## **Heavy Truck Traffic**

However, he does not explain how the access road parcels would be set back, doesn’t provide evidence that the mine would come with the appropriate public facilities like highways and streets, nor explains the impacts of heavy truck traffic.

With this intense traffic, HOME fears that South Pass Road will collapse.

The road is also part of the Ski to Sky route, a competition that attracts many tourists and athletes every year. To HOME, it’s not a matter of if, but when, bicyclists training for the race will be killed by a truck.

“There’s going to be carnage on the roads up there,” said Mark Hall, another neighbor, during a meeting on April 13 (17). “I’ve had several accidents in front of where I live, we all know those roads are dangerous.”

Another goal included in the county’s comprehensive plan that Bricklin & Newman mentioned is balancing the conservation of productive mineral lands with the quality of life of the residents who live in the county, something not shown in the application.

The applicant failed to prove that the project would be consistent with the comprehensive plan’s rural and land use policies, which require businesses to ensure that operations do not negatively impact or change the adjacent residential, agricultural and forestland, and to protect the cultural and historic character of the rural area and the community. The character of the general vicinity, the firm wrote, is residential.

Nor did Cowden prove the project would bring economic benefit to the community by creating new jobs, or that the truck traffic won’t damage roads. There will be approximately three employees on site during mining operations, according to the application.

“Three to five jobs are hardly a significant asset to the economic welfare of the community,” the firm wrote.

Cowden also stated there were no archaeological finds on the property, though no archaeological survey has been conducted.

## **An Uncertain Future**

If the project does go through, Clarke said HOME will look at ways to mitigate its effects,

such as requiring a different access to the site, and limiting the scale of the project.

“We’re not wealthy people,” Clarke said. “We have put our lives and our savings and everything into these properties to create our lives out here for our families. Having to walk away from that would be devastating financially and emotionally.” ■■

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