

## Homeowners Opposed to Mine Expansion

To: Mark Personius, Director  
Planning & Development Services  
Whatcom County

April 11, 2024

From: HOMEWhatcom: Andrew Clark, Mark Porter, Elli Harron, Erica Simons & Kathleen Greenbaum

Re: Formal Request for a Stop Work Order for Parcels 400517049475, 400517118447, 400518479443, 400518488379, 400518466281, 400517200503 and 400517220470

HOMEWhatcom is writing to **formally request that you issue a Stop Work Order, or other legal mechanism, to protect our community from exposure to Chrysotile asbestos resulting from blasting, rock crushing and transporting of asbestos contaminated Serpentine** at the location of the current Ranch Mine Quarry Conditional Use Permit (CUP) 2023-00001/SEP 2023-00005. This is our second formal request for asbestos testing and our first request for a Stop Work Order. We have clearly stated that there are two distinct issues, one being the CUP for the quarry and the second being the public safety issue of Chrysotile exposure. **This request is specific to the public safety issue, however the two issues are intertwined.**

### HISTORY

The Ranch Quarry Pre Application was submitted to PDS on 9/30/2020 and included the 9/9/2020 Element Solutions Geological Preliminary Review & Commentary. HOME gained access to this and other documents through a Public Records Request initiated on 6/20/2023, though some documents have still not been provided. Page 6 states *"Some ultramafic rock units in northwest Washington are also known to contain local occurrences of natural crystalline asbestos, typically concentrated within such altered or serpentinized zones. If present, the associated rock-derived dust from excavating or processing of ultramafic rocks (particularly serpentine varieties) may be deemed hazardous due to asbestos content."* The 6/2/1997 DNR report by Dragovich, et al., was referenced in this Element Solutions report, but page 19 was not directly addressed. That page states: *"Most samples include wholly to partially serpentinized primary enstatite (3-10 mm long) and olivine (0.15-0.20 mm diameter) grains; serpentinite minerals include antigorite, serpophite, and chrysotile (this study; Moen, 1962)"; 1962 Moen Bulletin 57, DNR Mines & Geology[.]"* There is also a 1969 DNR report stating the non-viability of asbestos mining on the west side of Sumas Mountain because the asbestos is spread throughout the Serpentine in one quarter inch or less veins. **These are reliable reports documenting the presence of chrysotile on the Ranch Quarry site and the west side of Sumas Mountain.**

PDS Review of the Pre Application. The County geologist, Andy Wisner, wrote a review of the pre application submittal. His 11/18/2020 comment on asbestos was included in the 11/22/2020 Findings: *"The 'Preliminary Geological Review and Commentary' prepared by Element Solutions describes the potential for ultramafite rock units mapped in the area to contain asbestos-bearing rock. If encountered, excavation and processing of these rock types could present a hazardous condition for mine employees and neighboring residents. In the absence of a rock exploration program of sufficient density to conclusively rule out the presence of asbestos-bearing rocks, the applicant shall devise an asbestos-testing and mitigation program to be included in the projects' 'Site Management Plan. The program shall [be] prepared by a qualified professional and shall be reviewed and preliminarily approved by the WDNR Surface Mining Program and the Washington State Clean Air Agency prior to submittal to Whatcom County Planning"* (Emphasis added). However, per SEPA, [RCW 43.21C](#), listed in the Findings as one of the applicable codes, the appropriate time to require testing of asbestos was before proceeding with the pre application and before issuing the 11/22/2020 Findings. Per [WAC 197-11-055](#), *"The SEPA process shall be integrated with agency activities at the earliest possible time to ensure that planning and decisions reflect environmental values, to avoid delays later in the process, and to seek to resolve potential problems."* In addition, we call your attention to WAC 197-11-794, which defines the term "significant" as used in SEPA. WAC 197-11-794 states, in part: "The severity of an impact

## Homeowners Opposed to Mine Expansion

should be weighed along with the likelihood of its occurrence. An impact may be significant if its chance of occurrence is not great, but the resulting environmental impact would be severe if it occurred.” Exposing workers and local residents to deadly asbestos is a good example of this kind of significant impact.

Per WCC 22.05.014(2) Obligation of property owner, occupant, and applicant. "It is the responsibility of an applicant to provide accurate and complete information and plans to comply with the requirements of the cited titles and all applicable laws and regulations. The county is not responsible for the accuracy of information or plans provided to the county for review or approval." The 11/22/2020 Findings letter provided 28 pages of references and instructions to fulfill this code requirement. **Multiple citations listed as Applicable Codes in the Findings letter are not met in the Pre Application or the Application.**

Applicable Codes:

- WCC Title 12 - Roads and Bridges
- WCC Title 15 - Buildings and Construction (Fire) • WCC Title 16 - Environment (Critical Areas)
- WCC Title 20 - Zoning
- WCC Title 22 - Land Use and Development Procedures
- WCC Title 24 - Health Code
- Whatcom County Comprehensive Plan
- Chapter 43.21C RCW State Environmental Policy Act (SEPA)
- Chapter 78-44 WAC - Surface Mining
- Chapter 332-18 WAC - Surface Mine Reclamation

PDS Review of the Ranch Quarry CUP Application. Per [WCC 22.05.050\(1\)](#), all materials required by the Administrative Manual and all items identified in the pre application notice of site-specific submittal requirements are required in the application for the CUP. The application was submitted on 2/3/2023. Listed as required in the 11/22/2020 Pre Application Findings, but not included were: a Preliminary Parking Plan or Landscape Plan, asbestos testing results approved by the WDNR Surface Mining Program and the Washington State Clean Air Agency, a preliminary stormwater plan, Site Management Plan or operations plan and an adequate traffic plan. This list is not all inclusive. The applicant did check the Stormwater Proposal on the Intake Checklist. County PDS did not check items verifying their receipt. **Asbestos testing by an independent, impartial company to conduct rock exploration per scientific methodology, with sufficient density to conclusively identify presence or non-presence of asbestos-bearing rocks is needed and required.**

The application by Brent Cowden (Lafarge) and the Findings review did not accurately define the **7 parcels** involved in this proposed mining operation, per [WCC 14.06.020](#). Only the top 5 parcels, which have the Mineral Resource overlay, were included, the bottom two parcels (Parcel Nos. 400517200503 and 400517220470, not included in the application but proposed to contain the access to the pit), which DO NOT have the mineral resource overlay, were omitted. Due to HOME comments, the CUP was noticed a second time, adding the omitted two parcels numbers and increasing the notification requirements to the appropriate 2000 feet. However, only the parcels numbers were added, none of the proposal content; the SEPA Checklist, the Narrative or the four reports, addressed the bottom two parcels. **The Completeness Determination was erroneously granted by Sam McDaniels of PDS on 2/17/2023.**

Notice of Additional Requirements (NOAR). On 5/22/2023 PDS issued the NOAR, 8 pages of additional requirements needed for the County to make a formal determination of either Significance (DS), Non-Significance (DNS) or Mitigated Non-Significance (MDNS). These NOAR findings, based on the review of the submitted application, provided additional information and resources for the applicant to eventually achieve an accurate, complete and comprehensive application. It also reiterated information from the 28 pages of 11/22/2020 Findings, including the Andy Wisner comment regarding asbestos [provided above in the [PDS Review of the Pre Application](#)]. However, WCC allows for four 160 day extensions to the NOAR due date, which was 11/18/2023 and can be extended into May of 2025. The first extension was granted on 11/17/2023.

## Homeowners Opposed to Mine Expansion

Relevant State and County Code. There are numerous code citations that are applicable to the asbestos issues and the broader issue of the Ranch Quarry CUP. Many are listed in the Findings “Applicable Codes”. We have not addressed all applicable codes. The 4/20/2023 letter from the HOMEWhatcom attorneys, Bricklin & Newman, LLP, to PDS, lists some applicable code citations.

**RCW 78.44.031(8)** *"Operations" means all mine-related activities, exclusive of reclamation, that include, but are not limited to activities that affect noise generation, air quality, surface and ground water quality, quantity, and flow, glare, pollution, traffic safety, ground vibrations, and/or significant or substantial impacts commonly regulated under provisions of land use or other permits of local government and local ordinances, or other state laws.*

*Operations specifically include:*

(a) *The mining or extraction of rock, stone, gravel, sand, earth, and other minerals;*

(b) *Blasting, equipment maintenance, sorting, crushing, and loading;*

(c) *On-site mineral processing including asphalt or concrete batching, concrete recycling, and other aggregate recycling;*

(d) *Transporting minerals to and from the mine, on-site road maintenance, road maintenance for roads used extensively for surface mining activities, traffic safety, and traffic control.*

**This specifically determines the inclusion of the bottom two parcels into the CUP and transporting of uncovered rock material results in a broader area of potential asbestos exposure.**

**WAC 365-190-120** Geologically hazardous areas addresses these hazards and states counties **should** identify such hazards.

The **SEPA Handbook**, page 4, provides a general overview of applicable citations.

**WAC 197-11-660, Substantive authority and mitigation**, specifically applies to this CUP.

RCW 70.105D, the Model Toxics Control Act, provides code to address toxics, Asbestos is a level 3 toxin. Whatcom County has experience with these codes through the Swift Creek landslide abatement effort which is estimated to cost \$50M over a 10 year period. The Whatcom County Superior Court issued a Consent Decree dated 12/6/2019 which addresses the MTCA clean up and prospective mitigation. Specific asbestos levels are provided for several testing methods conducted by various governmental entities. Chrysotile and trace amounts of amphibole asbestos (refers to the other 5 types of asbestos) and hazardous levels of various minerals were found.

DOE, Chemicals of special Concern in Washington, by Ellen Atkinson, provides a description of various forms of asbestos. Included in the description of asbestos, the synonyms include the 6 forms of asbestos, including Chrysotile. Also included is Serpentine. “The dangers of asbestos exposure is of special concern for children. If they are exposed early in their lives, they will have plenty of time to develop asbestos induced cancers. [citation 138- EPA 1980 Asbestos. Toxics Information Series].

The HOME 11/8/2023 slide presentation, which we attempted to provide at the 11/8/2023 county Council and which was submitted to the Council, the County Executive and to PDS, also contains some applicable code citations.

#### Due Diligence and Exhausting Administrative Remediation

The Swift Creek asbestos reclamation effort and the two DNR reports document Chrysotile presence on the west side of Sumas mountain and specifically at the Hammer parcels. This issue has been raised with PDS numerous times before, a recap is provided in the attached table labelled Asbestos.

- **Code Violation process**, suggested by Steve Roberge in the 7/13/2023 meeting, was submitted. Numerous emails were sent to PDS and DNR in an effort to satisfactorily complete this process.

## Homeowners Opposed to Mine Expansion

- **Complaint filed with Whatcom County Health.** Relating to the 7/13/2023 meeting and 7/17/2023 emails between K. Greenbaum and S. Roberge. An email raising the issue was sent to the County Department of Health in July with Whatcom County Health Department. Help and direction was provided by Jennifer Hayden to file the complaint, which was responded to by Bill Angel. After some pursuit, a site visit did occur on 2/5/2024. He explained that a sample would need to be taken from the rock purchased from J. Hammer, which we would need to crush, grind and pay to have it tested. This was only for the rock purchased and placed on our property. I was told nothing could really be done regarding the unpermitted and untested rock which came from the CUP - J. Hammer parcels.
- **Complaint filed with NWCAA.** Around 10/3/2023 a complaint was submitted through the Northwest Clean Air Agency online portal. Later we learned the complaint was never received/registered through the online messaging system, (and not in sent emails). On 11/29/2023, a Public Record Request revealed the 9/26/2023 email from Scott Pratschner of NWCAA, to County PDS stating he had not yet been notified of the Ranch Quarry CUP, that the site “is a possible source of naturally occurring asbestos (NOA) and that no rock crushing would be permitted if NOA is present.” In dealing with that correspondence, we learned the original complaint was not registered.

On 2/7/2024 we met with the County Executive, officially requesting asbestos testing. We believe we have exhausted all administrative remedies thus far. We have not received an answer on whether or not the County Executive would request that PDS issue a Stop Work Order.

### CONCLUSION

**To be clear, we are not claiming that asbestos exposure has been and is happening, although we believe based on documented evidence...it is. We are claiming that Whatcom County not requiring the requisite testing, makes the likely exposure unclear and unknown. The history of PDS not requiring testing during the pre-application process, choosing to defer to a lengthy CUP process and not confronting the current asbestos contamination issue, ignoring SEPA and other state code requiring the county to act proactively to protect people and the environment, enables the likely public health hazard of asbestos exposure. Why not test?**

**Also, we are formally requesting that WCC 22.15 code Compliance Procedures, currently reserved, be completed during the 2025 Comprehensive Plan Update.**

Please respond to let us know you are in receipt of our formal request, and, to let us know when you will provide a response regarding PDS action. Based on previous experience, we are letting you know we do expect a response. Also, please respond to the emails to which you, or staff, have not responded, such as the commitments made by Steve Roberge at the 7/13/23 meeting and the code violation PDS determination that the submitted violation was moot, with relevant citations. Thank you for your time.