

Kittitas County Community Development Services
411 N Ruby Street, Suite 2
Ellensburg, WA 98926

To whom it may concern,

I am writing this letter in response to the application for Large Plat submitted by Thorp Landing (LP 23-00001) and the environmental impacts this proposal will have on the current land, adjacent lands, and the community.

In the SEPA checklist submitted, under section three (water), subsection c (water runoff) question 3, the applicant indicated that there are no known drainage issues that could be affected by subdividing parcel 443233 into 10 five acre parcels. This is incorrect as there are numerous natural springs and historic wooden and cement tile drains across many sections of the proposed large plat, including a recorded irrigation easement. See exhibit A for details on locations for drains and easements. Under section three (water) subsection (water runoff) item d, regarding measures to reduce or control impacts to surface, ground, or water patterns in the proposed plat, the applicant states no measures are needed. If no measures are being implemented to reduce impacts, then historic drains and springs will potentially be harmed or destroyed, altering the intended flow of these waters. In addition, impacts to these drainages will affect land owners who have the right to said waters not to mention easements.

The landowner has already exhibited lack of responsibility in protecting these waterways. On May 16 2022, the landowner attempted to drain irrigation water from said lands. While doing this, the landowner dug in the area of perennial spring C (exhibit A) severing the drain pipe and creating siltation issues downstream and draining surface water and groundwater into a ditch on the adjacent landowner (see pictures 3 & 4. On November 27, 2022, the landowner yet again showed lack of responsibility in protecting waterways when he got his dozer stuck while attempting to dig in the area of perennial spring B (see exhibit A) See attached image (Image 1). Through these acts, it is apparent that the landowner has no regard to implementing measures that protect these springs, drainages, and water rights.

Exhibit B and C outlines the historical significance and legal rights to said waters. On June 23, 1919, Ruth Mason was awarded an easement corresponding to perennial spring C for water associated with parcel 735836 as shown in exhibit A in civil cause no. 5696, recorded in docket 23, page 618, of the right to go upon the lands of John A. Yearwood (see exhibit B). Exhibit B also outlines the right and easement to John Newman, by deed dated November 1, 1913, recorded in book 44 of deeds, page 365, with the right to use all the drain water flowing from and through four blind ditches and flowing into one main blind ditch, all on the northwest quarter of the southeast quarter of said section 11, all of which water passes from said land upon and to the northeast quarter of the southeast quarter of said section 11 at a point at about 150 feet south of the center of the division line between the northwest quarter of the southeast quarter and the northeast quarter of the southeast quarter of the said section. See exhibit C for the official deed for water associated with perennial spring B outlined on exhibit A.

In the wetlands and stream critical areas report, performed on May 10, 2022 and accepted as a viable report by Kittitas County, it failed to meet the standards outlined in critical areas studies and failed to

highlight perennial springs throughout the properties that have rights dating back to as early as 1913. The study states “it is concluded that the sole reason wetland vegetation is present within the study area is **probably** due to ongoing irrigation practices.” The term “probably” indicates that the conclusion is “likely” and it appears that adequate research was not performed by the firm, “GG Environmental”, and the site analysis was sub-par. In the pictures submitted in the critical areas study, pictures 1, 4, 5, and 6, show adjacent lands irrigation infrastructure which does not show the true critical areas, and rather defers that the issue lies in that the wetlands are created through irrigation practices. These structures are all located down gradient from the critical areas and perennial spring locations. It is also stated that “The development of hydric soil indicators can be inhibited where soils are well drained, and water moves quickly through the soil profile. The lack of hydrology source during the sample location demonstrates that water infiltrates quickly into the upper 12-16 inches of the soil profile.” Where was this sample location taken at? If irrigation water is the true source creating the wetlands, then why on March 8, 2023 (see picture 2, 5 and 6) attached) in the area of perennial springs B and C, water is running on the surface and through drain pipes indicating these wetlands are indeed created by perennial springs (running year round) and not irrigation water. It is impossible for these areas to have been created by irrigation water and still have water present when the irrigation canal has been shut off since October 15, 2022. Obviously, a firm with a high level of expertise would have noticed with basic site analysis and research that these areas were not created by irrigation water, but by perennial springs. Since a wetland was not properly identified in the original study on May 10, 2022, an adequate and or proper Eastern Washington Wetlands rating was not given thus not identifying proper setbacks and buffer zones associated with the wetland areas. In addition, according to the Kittitas County GIS Map, the area of perennial spring C is listed within a wetlands area, but this study indicates that it is not a wetlands.

Exhibit D indicates the locations of documented springs with the Department of Ecology and lands that have the rights to such water. Spring 1971#2 and 2046 lie within the Perennial Spring C as outlined in exhibit A. Springs 4817#1 and 4817#2 lie within Perennial Spring B. In addition, in exhibit A, perennial Spring A provided drinking water to landowners in the main part of the Thorp Community and was associated with parcel 025933 until transfer of rights. These springs and the rights to this water correspond to the shaded areas in exhibit D. As you can tell, and based off of DOE documentation, the current land owners have no right to use any water associated with these perennial springs, nor do any future owners have the right to use these waters for irrigation, stock, or to divert or obstruct waterways for prescribed/documented easements as outlined in RCW 90.03.410.

RCW 90.03.410 Crimes against water code—Interference with works—Wrongful use of water—Property destruction—Penalty.

(1) Any person or persons who shall willfully interfere with, or injure or destroy any dam, dike, headgate, weir, canal or reservoir, flume, or other structure or appliance for the diversion, carriage, storage, apportionment, or measurement of water for irrigation, reclamation, power, or other beneficial uses, or who shall willfully use or conduct water into or through his or her ditch, which has been lawfully denied him or her by the water master or other competent authority, or shall willfully injure or destroy any telegraph, telephone, or electric transmission line, or any other property owned, occupied, or controlled by any person, association, or corporation, or by the United States and used in connection

with said beneficial use of water, shall be guilty of a misdemeanor or, if there is actual physical injury to or destruction of any real or personal property, of property destruction and shall incur the penalties set forth in *RCW [9.61.070](#).

(2) Any person or persons who shall willfully or unlawfully take or use water, or conduct the same into his or her ditch or to his or her land, or land occupied by him or her, and for such purpose shall cut, dig, break down, or open any headgate, bank, embankment, canal or reservoir, flume, or conduit, or interfere with, injure, or destroy any weir, measuring box, or other appliance for the apportionment and measurement of water, or unlawfully take or cause to run or pour out of such structure or appliance any water, shall be guilty of a misdemeanor or, if there is actual physical injury to or destruction of any real or personal property, of property destruction and shall incur the penalties set forth in *RCW [9.61.070](#).

(3) The use of water through such structure or structures, appliance or appliances hereinbefore named after its or there having been interfered with, injured or destroyed, shall be prima facie evidence of the guilt of the person using it.

In addition, drainages and easements are clearly identified on the preliminary plat map updated 1-25-23 that was submitted by Thorp Landing. The drainage which corresponds with perennial spring B on exhibit A, and the Fudacz irrigation easement, also outlined in exhibit A, cannot be altered as outlined in RCW 64.04.175. In addition, proper setbacks must be enforced, and current lots do not line up to provide setbacks nor do they provide adequate protection for such easements.

RCW 64.04.175 Easements established by dedication—Extinguishing or altering. Easements established by a dedication are property rights that cannot be extinguished or altered without the approval of the easement owner or owners, unless the plat or other document creating the dedicated easement provides for an alternative method or methods to extinguish or alter the easement. [1991 c 132 § 1.]

Westside Irrigation Company also submitted written comments regarding transfer of shares and that bylaws indicate that shares and water will not be provided to lots without a proper plan approved for the delivery of water and disbursement of tail waters without affecting downgradient landowners. As outlined in WSIC bylaws and included in the comments dated February 28, 2023.

“Any stakeholder, or other person or organization on behalf of a stockholder, who undertakes any subdivision or configuration of parcels within the WSIC service area must construct an adequate water transmission system, including appropriate easements or right-of-way, therefor, to allow irrigation water delivery to each newly created or reconfigured lot. In connection therewith, the development proponent must provide WSIC and the County with adequate drawings or surveys, showing elevations, the location(s) of anticipated new parcels and the routing of the proposed irrigation delivery across WSIC lands.

Based on RCW 58.17.310, without these approved plans for an irrigation transmission system, the local jurisdiction shall not approve any such plat or subdivision without these plans submitted. At this point, the application is missing adequate plans to address irrigation water transmission.

(1) Whenever a city, town, or county receives an application for the approval of a plat of a subdivision that lies in whole or in part in an irrigation district organized pursuant to chapter [87.03](#) RCW, the responsible administrator shall give written notice of the application, including a legal description of the short subdivision and a location map, to the irrigation district. The irrigation district shall, after

receiving the notice, submit to the responsible administrator who furnished the notice a statement with any information or conditions for approval that the irrigation district deems to be necessary regarding the proposed division's effect upon the structural integrity, including lateral support, of the irrigation district facilities, other risk exposures, and the safety of the public and irrigation district.

(2) In addition to any other requirements imposed by the provisions of this chapter, the legislative authority of any city, town, or county shall not approve a short plat or final plat, as defined in RCW [58.17.020](#), for any subdivision, short subdivision, lot, tract, parcel, or site which lies in whole or in part in an irrigation district organized pursuant to chapter [87.03](#) RCW unless there has been provided an irrigation water right-of-way for each parcel of land in such district. In addition, if the subdivision, short subdivision, lot, tract, parcel, or site lies within land within the district classified as irrigable, completed irrigation water distribution facilities for such land may be required by the irrigation district by resolution, bylaw, or rule of general applicability as a condition for approval of the short plat or final plat by the legislative authority of the city, town, or county. Rights-of-way shall be evidenced by the respective plats submitted for final approval to the appropriate legislative authority.

In addition, West Side Irrigation Company outlines in their bylaws the following:

Newly proposed irrigation facilities must not impair the rights of users of downgradient water owners or users, who shall be consulted in connection with the system design.

Currently, downgradient landowners have no obligation nor do the property owners of parcel 443233 have the right to drain tail water into the ditch or property of parcels 725836 and 735836.

In addition, the Fire Marshal has indicated that a fire suppression/hydrant system will be required for this large plat. Again, waters associated with the perennial springs on this property will not and cannot be used to provide water flow for fire suppression systems, as this landowner does not have rights to use or obstruct this water.

In conclusion, it is apparent that this land has numerous water related issues associated and these issues have not been properly addressed and plans have not been provided on how mitigation will occur to protect landowner water rights, irrigation easements, drains, prescribed easements, and critical areas within the land.

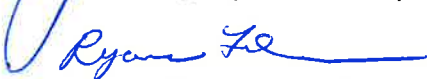
Thank you,



David & Lyla Fudacz, 9741 N Thorp Highway, Thorp, WA 98946



Jarred Fudacz, 9743 N Thorp Highway, Thorp, WA 98946



Ryan Fudacz, 530 Goodwin Road, Thorp, WA 98946



Photo 1: November 27, 2022 – Stuck in the area of perennial spring B drainage.



Photo 2: March 8, 2023 - Area in perennial spring B drainage sitting with surface water in the area that was disturbed in November 2022.



Photo 3: May 16, 2022 – Siltation issues occur downstream after digging in perennial spring C area and diverting groundwater to surface water.



Photo 4: May 18, 2022 Diversion of surface water into ditch on parcel 735836 after disturbing perennial spring C drainage as outline in exhibit A.

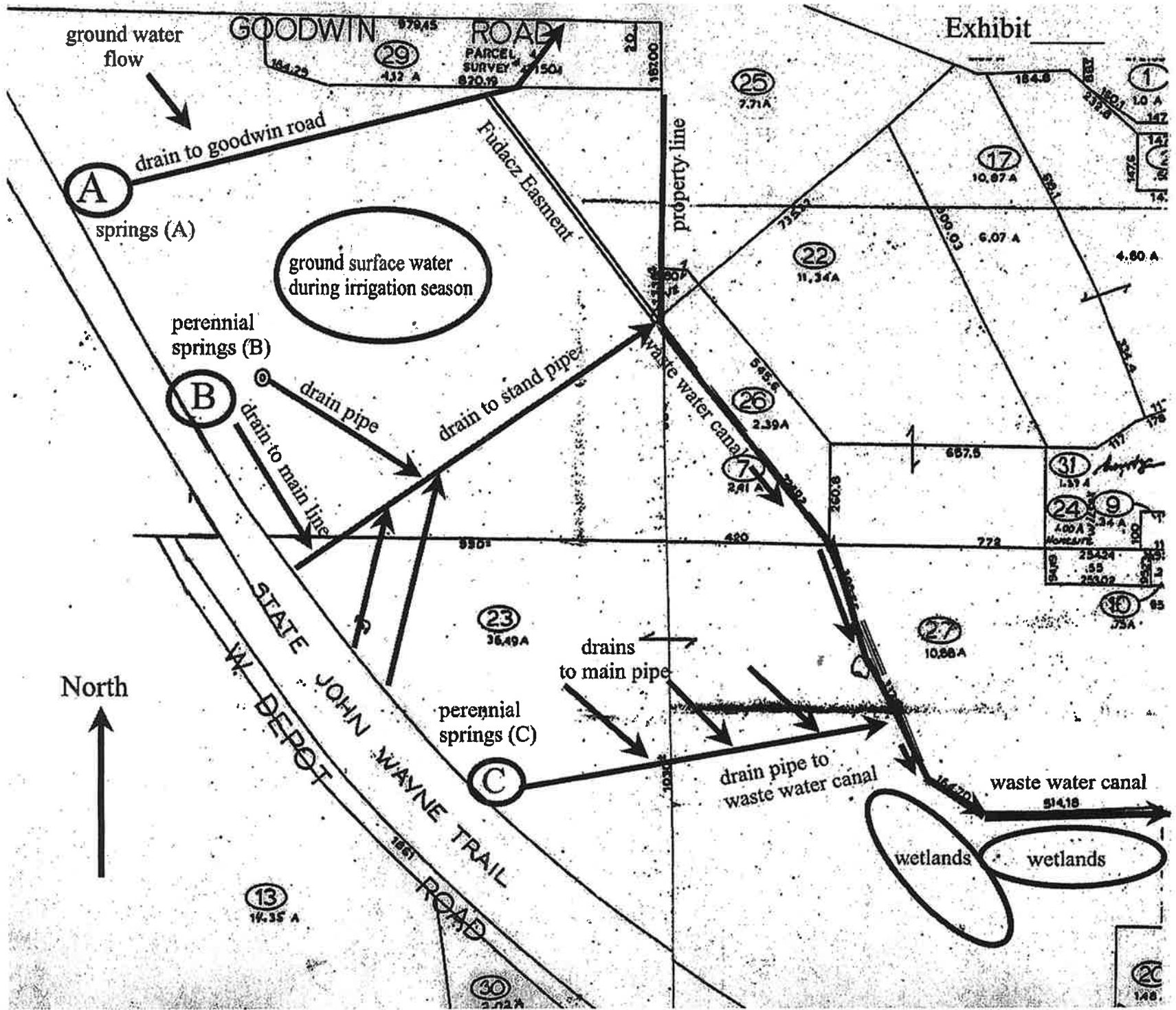


March 8, 2023

Photo 5 : Open ditch running water on surface ditch from perennial spring C area.



Photo 6 : open ditch running on March 8, 2023 in the area of perennial spring C drainage



1. AN EASEMENT AWARDED TO RUTH MASON IN CIVIL CAUSE NO. 5696, BY DECREE ENTERED JUNE 23, 1919; AND RECORDED IN DOCKET 23, PAGE 618, OF THE RIGHT TO GO UPON THE LANDS OF JOHN A. YEARWOOD, BEING THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 11, AND OPEN UP AND MAINTAIN ANY SURFACE DITCHES OR CHANNELS, FOR THE PURPOSE OF RECEIVING FROM CERTAIN SPRINGS ON THE LANDS OF SAID YEARWOOD, NOT TO EXCEED TEN INCHES WATER MINERS MEASURE, UNDER FOUR INCH PRESSURE. PREFERENCE TO THE RECORD OF SAID DECREE IS HEREBY MADE FOR FURTHER PARTICULARS.

2. AN EASEMENT GRANTED TO JOHN NEWMAN, BY DEED DATED NOVEMBER 1, 1913, RECORDED IN BOOK 44 OF DEEDS, PAGE 365, WITH THE RIGHT TO THE USE OF ALL THE DRAIN WATER FLOWING FROM AND THROUGH FOUR BLIND DITCHES AND FLOWING INTO ONE MAIN BLIND DITCH, ALL ON THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 11, ALL OF WHICH WATER PASSES FROM SAID LAND UPON AND TO THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 11 AT A POINT AT ABOUT 150 FEET SOUTH OF THE CENTER OF THE DIVISION LINE BETWEEN THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER AND THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION. REFERENCE TO THE RECORD OF SAID INSTRUMENT IS HEREBY MADE FOR FURTHER PARTICULARS.

3. AN EASEMENT AFFECTING THE PORTION OF SAID PREMISES AND FOR THE PURPOSES STATED HEREIN, AND INCIDENTAL PURPOSES, DELINEATED ON THE FACE OF, OR DEDICATED BY, SURVEY.

| | |
|---------|---|
| FOR | : IRRIGATION DITCH |
| AFFECTS | : A PORTION OF SAID PREMISES, ALL AS SHOWS ON SAID SURVEY |
| SURVEY | : VOLUME 12 PAGES 2 AND 3. |

END OF EXHIBIT "1"

M.B.
M.H.

FROM
 JOHN YEARWOOD, ET UX
 TO
 JOHN NEWMAN

Filed for record in the Auditor's office of Kittitas County,
 Wash., at the request of J. R. Newman
 on the 19th day of Dec. 19 30
 at 25min. past 3 P. M.
 Beaumont Apple
 Auditor of Kittitas County, Wash.
 By Margaret Burns Deputy

This Indenture, Made the 1st day of November A. D. one thousand nine hundred thirteen
 by and between J. A. Yearwood and Ettymay Yearwood his wife
 of Thorp, County of Kittitas, in the State of Washington, grantors, parties of the
 first part, and John Newman
 of the County of Kittitas, in the State of Washington, grantee, party of the second part:
 WITNESSETH, That the said parties of the first part, for and in consideration of the sum of

one..... Dollars,
 to him paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents,
 GRANT, BARGAIN AND SELL, CONVEY AND CONFIRM, unto the said parties of the second part, his heirs and
 assigns, the following described lots, tracts or parcels of land lying and situate in the County of Kittitas and
 State of Washington, to-wit: All of the drain water flowing from and through four blind ditches
 and flowing into one main blind ditch all on the Northwest quarter of the South East
 quarter of Section eleven Township eighteen north, Range seventeen E.W.M. all of which
 water passes from said land upon and to the North east quarter of the Southeast quarter
 of said section II in Township 18 North, Range 17 E.W.M. at a point about 150 feet south
 of the center of the division line between the Northwest quarter of the southeast quarter
 and the Northeast quarter of the Southeast quarter of said section township and range.
 The parties of the first part has the right to shut down the gates in said blind
 ditches at any time to irrigate the Northwest quarter of the southeast quarter of said
 section township and range.

It is intended by this conveyance to convey to second parties all the water flowing
 through said main blind ditch and party of the first part does not guarantee the per-
 manency of any certain amount of water.

TO HAVE AND TO HOLD, the premises aforesaid, with all and singular the rights, appurtenances and immunities there-
 unto belonging, or in anywise appertaining, unto the said party of the second part, and unto his heirs and
 assigns, forever; the said J. A. and Ettymay Yearwood hereby covenanting that they are lawfully
 seized of an indefeasible estate in fee, in the premises herein conveyed; that they have good right to convey the same;
 that the said premises are free and clear of any incumbrances done or suffered by them or those under whom they
 claim and that they will WARRANT AND DEFEND the title to the said premises unto the said
 party of the second part, and unto his heirs and assigns, FOREVER, against the lawful claims and demands
 of all persons whomsoever.

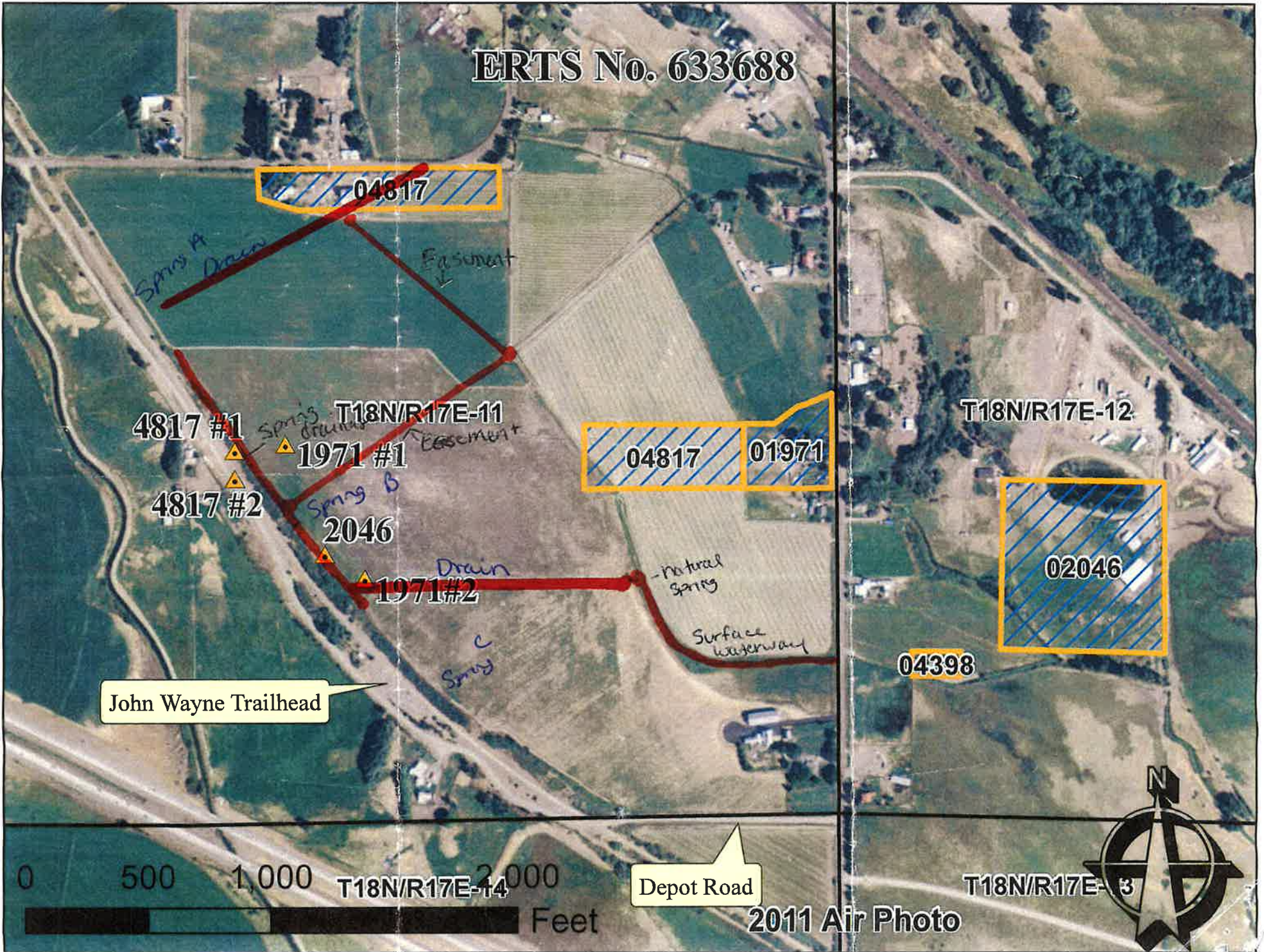
IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hand and seal
 this 1st day of November, A. D. 1913

Signed, Sealed and Delivered in Presence of
 J. A. Wilcox
 John Yearwood (Seal)
 Ettymay Yearwood (Seal)

STATE OF WASHINGTON, }
 County of Kittitas. } ss. THIS CERTIFIES, that on this 4th day of November, A. D.
 one thousand nine hundred thirteen, before me, the undersigned, Notary Public
 in and for said County and State, personally appeared the within named John Yearwood and Etta May Yearwood
 whose names are subscribed to the foregoing
 instrument as parties thereunto, personally known to me to be the individual s described in, and who executed the with-
 in DEED, and acknowledged that they executed the same freely and voluntarily, and for the uses and purposes therein
 mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate
 first above written.
 (Notary Seal) J. A. Wilcox

ERTS No. 633688



John Wayne Trailhead

Depot Road

2011 Air Photo

T18N/R17E-14

T18N/R17E-13

T18N/R17E-11

T18N/R17E-12

04817

04817

01971

02046

04398

4817 #1

1971 #1

4817 #2

2046

1971 #2

Spring C

Natural Spring

Surface Waterway

Spring A Drain

Spring B Drain

Easement

Easement

Drain