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**KITTITAS COUNTY HEARINGS EXAMINER**

Conditional Use Permit Application of:  
CASCADE FIELD AND STREAM CLUB

CU-11-00003

APPLICANT’S MEMORANDUM  
OF AUTHORITIES IN  
RESPONSE TO THE SEPA  
APPEAL AND IN SUPPORT OF  
THE ISSUANCE OF THE  
CONDITIONAL USE PERMIT

The Applicant, Cascade Field and Stream Club (hereinafter the “Club” or the “Applicant”), applied for a Conditional Use Permit to operate a shooting range.<sup>1,2</sup> The Applicant submitted a SEPA Checklist with the application.<sup>3</sup> The site is on a 182.38-acre parcel with a current zone of A-20.<sup>4</sup> Conditional uses in this zone specifically include shooting ranges (KCC 17.29.030(26)).<sup>5</sup>

<sup>1</sup> A copy of the application is attached hereto as Exhibit 1.  
<sup>2</sup> KCC 17.08.485 defines a shooting range as follows: “an area or facility designated or operated for archery (including crossbows), and/or the discharging and operation of lawfully possessed, lawful firearms, as defined in RCW Chapter 9.41...”  
<sup>3</sup> A copy of the SEPA Checklist with exhibits is attached hereto as Exhibit 2.  
<sup>4</sup> When the application was filed in 2011, the property was designated as rural land and zoned A-20 (Agriculture-20).  
<sup>5</sup> The full text of the A-20 zone is attached as Exhibit 3.

1 **I. BACKGROUND**

2 **1.1 The Applicant.**

3 The Club is a long standing outdoor sportsmen’s and women’s club now located on  
4 Hayward Road in upper Kittitas County. Originally organized in the early 1930s, the club has  
5 operated for over seventy-five years providing a venue for sportsmen and women to enjoy the  
6 shooting sports, archery, hunting and fishing opportunities, conducting hunter education and  
7 safety training and supporting environmental preservation, and conservation initiatives.  
8 Organized in 1934, the Club registered as a non-profit corporation with the Secretary of State in  
9 the State of Washington in 1947 and established exempt status with the Internal Revenue Service  
10 under the Internal Revenue Code in 1995. In the 1940s, the Club headquarters consisting of a  
11 small clubhouse relocated from Ronald to Roslyn on leased land. The Club was at a location off  
12 Bullfrog Road, just west of SR 903 on property leased from Burlington Northern Railroad and  
13 subsequently, Plum Creek Timber Company, until 1997. The Roslyn site was sold to Jeld-Wen  
14 Corporation as part of the total 7200-acre land sale for development of a destination resort by its  
15 subsidiary, Trendwest Resorts Inc. (now Suncadia). Trendwest continued the lease arrangement  
16 until June 1, 2000 when the Club was notified to vacate. In June, 2001 the Club purchased 180  
17 acres on Hayward Road with the plan of building a new facility.

18 The objectives of the Club are to promote the safe, responsible and respectful pursuit of  
19 outdoor sports, including hunting, fishing, hiking and camping; to provide a safe controlled  
20 facility for the pursuit of the shooting sports and to promote the safe, responsible and respectful  
21 use of firearms in those activities.

22 Membership before the 2001 move averaged approximately 300 members yearly,  
23 including approximately 60 officers from local, County and State law enforcement agencies who  
24 used the range for maintenance and qualification of shooting skills and special training exercises.  
25 Agencies represented were the Cle Elum Police Department, Kittitas County Sheriff’s Office,  
26 Washington State Patrol and Washington State Criminal Justice Training Commission.

1 Facilities at the old Roslyn site included a small clubhouse, rifle and pistol ranges with  
2 covered firing positions, shotgun range and archery field. These were located on approximately  
3 27.5 acres of forest land very close to the town of Roslyn. The facilities were the only ones  
4 available in Kittitas County providing a variety of target shooting opportunities in a safe  
5 environment. As such, they were made available to and used by many other organized groups  
6 from around the State. At the new location the Club hopes and plans to offer many of the same  
7 opportunities and services.

## 8 1.2 The Site

### 9 1.2.1 The Applicant's Property

10 The property consists of a 182.38-acre parcel.<sup>6</sup> The northern end of the property is  
11 relatively flat. The southern end of the property is steep.<sup>7</sup> There is one (1) wind turbine located  
12 on the property. The wind turbine lease, at page 16, Section 5.9, specifically authorizes a  
13 shooting range.<sup>8</sup> The property is accessed from Highway 97 to the north via Bettas and Hayward  
14 Roads.<sup>9</sup> Bettas and Hayward Roads were improved significantly as a result of the wind farm  
15 construction in the area. The site has a gated access off of Hayward Road. Hayward Road south  
16 of the site is not improved.<sup>10</sup> There are no structures on the property. When the wind turbine  
17 was constructed, one shooting berm was partially installed along with a gravel parking area.<sup>11</sup>

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21 <sup>6</sup> Attached hereto as Exhibit 4 is the Kittitas County parcel printout.

22 <sup>7</sup> See Exhibit 2, Attachments A and B.

23 <sup>8</sup> See Exhibit 5, which is a copy of the applicant's lease with the wind turbine company. Monetary amounts that are  
irrelevant to the application have been redacted.

24 <sup>9</sup> Attached as Exhibit 6 is a copy of the Kittitas County Department of Public Works road atlas showing roads in the  
area.

25 <sup>10</sup> *Id.*

26 <sup>11</sup> Attached as Exhibit 7 are a series of photographs of the site. See also, Exhibit 2, Attachment A.



1 from members of the public. Some of the comment raised concerns over noise occurring as a  
2 result of the use of firearms on the property. In order to address those concerns, the Applicant  
3 commissioned a noise study. The noise study examined prior noise studies done on the site,  
4 examined criticisms of that study and relied on independent testing to examine the noise. As a  
5 result of this study, the KCCDS issued a Mitigated Determination of Nonsignificance  
6 (“MDNS”).

## 7 **2.2 The Appeal**

8 Four landowners filed an appeal of the MDNS with the Kittitas County Board of County  
9 Commissioners (“BOCC”). Those individuals are Dean and Daniel Tonseth, David Holmquist,  
10 Margaret Towle and Ken Fyall.<sup>16</sup>

### 11 **2.2.1 SEPA Appeal Process**

12 The SEPA appeal process in Kittitas County is controlled by Chapter 15A.04 KCC and  
13 Chapter 15A.07 KCC. KCC 15A.04.020(1) provides as follows:

14 Appeals shall be of the governmental action together with its  
15 accompanying environmental determinations. Kittitas County shall  
16 consolidate an appeal of procedural issues made under Chapter  
17 43.21C RCW and Chapter 15.04 KCC (such as a decision to  
18 require particular mitigation measures or to deny a proposal) with a  
19 hearing or appeal on the underlying governmental action by  
20 providing for a single simultaneous hearing before one hearing  
21 body to consider the agency decision on a proposal and any  
22 environmental determinations made, with the exception of the  
23 appeal, if any, of a threshold determination of significance.

24 The code then provides as follows at KCC 15A.04.020(2):

25 Appeals of environmental determinations made or lacking under  
26 Chapter 43.21C RCW or Chapter 15.04 KCC shall be commenced  
within 10 working days to the Kittitas County board of  
commissioners, with appropriate administrative fee. Such appeals  
shall be filed pursuant to Chapter 15A.07 KCC. The agency shall  
give official notice stating the date and place for commencing an

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<sup>16</sup> Of the Appellants who live in the area, the closest of their residences is about 3,000 feet southwest of the Applicant's property.

1 appeal. If there is no time period for appealing the underlying  
2 governmental action, and a notice of action under RCW  
3 43.21C.080 is used, appeals shall be commenced within the time  
4 period specified by RCW 43.21C.080.

5 KCC 15A.07.010(3) provides as follows:

6 Upon the filing of a timely appeal, the administrator shall, in  
7 consultation with the appropriate hearing body chair pursuant to  
8 KCC 15A.01.040, set the time and place at which the matter will  
9 be considered and establish a briefing schedule for the parties. The  
10 appellant's brief shall be due 30 days prior to the hearing date.  
11 Briefing from the County and any other Respondents shall be due  
12 10 working days prior to the hearing date. There shall be no  
13 response or rebuttal briefing by any party. The officer from whom  
14 the appeal is being taken shall forthwith transmit to the reviewing  
15 body and the parties all of the records pertaining to the decision  
16 being appealed. Briefing shall be limited to legal argument based  
17 upon the documents comprising the record that formed the basis  
18 for the administrative decision on appeal that have been  
19 transmitted to the parties by said officer. (Ord. 2010-008; Ord.  
20 2000-07; Ord. 98-10, 1998).

21 Given the interplay of those two codes, the SEPA appeal essentially becomes an administrative  
22 appeal that is made to the Board of County Commissioners but heard by the Hearings Examiner  
23 because under current code the Hearings Examiner presides over the Conditional Use Permit  
24 application process. It is the Applicant's understanding the County intends to follow that  
25 process.<sup>17</sup> The SEPA appellants failed to file a brief in support of their appeal.

26 The Washington State Court of Appeals recently decided the case of *Ellensburg Cement*  
*Products, Inc. (ECP) v. Kittitas County*, 171 Wn.App. 691, \_\_\_ P.3d \_\_\_ (2012). In that case,  
the Court of Appeals, Div. III ruled that the County's process for determining SEPA appeals,  
which would be identical to the process Kittitas County intends on following in this matter, was  
an erroneous process because the County failed to provide an open record hearing on a SEPA  
appeal. *Id.* at 713. The Washington Supreme Court accepted review of that case and it is

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<sup>17</sup> Of interest is that the attorney who represented the project proponent in that case, who sought to exclude evidence and ensure the SEPA appeal was closed with no new evidence, is the same attorney who represents the individuals who object to this project and who have filed this SEPA appeal.

1 currently pending under Cause No. 88165-1. In view of the apparent issues with the County  
2 process, the Applicant is unsure how the Hearings Examiner should proceed. If the Hearings  
3 Examiner allows for an open record hearing, there is no process to do so, but allowing for an  
4 open record hearing would appear to be “harmless error” whereas to not allow for an open record  
5 hearing violates the Division III decision in *ECP*.

### 6 **2.2.2 Appeal Should Be Denied and the County MDNS Upheld**

7 The foregoing objection by the Applicant notwithstanding, the County’s MDNS should  
8 be upheld in any regard. The individual appealing the MDNS has the burden of proving the  
9 MDNS was improper. The County’s SEPA MDNS decision in this case is entitled to great  
10 weight.<sup>18</sup>

### 11 **2.2.3 Response to Specific Bases for Appeal**

12 The Appellants identified six different bases under which they assert the SEPA MDNS  
13 decision is inadequate. The Appellants do not specify what they believe the appropriate remedy  
14 is or what exactly they are asking the Hearings Examiner to do. Each of the specific bases of the  
15 SEPA appeal is discussed below.

#### 16 **2.2.3.1 MDNS was improperly issued without comment as required** 17 **by SEPA regulations. SEPA responsible official obtained** 18 **additional significant environmental information in the form** 19 **of a report by Arthur M. Noxon, PE, dated October 15,** 20 **2012. Optional DNA process under WAC 197-11-355** 21 **requires recirculation of notice and opportunity to comment** 22 **by agencies and the public.**

23 Here, the Appellants assert the MDNS was improperly issued without comment.  
24 Specifically, they assert additional information was obtained in the form of a report by Art  
25 Noxon, a sound expert retained by the Applicant. They assert that under WAC 197-11-355 the  
26 recirculation of notice and opportunity to comment should have occurred.

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<sup>18</sup> RCW 43.21C.090; *Douglass, Inc. v. City of Spokane Valley*, 154 Wn. App. 408, 423, 225 P.3d 448 (2010);  
*Anderson v. Pierce County*, 86 Wn. App. 290, 302, 936 P.2d 432 (1997); *Indian Trail Property Owners Assoc. v.*  
*City of Spokane*, 76 Wn. App. 430, 442, 886 P.2d 209 (1994).

1 In the Notice of Application<sup>19</sup> the County stated as follows:

2 **Environmental Review (SEPA):** The County expects to issue a  
3 Determination of Non-Significance (DNS) for this proposal, and  
4 will use the optional DNS process, meaning this may be the only  
5 opportunity for the public to comment on the environmental  
6 impacts of the proposal. Mitigation measures may be required  
7 under applicable codes, such as Title 17 Zoning, Title 17A Critical  
Areas, and the Fire Code, and the project review process may  
incorporate or require mitigation measures regardless of whether  
an EIS is prepared. A copy of the threshold determination may be  
obtained from the County.

8 Kittitas County then received comments, including comments related to the potential for noise  
9 from the discharge of firearms. As a result of the comments, the Applicant provided additional  
10 information to address those comments. The Applicant elected to provide a supplemental noise  
11 study, which concluded that while the discharge of firearms would create noise, that noise would  
12 not exceed allowable levels and would not be injurious to the neighborhood if certain mitigating  
13 factors were adopted, including bermed shooting areas and shooting structures enclosed on three  
14 sides designed by an engineer.

15 Specifically, the Appellants assert that under WAC 197-11-355 they should have been  
16 given an additional opportunity to comment. WAC 197-11-355 authorizes the optional DNS  
17 process Kittitas County followed. Based upon the comments the County received, the County  
18 elected not to issue a DNS and instead issued a Mitigated Determination of Non-Significance  
19 (MDNS).

20 WAC 197-11-355(4) provides as follows:

21 The responsible official shall consider timely comments on the  
22 notice of application and either:

23 (a) Issue a DNS or mitigated DNS with no comment period using  
24 the procedures in subsection (5) of this section;

25  
26 <sup>19</sup> Attached as Exhibit 17.



1 (b) Issue a DNS or mitigated DNS with a comment period using  
2 the procedures in subsection (5) of this section, if the lead agency  
determines a comment period is necessary;

3 (c) Issue a DS; or

4 (d) Require additional information or studies prior to making a  
5 threshold determination.

6 WAC 197-11-355(5) provides as follows:

7 If a DNS or mitigated DNS is issued under subsection (4)(a) of this  
8 section, the lead agency shall send a copy of the DNS or mitigated  
9 DNS to the department of ecology, agencies with jurisdiction,  
those who commented, and anyone requesting a copy. A copy of  
the environmental checklist need not be recirculated.

10 Thus, the County did exactly what they were allowed to do under WAC 197-11-355. They  
11 accepted comments, they considered those comments, and issued a MDNS without a comment  
12 period. WAC 197-11-355 does not require the County to recirculate for additional comment.

13 Nothing the County did violated WAC 197-11-355.

14 **2.2.3.2 Environmental Checklist and information was incomplete  
15 and inadequate for meaningful analysis, comment or  
16 threshold determination. See Appellant's Comment Letter  
dated January 13, 2012. Attachment B.**

17 In this section, Appellants assert the Environmental Checklist and information on it was  
18 incomplete and inadequate for a meaningful analysis. Appellants must present additional  
19 evidence of probable significant adverse impacts of the project.<sup>20</sup> They assert the basis for this is  
20 a comment letter they filed on January 13, 2012. The Appellants assert without foundation that  
21 the information is incomplete and provides no substantive basis for meaningful analysis or  
22 comment or mitigation. The application clearly sets forth a site plan that identifies exactly what  
23 activities the Applicant intends to engage in and where those activities will occur on the  
24 property.

25 \_\_\_\_\_  
26 <sup>20</sup> *Boehm v. City of Vancouver*, 111 Wn. App. 711, 719, 47 P.3d 137 (2002); and *Moss v. City of Bellingham*, 109  
Wn. App. 6, 23, 31 P.3d 703 (2001).

1 In their January 13, 2012 comment letter, Appellants assert without basis that this is “at  
2 least the fourth conditional use permit by Cascade Field & Stream Club.” That is factually  
3 incorrect. The Club sought a conditional use permit in the early 2000s and abandoned that  
4 application without completing it. Appellants then assert that comment letters on a different  
5 application should be inserted in the record based upon the prior application. The only one of  
6 those that could be remotely considered relevant to this application is the one the Applicant cited  
7 to, which was a prior noise study that was conducted.

8 The Appellants assert that the U.S. Environmental Protection Agency Best Management  
9 Practices for Managing Lead At Outdoor Shooting Ranges<sup>21</sup> (“Best Management Practices”),  
10 which the Appellants have proposed as a condition, is somehow not acceptable. Then they  
11 present an exhaustive two-page analysis of the Best Management Practices, at various times  
12 asserting the Applicant should be required to follow it. The Applicant has indicated it intends to  
13 adopt the Best Management Practices, which would include constructing the shooting range to  
14 incorporate those Best Management Practices. The Appellants raised issues with respect to  
15 noise, which prompted the Applicant to obtain an additional noise study to identify conditions  
16 for approval of the application that would mitigate noise. The Applicant has proposed to adopt  
17 those conditions in constructing the facility.

18 Lastly, the Appellants asserted the Environmental Checklist had incomplete disclosure  
19 and/or information. Here again, the Appellants discuss in great detail the Best Management  
20 Practices and suggest those standards be applied immediately to the project. The SEPA MDNS  
21 requires the Applicant to construct the facility to mitigate noise and to adopt the Best  
22 Management Practices.

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25 <sup>21</sup> Attached to Exhibit 2 hereto (SEPA Checklist) as Attachments C-1 and C-2 is a copy of the Applicant’s  
26 Management Plan for Lead/Bullets at Cascade Field and Stream Club Shooting Range, which incorporates the U.S.  
Environmental Protection Agency’s Best Management Practices for Lead at Outdoor Shooting Ranges  
([http://www.epa.gov/lead/pubs/epa\\_bmp.pdf](http://www.epa.gov/lead/pubs/epa_bmp.pdf)).

1                                   **2.2.3.3 MDNS sets forth vague, unclear and incomplete mitigation**  
2                                   **and conditions. See paragraphs 1, 2, 3, 5, 7, 8, 9 and 11.**

3                   The Appellants assert certain MDNS conditions are vague, unclear and incomplete.

4                   There is nothing vague or incomplete about Paragraph 1 of the MDNS. Appellants assert  
5 improvements to Hayward Road will not be required because the average daily traffic (ADT) is  
6 expected to remain below 100 vehicles. If future traffic to the property raises the ADT to above  
7 100, mitigation to offset the impacts of increased traffic may be required. That MDNS condition  
8 takes advantage of the fact that a conditional use permit, particularly one allowing a shooting  
9 range, is going to be subject to constant review. If traffic increases then the Applicant will be  
10 required to make certain traffic improvements in order to continue the conditional use. There is  
11 nothing vague, unclear or incomplete about that.

12                   Paragraph 2 of the MDNS requires access to Hayward Road from Bettas Road. It  
13 requires to Applicant to implement procedures to prevent users from accessing Hayward Road  
14 from SR 10. Again, there is nothing vague, incomplete or unclear about that condition. See also,  
15 Section 3.2.2.1.

16                   Paragraph 3 requires that the Best Management Practices shall be strictly adhered to. The  
17 manual is clearly identified and there is nothing vague, unclear or incomplete about the words  
18 “strictly adhered to.” It means that in order to use the property for the conditional use the  
19 Applicants have to adopt and follow the Best Management Practices. See also, Section 3.2.2.3.

20                   Paragraph 5 requires that water or septic systems meet Kittitas County Health  
21 Department, Washington State Department of Health and/or Department of Ecology code at the  
22 time. There is nothing vague or unclear about that condition. If the Applicant is going to  
23 provide potable water and/or sewer or septic systems, it must do so in a manner consistent with  
24 the Kittitas County Health Department, Washington State Department of Health and/or  
25 Department of Ecology rules and regulations in place at the time.  
26

1 Paragraph 7 requires that fire danger restrictions be in place and followed consistent with  
2 DNR lands in the immediate vicinity. DNR fire restrictions for a given site on a given day are  
3 readily available. The condition requires that DNR fire restrictions and corresponding use  
4 restrictions be adhered to. Again, there is nothing vague, unclear or incomplete about that.

5 Paragraph 8 merely requires the Applicant to contact Washington State Department of  
6 Archaeology and Historic Preservation in the Yakama Nation if items of possible cultural and  
7 historical significance are encountered during construction. There is nothing vague or unclear  
8 about that.<sup>22</sup>

9 Paragraph 9 requires all outdoor lighting to be shielded and directed downward. There is  
10 nothing unclear or vague about that.

11 Paragraph 11 requires berms and other noise deflecting construction as described in the  
12 noise study by Art Noxon to be implemented to deflect noise away from surrounding resources.  
13 The noise study requires that shooting occur within three-sided enclosures and that the shooting  
14 lanes be bermed, all designed by an engineer. Again, there is nothing vague or unclear about  
15 that. See also, Section 3.2.2.2.

16 **2.2.3.4 MDNS improperly defers evaluation and assessment of**  
17 **impacts related to transportation, lead management**  
18 **practices, specific water and septic standards, cultural and**  
19 **historic resources, outdoor lighting and noise mitigation.**

20 This is a baseless appeal point. The MDNS specifically requires the Applicant to do  
21 certain things and not do certain things. It does not improperly defer evaluation and assessment  
22 of impacts. Instead it imposes conditions on the Applicant's conditional use of the property to  
23 minimize and/or mitigate environmental impacts.

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26 <sup>22</sup> An archaeological survey of the property was completed when the wind farm was permitted. To the best of the Applicant's knowledge, no culturally significant items were identified on the Applicant's property.

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**2.2.3.5 Environmental review and information fails to contain sufficient substantial evidence upon which to make informed determinations regarding probable significant adverse environmental impacts.**

This appears to be nothing more than a reincorporation of the previous four SEPA appeal points.

**2.2.3.6 Noise study fails to identify specific location and design parameters for noise attenuation.**

The noise study indicates the shooting lanes should be bermed and that shooting should occur from within three-sided shooting stations. The noise study prepared by Mr. Noxon indicates that he reviewed the application, including the site plan, had been onsite, and his last criteria is that the shooting structures and berms be designed by an acoustical engineer.

**2.2.4 SEPA Appeal Conclusion**

The SEPA appeal should be denied. The Appellants have failed to follow the proper procedure and cannot meet their burden in demonstrating that the County MDNS decision violates the law.

**III. CONDITIONAL USE PERMITS IN GENERAL**

**3.1 State Law**

A conditional use is a “permitted” use; it is listed in the county code as one of the uses that may be made within a given zone. But it is not a “regularly permitted” use; it is permitted only upon the grant of a Conditional Use Permit (hereinafter “CUP”) by the County. However, once that CUP application is approved and a permit is issued, it becomes a vested right to use land under the terms and conditions of the CUP and the applicable zoning code.

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1           **3.2     Kittitas County Code**

2           The general code provisions covering Conditional Use Permits control this application.  
3 These are found in KCC 17.60A.010<sup>23</sup> which provides that in considering the issuance of a  
4 conditional use permit:

- 5           (1)     The Board of Adjustment shall determine that the proposed  
6 use is essential or desirable to the public convenience and  
7 not detrimental or injurious to the public health, peace, or  
8 safety or to the character of the surrounding neighborhood.
- 9           (2)     The Board of Adjustment shall determine that the proposed  
10 use at the proposed location will not be unreasonably  
11 detrimental to the economic welfare of the county and that  
12 it will not create excessive public cost for facilities and  
13 services by finding that (1) it will be adequately serviced by  
14 existing facilities such as highways, roads, police and fire  
15 protection, irrigation and drainage structures, refuse  
16 disposal, water and sewers, and schools; or (2) that the  
17 applicant shall provide such facilities or (3) demonstrate  
18 that the proposed use will be of sufficient economic benefit  
19 to offset additional public costs or economic detriment.  
20 (Emphasis added.)

21 Each of the statutory factors are addressed below.

22           **3.2.1 Public Convenience and Public Health, Safety and Welfare.** The first  
23 part of KCC 17.60A.010(1) requires that the activity be essential or desirous to the public  
24 convenience and not detrimental or injurious to the public health, peace or safety.

25           The proposed shooting range will be desirable to the public as there are no designated  
26 controlled shooting ranges in the county at present. This range will provide a convenient  
location to shoot with rules and regulations in place to address safety and environmental issues  
that are often disregarded on public lands. This range will also provide a location for County law

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<sup>23</sup> A complete copy of Chapter 17.60A is attached hereto as Exhibit 10. KCC 17.60A.06 specifies the role of the Board of Adjustment. However, pursuant to Ordinance 2013-001 (attached in relevant part hereto as Exhibit 11 and available in full at <http://www2.co.kittitas.wa.us/fileuploads/ordinances/2013-001-ordinance.pdf>), the County modified Chapter 17.60A KCC to provide that CUP applications are decided by the Hearings Examiner. The County has disbanded the Board of Adjustment and it no longer exists.

1 enforcement members to train. The range is adjacent to public lands where shooting is currently  
2 allowed but without any rules. Use of the property is certainly desirable to the public  
3 convenience, if not essential when one considers the need for local law enforcement officials to  
4 have a place to train. County and State law enforcement individuals have written comment  
5 letters from in support of the application.<sup>24</sup> In addition, the Washington State Parks and  
6 Recreation Commission supports this application and the issuance of the CUP because it  
7 provides a place for Parks officers to train and it provides a place for the public to shoot in a safe  
8 and legal manner.<sup>25</sup> In addition, members of the public have provided testimony that there is a  
9 need for a shooting range open to the public in the County.<sup>26</sup> Kittitas County has significant  
10 amounts of public lands owned by the State Department of Fish and Wildlife, Department of  
11 Natural Resources (“DNR”) and by the United States of America, primarily the U.S. Forest  
12 Service. Often, individuals who want to target shoot do so on public lands. When this  
13 unregulated, uncontrolled firearm use occurs there is a risk of increased fire danger and  
14 pollution, both by people shooting and as a result of the spent ammunition. Often member of the  
15 public shooting on public land fail to clean up after themselves, leave litter and improperly  
16 manage or simply leave discharged ammunition. Many of the individuals testifying in support of  
17 this application have or will cite to this uncontrolled shooting on public lands as being

18  
19 <sup>24</sup> Attached hereto as Exhibit 12 are copies of the following letters of support from State and local law enforcement  
20 individuals: Letters dated 7/28/2011 from Richard Mann, Captain, Washington Department of Fish and Wildlife;  
21 Gene Dana, Sheriff, Kittitas County; and Scott Ferguson, Cle Elum-Roslyn-S. Cle Elum Police Department; and  
22 Letter dated 8/6/2011 from Officer Anthony Venera, Ellensburg Police.

23 <sup>25</sup> Attached hereto as Exhibit 13 is a copy of a letter from Keith Wersland of the Washington State Parks and  
24 Recreation Commission in support of the application.

25 <sup>26</sup> Attached hereto as Exhibit 14 are copies of the following letters of support from the public: Emails dated  
26 1/6/2012 from Bret Daugherty and Brooke Drexler; letter dated 1/7/2012 from Steve Rogers; emails dated 1/9/2012  
from Joe Rotter, Anthony Robins, Dennis and Jenny Chapman, Eric Panattoni, Kimberli Green, Corey Shearer, Gary  
and Connie Gilligan, and Rori McCrackin; emails dated 1/10/2012 from Darren Allen, Bryan Nelson and Brandon  
Drexler; letter dated 1/10/2012 from Sean Jeffries; letter dated 1/11/12 from Marcy Bogachus and Ed Bogachus;  
emails dated 1/11/2012 from Wade Hamlin; emails dated 1/12/2012 from Jeff Thorpe, Dave Kuhn, Brent Mallon,  
The Hemmingson Family and Dave Duncan; emails dated 1/13/2012 from Kendra B. Allen, Rebecca Schweitzer,  
Duane Fluent, Joe Schweitzer and Russ Belsaas; and a letter dated 2/17/2013 from Nicholas C. Hendersen.

1 detrimental to the public interest. A facility such as is proposed in the application will help  
2 eliminate or decrease the use of public lands for shooting. This is desirable to the public  
3 convenience.

4 **3.2.2 Character of the Surrounding Neighborhood.** KCC 17.60A.010(1) also  
5 requires that the proposed use must not be detrimental or injurious to “the character of the  
6 surrounding neighborhood” or to the public health, peace or safety of the surrounding  
7 neighborhood.

8 This element is satisfied. The analysis should start with an analysis of the  
9 “neighborhood.” The property in the area is dominated by large open undeveloped tracts of land  
10 that are in either public or private ownership.<sup>27</sup> The area has historically been used for grazing  
11 livestock. There are smaller parcels with homes in the area that are interspersed within the larger  
12 tax parcels. The neighborhood was changed significantly as a result of Horizon Wind Energy’s  
13 construction of the Kittitas Valley Wind Power project in 2009 and 2010. This wind farm  
14 consists of up to 52 wind turbines and a vast system of roads and electrical distribution  
15 facilities.<sup>28</sup> The Applicant’s proposed use will have no impact on this industrial wind farm. It  
16 will not change the character of the area. Many of the opponents and those providing comment  
17 raised a number of issues they felt were going to occur which might create a negative impact on  
18 the neighborhood. These impacts generally can be grouped in several areas, each of which is  
19 discussed below.

20 //

21 \_\_\_\_\_  
22 <sup>27</sup> See Exhibit 8.

23 <sup>28</sup> Attached as Exhibit 9 is a map of the wind farm obtained from the EFSEC website at the following URL:  
24 [http://www.efsec.wa.gov/kittitaswind/09%20Amend/DEA%20KV%20Site%20Map%20Vers%202%20%281%20M](http://www.efsec.wa.gov/kittitaswind/09%20Amend/DEA%20KV%20Site%20Map%20Vers%202%20%281%20Mar%202010%29.pdf)  
25 [ar%202010%29.pdf](http://www.efsec.wa.gov/kittitaswind.shtml). The EFSEC website (<http://www.efsec.wa.gov/kittitaswind.shtml>) has considerable  
26 information on the area and includes an FEIS done when the wind farm was permitted by EFSEC. The website also  
includes copies of all pre-filed testimony and documents filed in the adjudicating proceedings, which examined,  
among other things, the noise produced by the turbines and the visual impact of the turbines. The website also has  
copies of the testimony of the related experts. This information is available to be reviewed, is part of the public  
record and is incorporated herein by reference.



1 **3.2.2.1 Transportation Issues**

2 One issue that was raised by the Kittitas Reclamation District (“KRD”) and by several of  
3 the neighbors in the area is transportation issues and impacts that may occur as a result of  
4 increased access to the Applicant’s property. Hayward Road is a partially improved County road  
5 that runs from Highway 10 to Highway 97.<sup>29</sup> As a result of the construction of the Kittitas  
6 Valley Wind Power Project, Hayward Road was improved significantly from Bettas Road to the  
7 Applicant’s controlled access point to its property. Between the Applicant’s controlled access  
8 point and Highway 10 to the south, Hayward Road is unimproved and there is a bridge across the  
9 KRD irrigation canal that is not designed to handle significant traffic. Hayward Road from  
10 Highway 10 to the Applicant’s property is not paved, is dirt, and oftentimes throughout the year  
11 is impassable. The County MDNS<sup>30</sup> conditions its SEPA determination on several issues related  
12 to transportation. First, the County indicates that based upon its analysis, average daily traffic is  
13 expected to remain below 100 trips and will not require any additional improvements to  
14 Hayward Road. A conditional use permit is always subject to review and the County indicates  
15 that if the average daily traffic count goes above 100, then mitigation, presumably improvements  
16 to Hayward Road, to offset the impacts of the increased traffic may be required. The County  
17 also indicates that all access to the site via Hayward Road shall be from Bettas Road and that the  
18 Club shall implement procedures to prevent users from accessing Hayward Road from Highway  
19 10. What the Applicant intends to do is post the site with notices indicating that there is no  
20 access to the Club property via Hayward Road from Highway 10. Furthermore, all the shooting  
21 range rules<sup>31</sup> will be modified to specify that there is no access from Hayward Road via Highway  
22 10. Additionally, all print and electronic Internet advertising of the site will identify the access

23 <sup>29</sup> Attached as Exhibit 6 is an area road map with the site identified.

24 <sup>30</sup> A copy of the Mitigated Determination of Non-Significance (“MDNS”) issued by Kittitas County is attached  
25 hereto as Exhibit 15.

26 <sup>31</sup> Attached to Exhibit 2 hereto (SEPA Checklist) as Attachment D-1 is a copy of the Cascade Field and Stream Club  
Range Rules.

1 route by map and specify that there is no access from Hayward Road via Highway 10. Because  
2 Hayward Road is a public road, even though unimproved to the south of the Applicant's  
3 property, the Applicant cannot block the road, but the Applicant can and will require its members  
4 and those participating in activities on site to access the site from Bettas Road.

### 5 **3.2.2.2 Noise**

6 Many of the individuals who have commented on both the 2003 application and this  
7 current application have raised the issue of noise. There are three sources of noise that seem to  
8 be of concern. First, there will be some noise associated with the construction of the shooting  
9 ranges on the facility and the development of the site. That will be consistent with normal  
10 construction noise and will be limited in time and scope and once the site is developed will not  
11 reoccur. Secondly, there will be some noise associated with vehicular traffic to the site. Again,  
12 the County has examined the trip count and given the trip count this type of noise is consistent  
13 with the typical use of many County roads.

14 The predominant concern regarding noise is noise emanating from the shooting range as  
15 the result of the discharge of firearms. There was significant discussion of the shooting range  
16 noise in the 2003 application. The Applicant hired a Central Washington University professor,  
17 Andy Piascek, to prepare a report. That report was submitted in the record. It has been  
18 resubmitted into the record in the present application. That report was heavily criticized by  
19 various opponents. When these issues were raised again the Applicant retained Art Noxon, an  
20 acoustical engineer, who has an engineering practice in Oregon. Mr. Noxon reviewed all of the  
21 material submitted relating to noise. Mr. Noxon was contacted by the Applicant several years  
22 ago to analyze noise impacts and as a result of that contact did a site visit to the Applicant's  
23 property. After his review of the record and State and local noise ordinances Mr. Noxon  
24 submitted a report.<sup>32</sup> The essence of Mr. Noxon's report is that there will be noise as a result of

25 \_\_\_\_\_  
26 <sup>32</sup> Attached hereto as Exhibit 16 is a copy of Mr. Noxon's report.

1 the discharge of firearms, but that noise will be within acceptable limits if the shooting lanes are  
2 bermed and the shooting stations are enclosed on three sides and positioned so that the sound is  
3 directed to the north and east where there is State and undeveloped land associated with the wind  
4 farm. It is also important to point out that many of the individuals who are raising a concern  
5 with noise live a significant distance from the property and they have provided no demonstrable  
6 evidence that the noise, when it reaches their property, will exceed noise levels allowed by law.  
7 These individuals also seem to ignore that there are other sources of noise area, including wind  
8 turbines, the noise of which varies depending upon the speed the wind is blowing. Thus, while  
9 this is a remote site, because of current uses on this property and an adjoining property, there is  
10 already noise in the area and the addition of the shooting range with the proposed mitigation  
11 measures will not significantly change the noise in the area.

### 12 **3.2.2.3 Lead Management**

13 In addition, a variety of comment letter raised issues with respect to impacts of the  
14 shooting range on the land and the air on the property and in the vicinity of the property. Some  
15 of these impacts related to lead that may accumulate as a result of discharged shotgun shells and  
16 rifle and pistol rounds on the property. As part of the application, the Applicant has proposed a  
17 condition where the Applicant be required to strictly follow the Best Management Practices,  
18 which the MDNS requires. Furthermore, as the Applicant develops its property with firing lanes,  
19 those will have to be developed with appropriate permits to the extent they are necessary from  
20 either Kittitas County or the Department of Ecology. In addition, the shooting berms that the  
21 Applicant will be creating in order to mitigate noise impacts (see above) will result in a  
22 significant portion of the area ultimately being re-vegetated over time. The Applicant also  
23 proposes that it will also be locating its shooting ranges so as to prevent spent ammunition and/or  
24 lead shot from being discharged into the perennial stream and pond that are located on the  
25 property.

26 //

1 **3.2.2.4 Fire**

2 Some comments discussed fire danger as a result of the proposed use. To address those  
3 comments and because of the 2012 Taylor Bridge Fire, which burned surrounding property and  
4 the Applicant's property, the Applicant has closely examined fire and life safety issues. The  
5 MDNS requires that the Applicant adhere to the fire danger restrictions adopted by DNR, which  
6 owns land immediately adjacent to the Applicant's property. The Applicant will incorporate and  
7 operate the facility consistent with the DNR fire danger restriction practices. In addition, the  
8 proposed range rules, which are set forth at Exhibit 2, Attachments D-1 and D-2, take into  
9 account certain issues that are designed to minimize the risk of fire. In addition, the Applicant  
10 has a 15,000-gallon water tank on the property, which will be full and fully operational with a  
11 gas powered pump to use in the event of a fire on the range or on the property. Additional water  
12 from the nearby irrigation canal is typically available during the summer fire season. The  
13 Applicant also intends to work closely with the local fire district to ensure that the site is  
14 maintained consistent with "Firewise" criteria and so that brush and vegetation on the property  
15 are monitored to ensure that they do not create a significant fire danger. The proposed range  
16 rules prohibit shooting, outdoor fires and the use of tracer or incendiary ammunition. The  
17 Applicant is also aware that pursuant to the County definition of a shooting range (see page 1,  
18 footnote 2 above), the site will be inspected regularly by law enforcement personnel to ensure  
19 those mitigating measures are in place.

20 **3.2.3 Economic Welfare of the County.** KCC 17.60A.010(2) requires that the  
21 activity not be unreasonably detrimental to the economic welfare of the county and that it will  
22 not create excessive public cost for facilities and services. The proposed range will not require  
23 any additional services and the existing facilities are sufficient for the proposed use. Therefore,  
24 the proposed use will not be unreasonably detrimental to the economic welfare of the County and  
25 will not create excessive public cost for facilities.

26 //

1 IV. CONCLUSION

2 Legally speaking there is no reason not to issue the conditional use permit. There is  
3 nothing tangible that can be utilized to deny the application. Land use decisions must be based  
4 upon legal criteria not public opinion. It is well settled in Washington that "neighborhood  
5 opposition alone may not be the basis of a land use decision."<sup>33</sup> Neighbors and surrounding  
6 community members cannot wield veto power over a property owner's use of his or her land.  
7 There must be legal criteria that either allow or disallow a certain use. Here the legal criteria  
8 support the conditional use permit requested by Cascade Field and Stream Club.

9 Respectfully submitted this 8 day of May, 2013.

10 LATHROP, WINBAUER, HARREL,  
11 SLOTHOWER & DENISON L.L.P.

12 

13 \_\_\_\_\_  
14 Jeff Slothower, WSBA #14526  
15 Attorney for Cascade Field and Stream Club

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25 <sup>33</sup> *Tugwell v. Kittitas County*, 90 Wn. App. 1, 9, 951 P.2d 272 (1997); citing *Sunderland Family Treatment Servs. v.*  
26 *City of Pasco*, 127 Wash.2d 782, 797, 903 P.2d 986 (1995); *Indian Trail Property Owner's Ass'n v. City of Spokane*,  
76 Wash. App. 430, 439, 886 P.2d 209 (1994).

CERTIFICATE OF SERVICE

I certify that I have this day caused a copy of the document to which this is attached to be served on the individual(s) listed below and in the manner noted below:

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I certify, or declare, under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed at Ellensburg, Washington this 8<sup>th</sup> day of May, 2013.



Heather L. Hazlett  
Legal Assistant to Jeff Slothower