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June 6, 2013

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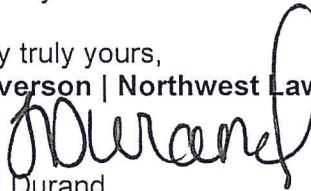
RE: SEPA Appeal of Conditional Use Permit  
Application of Cascade Field and Stream Club

Dear Mr. Kottkamp:

Enclosed is the original and one copy of Memorandum of Appellant with Respect to SEPA Appeal regarding the above-referenced matter. This correspondence is being delivered via U.S. First Class mail and email.

Thank you.

Very truly yours,  
Halverson | Northwest Law Group P.C.

  
Tori Durand  
Legal Assistant

Enclosures

cc: Client (w/encl.)  
Jeff Slothower (w/encl.)  
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KITTITAS COUNTY  
BEFORE THE HEARING EXAMINER

SEPA Appeal of Conditional Use Permit Application of: Cascade Field and Stream Club	CU: CU-11-00003
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Memorandum of Appellant with Respect to SEPA Appeal

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1 This Memorandum is submitted on behalf of Dean and Danielle Tonseth, David  
2 Holmquist and Ken Fyall with regard to the Mitigated Determination of Nonsignificance  
3 issued by SEPA Responsible Official dated February 8, 2013. (Exhibit 65).

#### 4 **I. Introduction**

5 Cascade Field & Stream (“Applicant”) has filed a series of land use applications over  
6 the past decade requesting development of approval for a multi-faceted shooting range.  
7 While site designs and concepts have changed in minor respects, the basic concept has  
8 remained consistent. A critical component of each land use process has been the circulation  
9 of notice and provision of comment by adjacent property owners. Appellants have  
10 consistently commented on the applications and simply requested as a beginning proposition  
11 that there be a clear and concise project description. The recurring response has been that  
12 development will occur in a haphazard pattern as funds are available. The application has  
13 been a moving target. Despite the passage of more than eleven (11) years, the application  
14 remains a morpheus, vague and undefined in terms of specific components, schedules and  
15 mitigation.

16 This is a SEPA appeal. The procedural duties imposed by SEPA – full consideration  
17 of environmental impacts – are to the fullest extent possible to be exercised in a manner  
18 to ensure that the “attempt to buy the people to shape their future environment by deliberation,  
19 not default” will be realized. *Eastlake Community Council v. Roanoke Associates, Inc.*, 82  
20 Wn.2d 475, 490 (1975). Appellants own adjacent properties and are directly and  
21 significantly impacted by the proposed shooting range. The appeal presents simple and  
22 straight-forward issues: (1) the project should be clearly defined and scheduled; (2) an  
23 appropriate professional noise study should be prepared based upon the specific project  
24 description; (3) mitigation measures should be specific, clear and objective and set forth  
25 within the mitigated determination of nonsignificance (MDNS); (4) mitigation measures and  
26 site improvements must be constructed prior to any use or occupancy of the facility; and (5)  
27 commenting agencies and the public should be given an opportunity in accordance with  
28 regulations to comment upon all submitted materials prior to issuance of a threshold  
29 determination.

Environmental information is required prior to decision-making. Appellants request  
that the threshold determination be reversed and the matter remanded for appropriate analysis  
and procedural review.

1 **II. Appeal Analysis and Argument**

2  
3 **2.1 Kittitas County Failed to Follow Required Review Procedures.**

4 Kittitas County provides for administrative appeals of SEPA procedures and  
5 threshold determinations. KCC 15.A.04.020. The environmental review process was  
6 procedurally defective in the following ways: (1) the lead agency improperly utilized the  
7 Optional Determination of Nonsignificance (DNS) process of WAC 197-11-355; and (2)  
8 SEPA Responsible Official failed to incorporate a review environmental information and  
9 comments with respect to prior iterations of the project proposal.

10 **(a) Notice of Application and Review Violated Optional Review Procedures**  
11 **of WAC 197-11-355.**

12 Kittitas County has utilized the optional environmental review process established by  
13 WAC 197-11-355 (Exhibit 6). This process allows the lead agency to eliminate a second  
14 comment period under limited circumstances. *Id.* (“...if this process is used a second  
comment period will typically not be required when the DNS is issued).<sup>1</sup> DOE has  
recognized the limited scope of the optional DNS process.

15 When the GMA city or county is the SEPA lead agency for a  
16 proposal and they have completed their environmental review at  
17 the time they will issue the NOA, they may chose to use the  
18 optional DNS process. It is appropriate to use the optional DNS  
19 process when the GMA county/city has enough information at the  
20 time it issues the NOA to be reasonably certain that there are no  
significant impacts associated with the project. The optional DNS  
process may also be used when mitigation measures have been  
identified that will reduce all impacts to a nonsignificant level.

21  
22  
23 <sup>1</sup> Local jurisdictions are required to issue a Notice of Application (NOA) with respect to project proposals.  
24 RCW 36.70B.110. GMA counties and cities may not issue a DNS before the close of the public comment  
period on a Notice of Application under RCW 36.70B.110(6). *DOE SEPA Handbook § 8.3* provides:

25 As previously discussed, GMA counties and cities may not issue a DNS before  
26 the close of the public comment period on a Notice of Application (14-30 days)  
27 under RCW 36.70B.110(6) [RCW 36.70B.110]. Although a comment period is  
not always required on a DNS, when it is required, this restriction results in two  
separate public comment periods.

28 A second comment period is required upon issuance of a Determination of Nonsignificance (DNS) or Mitigated  
29 Determination of Nonsignificance (MDNS). These procedures are required unless the agency properly utilizes  
the Optional DNS procedures of WAC 197-11-355.

1 *DOE SEPA Handbook § 8.3.* There have been two fundamental predicates: (1) there is  
2 sufficient information to be reasonably certain there are no significant impacts; and (2)  
3 mitigation measures must be specifically identified in the notice. Neither predicate is  
4 present in this case.

5 The public was allowed only one opportunity to comment on the proposal.  
6 Appellants provided comment on the basis of the existing record and prior project  
7 applications. Specific comments were provided with respect to noise analysis based upon the  
8 “Preliminary Noise Measurements of Proposed Cascade Field & Stream Firing Range on  
9 Hayward Road” dated November 1, 2003. The comments were supplemented by letter  
10 prepared by Jerry G. Lilly, P.E., F.A.S.A. of JGL Acoustics, Inc. Subsequent to the  
11 circulation of the initial Notice of Application and closure of the comment period, Cascade  
12 Field & Stream submitted significant new information in the form of an additional noise  
13 report prepared by Acoustical Engineers. This information was not available to agencies or  
14 the public during the comment period. SEPA Responsible Official proceeded to issue a  
15 Mitigated Determination of Nonsignificance (MDNS) without further comment and adopted  
16 purported mitigation from the supplemental and late report. The procedure followed was  
erroneous.

17 **(i) Optional DNS Process is Not Appropriate Where Project Has Potential**  
18 **Significant Environmental Impacts.**

19 WAC 197-11-355(1) allows the use of the optional environmental review process  
20 only when the “... lead agency for a proposal ... has a reasonable basis for determining  
21 significant adverse environmental impacts are unlikely, ... .” The administrative record at  
22 time of the original comment period disclosed significant environmental impacts associated  
23 with noise. *Piacsek Report* (Exhibit 2 – Attachment E-1). The report disclosed measured  
24 noise impacts in excess of a maximum permissible noise levels under state regulations.  
25 WAC 173-60-040. The record also identified significant impacts with regard to lead  
26 management, grading and site improvement of processes, ponds and stream corridors within  
27 the site, transportation impacts and a variety of additional factors. Kittitas County had, in  
28 fact, reviewed the same proposal during earlier application processes and prepared a  
29 summary analysis and mitigation for the proposal. (Exhibit 48, Exhibit K) (Attachment B).  
There was no basis for assuming that “... environmental impacts are unlikely.”

1           (ii)   **Kittitas County Failed to “List” Mitigation Measures on Notice of**  
2                   **Application.**

3           The lead agency must “... [l]ist in the notice of application the conditions being  
4 considered to mitigate environmental impacts, if a mitigated DNS is expected ... .” WAC  
5 197-11-355(2)(b). *DOE SEPA Handbook § 8.3* specifically provides that the “... optional  
6 DNS process may also be used when mitigation measures have been identified that will  
7 reduce *all* impacts to a nonsignificant level.” Kittitas County failed to identify any specific  
8 mitigation measures. Kittitas County’s notice simply stated that it expects “... to issue a  
9 Determination of Non-Significance (DNS) for this proposal. The public was provided no  
10 information regarding mitigation. The failure to disclose “conditions being considered to  
11 mitigate environmental impacts” was compounded with the acceptance of supplemental  
12 environmental information directly discussing noise mitigation. Mitigation was not  
13 identified until the final threshold decision and the public and commenting agencies were  
deprived of their statutory right to comment.

14           (iii)   **Kittitas County Accepted Material Environmental Information Following**  
15                   **End of Comment Period.**

16           Kittitas County accepted significant environmental information following close of the  
17 comment period. The information included the Noxon report which introduced new  
18 environmental information (ambient noise tests), and proposed alternative mitigation.  
19 (Exhibit 56). The report was filed on November 7, 2012 (Exhibit 55). An agency is  
20 required, however, to withdraw any environmental determination if “... [t]here is significant  
21 new information indicating, or on, a proposal’s probable significant adverse environmental  
22 impacts ... .” WAC 197-11-340(3)(a). The purpose of this requirement is logical – agencies  
23 and the public provide comment based upon the environmental record available for review  
24 during the comment period. WAC 197-11-504. The ability to comment on the supplemental  
25 environmental information in this case is significant because it proposes specific mitigation  
measures designed to address significant noise impacts.

26           (b)   **Kittitas County Failed to Consider and Incorporate Environmental**  
27                   **Comments and Materials from Prior Applications.**

28           Cascade Field & Stream had submitted at least four (4) prior applications for  
29 development of a shooting range at this specific site. (Exhibit 48). Each of the prior project

1 proposals were virtually identical to the current application but contained greater and more  
2 detailed information regarding proposed project improvements, timing and mitigation  
3 measures.<sup>2</sup> Appellants identified specific environmental information to be included in the  
4 review process. (Exhibit 48-2-3). None of the prior review and documents were  
5 incorporated or included in the current environmental review. The lead agency is required to  
6 determine whether "... [a]ll or part of the proposal, alternatives or impacts have been  
7 analyzed in a previously prepared environmental document ... ." WAC 197-11-330(2)(a).  
8 Appellants specifically requested incorporation of the prior comments and materials. Kittitas  
9 County ignored this request and proceeded without critical and fundamental information  
10 pertaining to environmental impacts of the project.

11 **2.2 Application And Project Information Is Incomplete, Insufficient And**  
**Contradictory.**

12 An appeal of a threshold determination is based upon the administrative record. The  
13 record of a negative threshold determination by a governmental agency must "demonstrate  
14 that environmental factors were considered in a manner sufficient to amount to *prima facie*  
15 compliance with the procedural requirements of SEPA." *Pease Hill Cmty. Group v. Spokane*  
16 *County*, 62 Wn. App. 800, 810, 816 P.2d 37 (1991); and *Ellensburg Cement Products, Inc. v.*  
17 *Kittitas County*, 171 Wn. App. 691, 712, 287 P.3d 718 (2012). "The determination must be  
18 based upon information reasonably sufficient to determine the environmental impact of a  
19 proposal." *Id.*

20 The administrative record is deficient in the following respects: (1) the application  
21 fails to clearly and specifically define the scope and timing of the project proposal; and (2)  
22 information contained in the Environmental Checklist is incomplete and insufficient to  
23 evaluate potential environmental impacts. SEPA is designed to consider environmental  
24 information (impacts, alternatives, and mitigation) before committing to a particular course  
25 of action [WAC 197-11-055(2)(c)]; identify and evaluate probable impacts, alternatives and  
26 mitigation measures [WAC 197-11-030(2)(b) and (g)]; encourage public involvement in  
27 decisions [WAC 197-11-030(2)(f)]; and prepare environmental determinations that are  
28 concise, clear and to the point [WAC 197-11-030(2)(c)]. *DOE SEPA Handbook § 1.1.*

29 <sup>2</sup> Cascade Field & Stream filed applications in 2001, 2002 and 2003. Extensive public comment was provided  
with respect to each of the applications. A copy of application information from File C-2001-20 was included  
in comments provided by Appellants. (Exhibit 48-Attachment A). Environmental Checklist is much more  
specific and complete including information on grading and excavation, proposed uses (including dry camping  
and overnight stays), landscaping of disturbed areas, bullet backstop areas and best management practice and  
compliance, lead migration, and similar disclosures.



1 (a) Project Description and Timing is Vague and Unclear.

2 The beginning point for environmental review is a clear, cogent and understandable  
3 project description. Agencies conducting environmental review "... shall make certain that  
4 the proposal that is the subject of environmental review is properly defined." WAC 197-11-  
5 060(3)(a). "Accurately defining the proposal is key to a successful SEPA process." *DOE*  
6 *SEPA Handbook* § 2.3.1. ("Defining the total proposal involves the identification of all the  
7 related and interdependent pieces of the proposal.").

8 Cascade Field & Stream Club described the project proposal as "... Shooting Range  
9 on 182 acre site as per Attachment A with future use as per Attachment B." (Exhibit 2).  
10 Attachment A is a topographic depiction of the "existing conditions" on the parcel with no  
11 specific site plan. Attachment B contains "possible future ranges" but does not identify any  
12 specific development timelines or procedures. The reviewing agencies and commenting  
13 public were left to speculate with respect to timing, development and integration of the multi-  
14 faceted facility. The nature and scope of usage is vague.

15 Appellants addressed this issue in subsequently-filed comments. (Exhibit 48).  
16 Neither agencies nor the public had these clarifications available at time of commenting.  
17 Applicant sought to clarify its proposal. (Exhibit 5).

18 Please review Attachment A to the SEPA Checklist, which is a  
19 detailed drawing with elevations depicting the current conditions  
20 on the property. *Attachment B is a detailed drawing that shows  
21 not only the proposed parking areas but also a schematic layout of  
22 the property after the property is turned into a shooting range.  
23 Attachment B identifies parking areas, different types of shooting  
24 ranges and roads on the property.*

25 In addition to Attachment B to the SEPA Checklist, which depicts  
26 the location of the ranges and types of ranges, Attachment F to this  
27 SEPA Checklist shows Model National Rifle Association drawings  
28 for different types of shooting ranges. *The Club intends to  
29 construct the ranges in conformity with Attachment F.*

(Exhibit 55 at 2). Attachment B presents a wide range of facilities and improvements. The  
problem is that there is no way to determine what is to be built at any given time. The  
project proposal sets the locations, components and activities that are to be evaluated in the

1 environmental review process.<sup>3</sup> No information is provided, however, with regard to timing  
2 or integration of project improvements (e.g. parking, roads, ranges, etc.). And the attachment  
3 provides no specific information (e.g. berm location, sound baffles, excavation, target pits,  
4 lead management, etc.). All that is said is that the ranges will be constructed in accordance  
5 with Attachment F. Does this mean that range backstops, side berms, graded roads, concrete  
6 shooting slabs, trap houses and other features will all be installed prior to operation? There is  
7 simply no way to understand the sequence of phasing of the proposal. Applicant provides the  
8 following summary of phased development:

9           There were several comments related to phasing and how the  
10           facility would be used. What the Club proposes is that upon  
11           approval it will begin construction of the shooting ranges. It may  
12           construct one type of range before it constructs another range. The  
13           Club is not proposing to begin using the property as a shooting  
14           range for non Club members without constructing any  
15           improvements. For instance, it has proposed to construct a law  
16           enforcement and small arms range as well as a rifle range, which  
17           are depicted on Attachment B to the SEPA Checklist. Those two  
18           ranges may be constructed immediately, and if constructed  
19           immediately, will be constructed consistent with the schematic  
20           drawing depicted on Attachment B. The only portion of  
21           Attachment B that indicates a future facility is a storage and  
22           meeting facility that may be constructed in the future depending  
23           upon need.

24 (Exhibit 55). Will parking lots, water and sanitary facilities, road access and other features  
25 be constructed at the outset and prior to any range construction? What “range specific”  
26 improvements will apply to each specific facility? It is simply impossible to understand the  
27 scheduling and timing of improvements. And in the absence of a reasonable schedule, it is  
28 impossible to identify and implement appropriate mitigation measures.

29 **(b) Environmental Checklist is Vague, Incomplete and Inaccurate.**

The Environmental Checklist is a standard form used by agencies to obtain  
information about a proposal. *DOE SEPA Handbook § 2.5. SEPA Handbook* provides:

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<sup>3</sup> Applicant has included a Narrative Project Description with its land use application. (Exhibit 2-Exhibit A.) The narrative provides that “... [t]he property will be used in its existing condition with additional ranges and a storage facility being constructed as needed and funds allow.” There is a suggestion that the applicant will use the facility and allow shooting activities without any improvements to the property, i.e. use in “existing condition.”

1 Environmental review normally starts with the completion of an  
2 environmental checklist. The checklist provides information to the  
3 lead agency about the proposal and its probable environmental  
4 impacts. It is the lead agency's responsibility to review the  
5 environmental checklist, permit application(s), and any additional  
6 information available on a proposal to determine any probable  
7 significant adverse impacts and identify potential mitigation. ...  
8 Mitigation is the avoidance, minimization, rectification,  
9 compensation, reduction, or elimination of adverse impacts.

7 *Id.* Essential to the review process is a determination that the project is completely and  
8 accurately described; interdependent pieces have been identified; necessary permits and  
9 licenses have been listed; and the descriptions of the environment are complete and accurate.

10 *Id.* The information contained in the Environmental Checklist submitted by Cascade Field &  
11 Stream is so sparse and incomplete that it is virtually impossible to identify, evaluate and  
12 comment upon impacts and mitigation.

13 Deficiencies include, but are not limited to the following:

14 Checklist A.6. Does not disclose timing or schedule (including phasing) but simply  
15 states "... [i]mmediate use of current facility; Add ranges as the need and money allows."  
16 No initial improvements or mitigation is proposed.

17 Checklist A.7. Simply reflects that "... [a]dditional range is similar to Attachment F.  
18 Range designs may be added in the future." Those range designs include shooting range  
19 definitive drawings prepared by National Rifle Association. Those standards should apply  
20 immediately to the project and be constructed prior to any use of the property. The  
21 references also inaccurate because "possible future ranges" are identified in Attachment B.  
22 No timing or design standards are established for the identified "... possible future ranges."

23 Checklist B.1(e). Indicates that future ranges may be graded and gravel imported to  
24 surface parking areas. EPA Best Management Practices require construction of berms as do  
25 guidelines from National Rifle Association. Berm construction will include excavation and  
26 grading. Checklist needs to identify locations, quantities of grading proposed for the project.

27 Checklist fails to document and mitigate impacts on Type 5 stream draining the  
28 subject property, Hayward Canyon Creek. The stream is located within the shooting range  
29 and presents potential for lead migration to adjacent properties and surface waters.

30 Checklist 3. Checklist fails to "... [d]escribe the source of runoff (including  
31 stormwater) and method of collection and disposal. The insert is only that applicant expects  
32 water to seep into the ground and will create stormwater retention areas as required by

1 applicable law. Site plan includes designated parking areas but provides no analysis of  
2 grading or stormwater management with respect to such areas.

3 It is also indicated that it is “not likely” that waste materials could enter ground or  
4 surface waters.

5 Checklist B.5. Fails to identify impacts on birds and animals. The property is known  
6 for wildlife and shooting ranges may impact migration and wildlife environments.

7 Checklist B.11. Applicant may add lighting in the future. No assessment of light or  
8 glare impacts is provided with respect to the potential lighting of the area.

9 Checklist B.14. Transportation impacts are insufficiently identified and mitigated.  
10 The project site is served by Hayward Road from both Highway 10 and Horse Canyon Road.  
11 The most efficient access is from Highway 10. Hayward Road is a primitive road that does  
12 not meet applicable standards. Kittitas County Fire Protection District No. #1 previously  
13 commented that “... the lower portion of Hayward Road (canal to Highway 10) needs to be  
14 addressed – i.e. new culverts put in and turnouts established.” Department of Public Works  
15 require that the roads should be improved to a 24’ wide gravel road with sufficient crushed  
16 rock added to form an adequate structure and crown; access point to be at 90° angle.

17 Checklist B.15. Applicant indicates that it is “not likely” to increase needs for public  
18 services. This statement is incomplete and inaccurate with respect to prior review and  
19 analysis with respect to fire protection. Prior comments regarding fire protection are  
20 incorporated by this reference.

21 In addition to the identified deficiencies, Cascade Field and Stream has failed  
22 to include details sufficient to evaluate the project proposal in the following respects: (a) the  
23 intended build out schedule and completion of infrastructure improvements; (b) assessment  
24 or mitigation of project components (e.g. trap ranges, rifle ranges, law enforcement training  
25 areas, meeting facilities, etc.); (c) identification of specific best management practices; and  
26 (d) site development standards (meeting facility, access, etc.) and timing.

27 **(c) SEPA Requires that Entire Plan be Considered as One Project.**

28 SEPA requires that “... proposals or parts of proposals that are related to each other  
29 closely enough to be, in effect, a single course of action shall be evaluated in the same  
environmental document.” WAC 197-11-060(3)(b). Even though the project proponent  
suggests that additional ranges and facilities will be added as “needed” and “as funds are  
available”, environmental review requires specific assessment of each component element of  
the proposal. Mitigation and assessment needs to be completed at this point in time.

1           **2.3    Noise Analysis and Mitigation is Incomplete and Insufficient.**

2           A significant component in review of any shooting range is noise impacts. The  
3 uncontroverted fact is that there is no comprehensive noise analysis or study for the project.

4  
5 Applicant has simply cobbled together two piecemeal observations containing information  
6 randomly obtained over a ten (10) year period. And the reports do not even measure or  
7 evaluate the specific proposal (e.g. measurements are not taken from identified range  
8 locations and no testing at receiving property boundaries).

9           Noise “information” was presented in two (2) documents: (1) “Preliminary Noise  
10 Measurements for Proposed Cascade Field & Stream Firing Range on Hayward Road” dated  
11 November 1, 2003 (Exhibit 2 Attachment E-1-7)<sup>4</sup>; and (2) Supplemental Noise Comments  
12 prepared by Arthur M. Noxon, P.E. with respect to the noise study prepared by Dr. Piacsek  
13 (2003).<sup>5</sup> (Exhibit 56). Neither analysis is a “noise study”. Appellants have provided expert  
14 comments on both reports. (Exhibit 48 and attached).

15           **(a)    Piacsek Noise Report is Preliminary, Incomplete and Ineffective.**

16           Applicant bases its application on an incomplete ten (10) year old report. The report  
17 was prepared by Andrew Piacsek dated November 1, 2003. The report was by definition  
18 preliminary and limited in scope and nature.

19                     The measurements described above are considered preliminary.  
20                     Only SPL was measured; the waveform was not reported, nor was

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21 <sup>4</sup> The Preliminary Noise Measurements were prepared by Andrew A. Piacsek, Assistant Professor of Physics,  
22 Central Washington University. The report measured sound generation from a single source on two days  
(September 16 and October 24, 2003). The report included with the land use application did not contain  
23 mapping identifying either the sound source location or receiving property locations. That map is included in  
24 submissions by appellants (Exhibit 48).

25 <sup>5</sup> Arthur M. Noxon, P.E. submitted his report dated October 15, 2012 (Exhibit 56). The report is purportedly  
26 based upon “... an ambient noise study taken on 2005, a survey of gunfire from the shooting range at various  
27 distances and directions and a noise impact assessment.” The report does not include the background noise  
28 study dated October 24, 2010. The reference study included the following comment:

29                     A total of 24 noise readings were taken of the rural environment that is around the  
shooting range location on Wed. evening and Thur. morning, Oct. 19 and 20, 2005.  
Each data run lasted at least five minutes. Transient, extra loud noise due to overhead  
airplanes, trains or vehicles passing by were excluded from the ambience measurements.

(Exhibit 56-12). The sole measurement was of “ambient conditions” and no measurements were made with  
respect to noise generated from the discharge of firearms.

1 any spectral analysis conducted. *Only one or two measurements of*  
2 *a single shot were made at each location, which does not provide*  
3 *sufficient information to characterize the day to day variation in*  
4 *sound level due to environmental changes (especially when) or in*  
5 *the nature and number of sources.* This study also does not attempt  
to provide a long-term characterization of the background noise  
levels at residential sites within audible range of the source.

6 (Exhibit 2 Attachment E-5). Piacsek acknowledges report deficiencies and Applicant has  
7 taken no steps to correct the deficiencies. Appellants provided expert comment on the  
8 original noise report as prepared by JGL Acoustics, Inc., and dated December 13, 2003  
9 (Exhibit 50). Acoustic expert Jerry G. Lilly, P.E., F.A.S.A.<sup>6</sup> identified specific errors,  
10 inconsistencies and defects in the report and concluded:

11 While the report is clear to indicate that the measurements are  
12 preliminary, I am concerned that the casual reader will conclude  
13 that noise from the proposed facility will have no noise impact on  
14 neighboring properties. This conclusion cannot be drawn from the  
15 results of this preliminary study. What is needed is a  
16 comprehensive noise study to assess the environmental impact of  
the proposed firing range. The preliminary study did not assess  
any of the following factors that must be included in the  
comprehensive noise study.

17 (Exhibit 50). Lilly then identified specific components of a comprehensive noise study  
18 which should include (a) assessment of the noise characteristics of different gun types that  
19 would be used at the facility; (b) assessment of the number of gunshots that could occur in  
20 any given hour; (c) assessment of existing ambient noise environment; (d) assessment of  
21 impacts of varying environmental conditions on the sound propagation from the firing range  
22 to nearby residences, particularly humidity, wind and air temperature profiles; and (e)  
23 consideration of impacts and mitigation for nearby residential properties. None of these  
items were specifically addressed in subsequent submittals by the project applicant.

24 Lilly identified a number of additional considerations in his comments.

27 <sup>6</sup> Jerry G. Lilly is President of JGL Acoustics, Inc. He has a Masters in Engineering Acoustics from  
28 Pennsylvania State University; has been an acoustical engineer and consultant for 37 years; and has been an  
29 instructor and lecturer on matters associated with acoustical engineering. He is a Fellow in the Acoustical  
Society of America and served as President of National Council of Acoustical Consultants (1996-1998).  
(Exhibit 50).

1           1.       Lilly and Piacsek agree that the measurement of one or two gunshots at each  
2 location is not sufficient to characterize the day-to-day variations and sound level caused by  
3 changing environmental conditions. A more complete study and analysis is necessary for  
4 determinations regarding acoustic impacts.

5           2.       Lilly disagrees with the conclusion that the maximum sound pressure level  
6 with an impulse response (time constant of 35 ms) should be used to evaluate compliance  
7 with adopted noise standards. Lilly indicates that "... time waiting should not be permitted  
8 when dealing with the maximum sound level." The only way to eliminate the time waiting  
9 influences is to use the peak detector on the sound level meter. All technical papers  
10 regarding gun and firearm noise are evaluated at peak levels, not impulse average values.

11           3.       Piacsek incorrectly identifies the receiving property as Class CEDNA. WAC  
12 173-60-030. Receiving property should be classified as Class AEDNA (lands where human  
13 beings reside and sleep).

14           4.       Piacsek's report establishes violation of applicable noise standards. Table I  
15 shows peak sound pressure levels measured at nearby residential properties as high as 81dBA  
16 at Location 12 and 79dBA at Location 14.

17           An appropriate noise study should be prepared by licensed acoustical engineer whose  
18 such report containing components specified by Jerry Lilly.

19           **(b) Noxon Supplemental Report is Not a Noise Study and Does Not Contain**  
20           **Substantive Noise Assessment or Information.**

21           Applicant supplemented the incomplete Piacsek report with narrative comments  
22 prepared by Arthur M. Noxon, Acoustical Engineer. The report purported to provide an  
23 ambient noise assessment together with legal arguments and vague mitigation alternatives.  
24 (Exhibit 56). The report was not available to the public during the comment period and  
25 SEPA Responsible Official issued a threshold determination without the benefit of agency or  
26 public comment. Jerry G. Lilly, P.E., comments are attached.

27           Lilly's comments include the following:

- 28           •       Noxon background noise analysis did not have sufficient duration to  
29 accurately characterize the acoustic environment. Five minutes is not a sufficient duration to  
make a reasonable assessment of acoustic environment.
- Criticisms registered with respect to impulse time responses.

- 1           • Disagreement regarding the applicability of WAC 173-060.
- 2           • Character of sound is critical to noise analysis. “An 80 dBA gunshot illicit a
- 3 much different reaction than an 80 dB noise from a passing motorcycle or a note from a
- 4 musical instrument.”
- 5           • Noise measurements should be taken at the property line of the receiving
- 6 property.
- 7           • Identifies mischaracterization of receiving property classifications – Class A
- 8 (residential).

9           Second, Piacsek measured single gunshots from a 30.06 rifle. Applicant’s project  
10 proposal contains multiple range locations for a wide variety of firearms including two (2)  
11 trap ranges, law enforcement and small arms range; multiple distance (100, 200 and 300  
12 yards) rifle range; and long-rifle range. None of these guns were tested from the designated  
13 range location. Lilly provides an obvious comment in that “... [a] comprehensive study  
14 should evaluate the different characteristics (including peak level, pulse, width, and  
15 directivity) of each gun type and factor these results into the analysis.” This analysis and  
information was not made available but would be a part of a normal noise study.

16           The noise study should also include an assessment of the number of gunshots that  
17 could occur in any given hour. SEPA analysis “... should assess the worst-case scenario, not  
18 a typical or average hour of the day.” Lilly comments (Exhibit 50). The preliminary report  
19 made no attempt to assess this very important component of the acoustical environment.

20           **(c) Applicant’s Reports Fail to Contain Required Measurements at Property  
Boundaries and Test Only a Single Shot Location.**

21           A fundamental beginning proposition is that noise information should be consistent  
22 with the design of the proposed project. No measurements were taken from the identified  
23 shooting platforms. Appellants own land bordering the west side of the proposed range. No  
24 measurements were taken at their property boundary. State of Washington has established  
25 maximum permissible noise levels within identified environments. WAC 173-60-010, *et seq.*  
26 The purpose of the regulations is to establish use standards relating to the reception of noise  
27 within such environments. *Id.* The basic premise of the regulations is that “... [n]o person  
28 shall cause or permit noise *to intrude into the property of another person* which noise  
29 exceeds the maximum permissible noise levels ...” set forth in the regulations. WAC 173-



1 60-040(1). The proper measurement point is the “property boundary” WAC 173-60-  
2 020(11). Applicant failed to provide specific noise measurements or other substantive  
3 information with respect to impacts at property boundaries.

4 (d) **Ambient Noise Assessment is Incomplete, Insufficient and Deficient.**

5 Piacsek did not include an assessment of the existing ambient noise environment.  
6 (Exhibit 50). Lilly commented with respect to ambient noise assessment as follows:

7 A comprehensive study should include continuous ambient noise  
8 monitoring at nearby residences over several days (with no  
9 shooting at the fire range) to develop the true ambient noise  
10 statistics in the area.

11 (Exhibit 50). Noxon purported to measure ambient noise conditions. (Exhibit 56). Testing  
12 was done on October 19, (evening) and 20 (morning), 2005. The datarun lasted only five (5)  
13 minutes. (Exhibit 56-Appendix Section 2). The receiving locations are identified in the  
14 report. The report was insufficient to properly characterize the environment.

15 **2.4 Best Management Practices – Lead at Outdoor Shooting Ranges/NRA  
16 Range Sourcebook.**

17 KCC 17.08.485 requires a “detailed site plan” establishing adherence to the practices  
18 and recommendations of (1) the “EPA Best Management Practices for Lead at Outdoor  
19 Shooting Ranges (“EPA BMP”) and (2) NRA Range Sourcebook. Applicant has failed to  
20 provide a “detailed site plan” which identifies the location of berms and other procedures for  
21 management of lead on the site. Mitigated Determination of Nonsignificance (MDNS)  
22 simply provides:

23 The U.S. Environmental Protection Agency’s Best Management  
24 Practices for Lead at Outdoor Shooting Range’s manual shall be  
25 strictly adhered to.

26 (Exhibit 59). MDNS does not specifically identify or articulate the specific standards: *SEPA*  
27 *Handbook* requires that “... mitigation must be included as permit conditions to be  
28 enforceable.” *SEPA Handbook* § 6.

29 1. Best Management Practices require development and construction of bullet  
and shot containment facilities. This is step 1 in the EPA BMPs. Applicant does not identify  
or propose to construct specific containment facilities. The most common bullet containment  
system at rifle and pistol ranges is earthen backstop (earth and material, i.e., sand, soil, etc.)

1 which is located directly behind the targets. (EPA BMP 3.1). The earth and backstop should  
2 be between 15 and 20 feet high with a recommended slope as steep as possible. EPA BMP  
3 3.1.1. Sand traps, steel traps, lamella and rubber granule traps and shock absorbing concrete  
4 are alternatives. Applicants failed to identify or describe required bullet and shot  
5 containment areas. Design alternatives are also to be considered to address shot containment.  
6 EPA BMP 3.1.2. It should also be noted that construction of berms would necessarily  
7 require significant excavation which triggers additional environmental review and grading  
8 permit requirements.

9  
10 2. EPA BMPs require monitoring and measures designed to prevent lead  
11 migration. EPA BMP Step 2. Mitigation to prevent lead migration includes monitoring and  
12 adjusting soil pH, immobilizing lead and controlling runoff. EPA BMP 3.2.2. Soil analysis  
13 is required to establish effective mitigation measures that provides for adjustment of soil pH  
14 and phosphates. Applicant's SEPA Checklist fails to include the required soil testing and  
15 information. No specific mitigation measures are identified. EPA BMP 3.2.1.

16  
17 3. EPA BMPs provide direction with respect to controlling soil erosion and  
18 surface water runoff. A Type 5 stream is located within the shooting area but no information  
19 or mitigation is provided with respect to project design and mitigation. Filter beds,  
20 containment traps, detention ponds, dams and dykes are required to address surface water  
21 runoff from the target range. Applicant has provided no information or proposals with  
22 respect to management of surface water runoff and control of such runoff.

23  
24 4. The most important BMP for lead management is lead reclamation (lead  
25 removal and recycling). EPA BMP 3.3. Applicant indicates that it will "... plan a lead  
26 reclamation project ... ." Neither the project nor mitigation measures are identified in the  
27 materials and no factual basis exists to appropriately condition project design, development  
28 and operation. Reclamation activities usually require that the area be clear of scrub  
29 vegetation (grass, mulch, or compost). EPA BMP 3.3.4.

30  
31 5. BMPs require provision of specific information including number of rounds  
32 fired, soil pH, annual precipitation, soil type, depth to ground water and surface water  
33 assessment. None of the essential information has been provided for review. This  
34 information is also required in order to complete environmental review of project impacts. It  
35 is clearly recognized that lead presents a significant adverse impact.

36  
37 The National Rifle Association Range Source Book recommends that berms and  
38 baffles be constructed as necessary safety measures. Moreover, the backstop area for ranges,  
39 if natural soil is to be used, needs to be "free of rocks and debris to a depth of 18-24 inches."  
40 Section 2.04.1.5. The Source Book goes on to say "in rocky soils, when the face of a hillside

1 is cut to provide a better angle, the cut must be over-excavated and clean fill placed in the  
2 cavity to provide an impact area free of any material large enough to create ricochets.”

3 It recommends that berms be constructed eight feet high.

4 The Source Book recommends, for high-powered rifle ranges, that a target pit be  
5 constructed. These recommendations must be viewed in the light of the NRA’s information  
6 that maximum ranges for center fire rifle cartridges range from 2,100 yards for a .22 Hornet  
7 to as much as 6,000 yards for the .338 Winchester Magnum and that maximum calculated  
8 ranges for pistol ammunition are, with one exception, over 1,500 yards, and can be as far as  
9 2,500 yards.

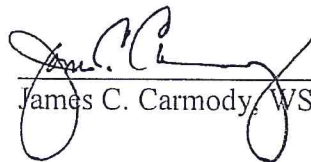
10 The application fails to disclose the total area to be excavated for berms and  
11 backstops. It fails to state the total area to be used by the assortment of shooting ranges  
12 alluded to. Since all shrub vegetation will have to be cleared from firing range areas, there  
13 will be substantial habitat destruction involved in constructing this project. There is no  
14 description of whether that habitat currently serves as important feeding or nesting habitat for  
15 birds and other wildlife. No assessment has been done of the habitat to be destroyed from the  
16 standpoint of the presence of rare and important plants and plant communities.

### 14 **III. Conclusion**

15 SEPA appeal should be granted and environmental review remanded for (1)  
16 preparation of a full noise study; (2) complete description of proposal and phasing; (3) full  
17 and complete Checklist responses; (4) accurate and complete identification and description of  
18 mitigation measures; and (5) recirculation of MDNS for public comment.

19 **RESPECTFULLY SUBMITTED** this 6<sup>th</sup> day of June, 2013.

20 Halverson Northwest Law Group P.C.

21   
22 \_\_\_\_\_  
23 James C. Carmody, WSBA #5205  
24

CERTIFICATE OF SERVICE

I, Tori Durand, hereby certify under penalty of perjury under the laws of the State of Washington that the following is true and correct:

I am the legal assistant to James C. Carmody, attorney for Appellants, and am competent to be a witness herein.

On the 6<sup>th</sup> day of June, 2013, I caused to be served via the method indicated below, a copy of the following documents:

- ▶ Memorandum of Appellant with Respect to SEPA Appeal

**And a copy this Certificate of Service to:**

11 12 13 14 15 16 17 18 19	Jeff Slothower Lathrop, Winbauer, Harrel, Slothower & Denison, LLP P.O. Box 1088 Ellensburg, WA 98926	<input checked="" type="checkbox"/> Via First Class U.S. Mail <input checked="" type="checkbox"/> Via Email: <a href="mailto:jslothower@lwbsd.com">jslothower@lwbsd.com</a>
20 21 22 23	Andrew L. Kottkamp, Hearing Examiner Kottkamp & Yedinak PLLC 435 Orondo Avenue Wenatchee, WA 98801	<input checked="" type="checkbox"/> Via First Class U.S. Mail <input checked="" type="checkbox"/> Via Email: <a href="mailto:andy@wenatcheelaw.com">andy@wenatcheelaw.com</a>
24 25 26 27 28 29	Lindsey Ozbolt, Staff Planner Kittitas Co. Community Development Svcs. 411 N. Ruby Street, Ste. 2 Ellensburg, WA 98926	<input checked="" type="checkbox"/> Via First Class U.S. Mail <input checked="" type="checkbox"/> Via Email: <a href="mailto:lindsey.ozbolt@co.kittitas.wa.us">lindsey.ozbolt@co.kittitas.wa.us</a>
	Neil Caulkins Deputy Prosecuting Attorney Kittitas County, Washington Room 213, Kittitas County Courthouse 205 W. Fifth Avenue Ellensburg, WA 98926	<input checked="" type="checkbox"/> Via First Class U.S. Mail <input checked="" type="checkbox"/> Via Email: <a href="mailto:neil.caulkins@co.kittitas.wa.us">neil.caulkins@co.kittitas.wa.us</a>

DATED this 6<sup>th</sup> day of June, 2013.

Halverson Northwest Law Group P.C.



Tori Durand  
Legal Assistant



June 3, 2013

Dean Tonseth  
c/o The Farm  
16532 Hwy. 10  
Ellensburg, WA 98926

Subject: Cascade Field & Stream Noise Study

Ladies and Gentlemen:

I have reviewed the 10/15/12 report from Art Noxon, and I offer the following comments:

1. The background noise study conducted by Arthur Noxon in 2005 did not have sufficient duration to accurately characterize the acoustic environment. Five minutes is not a sufficient duration to make any reasonable assessment of the acoustic environment. Fewer carefully chosen locations and much longer durations (at least 24 hours) could have provided the necessary information. This study could still be done, but now it might take more than a few days to properly characterize the environment with the wind turbines in the area.
2. My 2003 report was critical of the use of the impulse time response, not the peak time response. Dr. Piacsek' report tabulated both at some locations. For example, at the Pearson residence he measured 81 dB (peak) and 66 dB (impulse). In this case the difference is 15 dB. Note that the 81 dB value represents a violation of WAC 173-060 for a residential receiving property.
3. Art Noxon's statement regarding the applicability of the WAC 173-060 is confusing. I'm not sure of his point. As I read the WAC, the exemption for shooting ranges applies to existing approved facilities. It appears to me that if this facility becomes approved, then it would not have to comply with the noise ordinance during daytime hours (7 AM to 10 PM). In that case there would be no limit to the amount of noise that would be generated by the gun range.
4. It appears that Mr. Noxon is not concerned about the audibility of gunfire at distant properties and the psychological responses that it can generate. The noise ordinance deals only with the level of the sound, but the character of the sound is also critically important. An 80 dBA gunshot elicits a much different reaction than an 80 dB noise



from a passing motorcycle or a note from a musical instrument. This should be taken into consideration.

5. It appears (see bottom of page 5) that Mr. Noxon does not feel that residential property should have to meet the noise ordinance at the property line when the house has a significant setback from that line. This is simply not the case. If a homeowner wants to achieve a quieter environment at his home he may need to buy more property to give him space to create the buffer zone that he needs. The noise ordinance must be met at all locations on the receiving property, including at the property line.
6. If you do a word search for "impulse" or "impulsive" in WAC 173-060 you will find no such words in the noise ordinance. The WAC simply ignores the issue of time constants when measuring noise levels. As a result, the peak noise level must also comply with the noise ordinance.
7. If the shooting range is Class B (recreational) and the receiver is Class A (residential), then the maximum allowable noise level is  $57 + 15 = 72$  dBA. This is clearly exceeded by gunshots in the Piacsek report.
8. It appears that only one type of gun has been tested at this site. Clearly a wider range of guns should be evaluated before a decision on mitigation is made. I do not disagree that a maximum noise level of 5 dBA above the background noise level is probably a good criterion. However, I don't think that we have a good idea of what the existing background noise level is at the nearby residences on a day without the wind turbines running. A 5 minute measurement at a time when the weather conditions were not reported is not sufficient.

In summary, a more complete assessment of the noise generated by different types of guns is needed, along with an ambient noise study that documents the background (L90) noise level at the nearby residences when the wind is not blowing.

If you have any questions regarding this matter, do not hesitate to give me a call.

Very truly yours,  
JGL Acoustics, Inc,

A handwritten signature in black ink that reads "Jerry G. Lilly".

Jerry G. Lilly, P.E., President, FASA  
Member INCE, ASTM, NCAC