

**KITTITAS COUNTY
LAND USE HEARING EXAMINER**

IN THE MATTER OF)	SE 20-00003
)	
Brown & Jackson, Inc. Appeal of Issuance of a Determination of Significance)	FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION
)	

This matter came before the Hearing Examiner for an open record public hearing on November 9, 2021. The Hearing Examiner having taken evidence and heard argument from counsel, and having reviewed all exhibits, renders the following decision:

I. FINDINGS OF FACT

- 1.1 The Appellant filed an application for a grading permit related to a proposed project for septage lagoons that triggered SEPA review. Kittitas County, the lead agency in this matter, solicited comments from departments within Kittitas County, State agencies, and neighboring property owners.
- 1.2 The comments raised included, but are not limited to, odor, flooding risk, ground and irrigation water contamination, and archeological impacts.
- 1.3 The Appellant responded to these comments.
- 1.4 After receiving and reviewing the Appellant's comments, Kittitas County informed the Appellant, on March 13, 2021, that it was contemplating issuing a determination of significance and asked for additional information about the issues raised in the comments.
- 1.5 Over 120 days elapsed without the Appellant responding.
- 1.6 Because of this lack of response, Kittitas County issued a Determination of Significance on the project based upon the information available to the County at the time the determination was made.
- 1.7 After the County issued the Determination of Significance, the Appellant submitted some additional information.
- 1.8 The Appellant timely filed an appeal of the SEPA Determination of Significance.
- 1.9 The Hearing Examiner received a motion by Kittitas Reclamation District to intervene in this

matter. The Hearing Examiner issued an order granting that motion to intervene, but allowed the intervention only to specific issues.

- 1.10 An open record public hearing after due legal notice was held on November 9, 2021. The above-referenced SEPA appeal hearing is scheduled for November 9, 2021.
- 1.11 Kittitas County, Appellant Brown & Jackson, Kittitas Reclamation District, all appeared at the hearing through counsel.
- 1.12 Admitted into the record at this open record public hearing were the following exhibits:
 - 1.12.1 Ex. 1 SEPA Checklist
 - 1.12.2 Ex.2 Receipt
 - 1.12.3 Ex. 3 Addendum to SEPA Checklist 6-30-2020
 - 1.12.4 Ex. 4 NOA Affidavit
 - 1.12.5 Ex. 5 Comments
 - 1.12.6 Ex. 6 Transmittal of Comments
 - 1.12.7 Ex. 7 Request for Extension 9-23-20
 - 1.12.8 Ex. 8 Request for Extension 10-7-20
 - 1.12.9 Ex. 9 CDS Extension Response
 - 1.12.10 Ex. 10 Applicant's Response to Comments
 - 1.12.11 Ex. 11 CDS Threshold Letter
 - 1.12.12 Ex. 12 Correspondence
 - 1.12.13 Ex. 13 DS and Scoping
 - 1.12.14 Ex. 14 Appeal Letter
 - 1.12.15 Ex. 15 Briefing Schedule
 - 1.12.16 Ex. 16 Applicants Threshold response letter (received 7-23-21)
 - 1.12.17 Ex. 17 Lagoon location examples
 - 1.12.18 Ex. 18 Appellant's September 3, 2021 letter
 - 1.12.19 Ex. 19 Kittitas County's October 5, 2021 Brief
 - 1.12.20 Ex. 20 Declaration of Johnson dated October 5, 2021 with Exhibit A and B;
 - 1.12.21 Ex. 21 November 2, 2021 brief by intervener, Kittitas Reclamation District with attachment A.
 - 1.12.22 Ex. 22 November 2, 2021 Declaration of Rehberger
 - 1.12.23 Ex. 23 November 4, 2021 Declaration of Vickers;
 - 1.12.24 Ex. 24 November 1, 2021 Declaration of Eberhart
 - 1.12.25 Ex. 25 November 8, 2021 letter from the Department of Archeology & Historic Preservation.
 - 1.12.26 Ex. 26 November 8, 2021 letter from the Department of Ecology
 - 1.12.27 Ex. 27 Emails submitted by Brittany Oliver of Western Engineering
- 1.13 Oral testimony was received from the following witnesses:
 - 1.13.1 Brittany Oliver, Western Pacific Engineering and Survey;
 - 1.13.2 James Rivard, Regional Manager Solid Waste Division for Washington State Department of Ecology;
 - 1.13.3 Nathan Nofziger.

- 1.14 On March 12, 2021, Kittitas County reasonably requested additional information regarding environmental impacts relating to odors, flooding, critical areas and wildlife, ground water and irrigation channel impacts, impacts to adjacent properties, wildlife and general safety, and general operations from the Applicant/Appellant.
- 1.15 The Applicant/Appellant did not timely respond to this request for additional information. As a result of this failure to timely provide the requested additional information, Kittitas County properly issued a Determination of Significance.
- 1.16 Because of the Applicant/Appellant's lack of timely providing responsive information, the County properly determined that the Applicant/Appellant's project may have significant adverse environmental impacts.
- 1.17 In order to issue a SEPA Determination of Significance when the Applicant/Appellant has failed to timely provide requested additional information, it is not necessary for the County to find that the significant environmental impacts be likely or probable.
- 1.18 Kittitas County's Determination of Significance threshold determination was based upon information provided to Kittitas County prior to the making of that Determination of Significance.
- 1.19 The Hearing Examiner finds that environmental issues surrounding odors and flooding may have a significant adverse impact, thereby requiring a Determination of Significance and an Environmental Impact Statement.
- 1.20 Any Conclusion of Law that is more correctly a Finding of Fact is hereby incorporated as such by this reference.

II. CONCLUSIONS OF LAW

- 2.1 The Hearing Examiner has been granted authority to render this decision.
- 2.2 To overturn a Determination of Significance, the Applicant must demonstrate that the decision is clearly erroneous. The finding is clearly erroneous when, although there is evidence supporting the determination, the authority reviewing the record is left with a definite and firm conviction that a mistake has been made.
- 2.3 WAC 197-11-330(4) controls the issuance of the Determination of Significance in this matter.
- 2.4 Kittitas County followed WAC 197-11-080 and 197-11-335.
- 2.5 In the situation presented under the facts of case, Kittitas County, reasonably believing that this proposal may have a significant adverse impact on the environment, properly issued a Determination of Significance requiring an environmental impact statement.
- 2.6 The Applicant/Appellant's failure to provide information requested by the County on March

12, 2020, intended to assist in the County's SEPA determination, provides a basis for the County to issue a Determination of Significance.

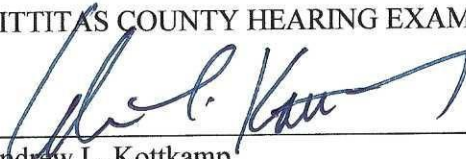
- 2.7 Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.

III. DECISION

Based upon the above Findings of Fact and Conclusions of Law, Kittitas County's Determination of Significance issued in this matter is hereby **AFFIRMED** in all respects.

SO ORDERED this 23rd day of November, 2021.

KITTITAS COUNTY HEARING EXAMINER



Andrew L. Kottkamp