

September 1, 2020



Kelly Bacon
Designated Permit Coordinator
Kittitas County Community Development Services
411 N. Ruby Street, Ste. 2
Ellensburg, WA 98926

Re: Project Name: Brown and Jackson
File Number: SE-20-00003
Kittitas Reclamation District Comments

Dear Ms. Bacon:

This firm represents the Kittitas Reclamation District (KRD), and provides the following comments and objections to the proposed application of Brown & Jackson, Inc. (B&J) to construct a septage management facility, including the construction of two septage storage ponds and associated septage land application on Parcel No. 295134 in Kittitas County. KRD is an irrigation district operating in and serving the Kittitas Valley. KRD supplies irrigation water to two-thirds of all the irrigated acres in Kittitas County, approximately 60,000 acres. KRD's North Branch Canal runs along and is located immediately adjacent to the southern boundary of the proposed project site, and down-gradient of the proposed septage operations.

SUMMARY

The proposal is not an authorized use in the Agriculture 20 (A-20) zone. The proposed commercial septage management facility is not a "utility" under KCC 17.61.010(1). B&J is a commercial septic pumping business that collects "septage" from existing residential and commercial septic systems. It does not operate nor is it proposing to operate a utility system handling "sewage" as contemplated by the code. Commercial septic system pumpers like B&J pump on-site septic systems and transport the collected septage to approved treatment facilities, presently the Kittitas County landfill. B&J's proposed project itself is not a utility.

Further, under both federal and state law, the proposed commercial septage management facility is considered wastewater treatment based on its handling, treatment, and application of septage. It is not a utility under either common understanding, or the definitions in the county code. Rather, the code specifically categorizes wastewater treatment as a distinct land use, and one not authorized in the A-20 zone.

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DISCUSSION

The subject property is zoned agriculture (A-20) and B&J's proposed land use does not qualify as a permitted utility use. First, B&J is not providing nor proposing to provide a "sewage" utility system as contemplated by the code. B&J is not dealing with "sewage" at all, nor does it operate a sewer system within the County. Rather, it is a commercial operation engaged in the collection and treatment of collected septage. Septic systems are by definition separate and independent, in contrast to sewer systems. See WAC 173-308-005 (explaining difference between "sewage sludge" and "septage"). Further, the exclusion of septage from the definition of "utility" comports with the intent of the regulations, because under their definition the functions of utilities are interconnections between buildings and properties—gas, municipal water, sewage, stormwater, electricity, telephone, and television. KCC 17.61.010. Septage does not fit in this category. The commercial collection, treatment, and application of septage is not a system of sewerage or sewage utility.

Because the proposed facility is not a "utility," it is not an outright permitted use. Rather, it is properly described as "wastewater treatment," a distinct and specific use contemplated by the zoning table, and prohibited on land zoned A-20. See KCC 17.15.060(1)(A). The County Code specifically includes "wastewater treatment" as a distinct and specific land use, and establishes it as a nonauthorized use in the A-20 zone.

B&J's proposed land use qualifies as wastewater treatment. State statute regarding reclaimed water use defines "wastewater" as "water-carried wastes from residences, buildings, industrial and commercial establishments, or other places, together with such groundwater infiltration and inflow as may be present." RCW 90.46.010. This includes the septage that B&J intends to collect.

Moreover, the proposed B&J facility is a "treatment works treating domestic sewage," and B&J has identified its proposed commercial operation as a septage management facility. Ecology's biosolid regulations governing this proposed use define "[t]reatment works treating domestic sewage" as expressly including "beneficial use facilities and septage management facilities as defined in this section." WAC 173-308-080. Under the regulations, a "septage management facility" is (a) an entity that "treats septage for application to the land" or (b) "one that applies septage to the land." *Id.* Here, B&J is proposing to do both.

First, B&J is required to treat its septage. The applicable regulations require that septage, like biosolids and sewage sludge, must be "treated by a process such as physical screening" for manufactured inerts (plastics, metals, etc.) "prior to final disposition." WAC 173-308-205(1) (emphasis added). Assuming that B&J intends to comply with this regulatory requirement, it is clear that B&J is performing and must perform wastewater "treatment." Similarly, under applicable EPA guidance, primary wastewater treatment involves a process of screening wastewater, then allowing it to

separate in a chamber.¹ B&J intends to follow this type of process using lagoons (the proposed storage ponds). See also WAC 173-308-080 (defining "[t]reat or treatment of biosolids" as the "preparation of biosolids for final use or disposal" which specifically "includes, but is not limited to, thickening, stabilization, and dewatering of biosolids." B&J's proposed facility thus constitutes "treatment" of wastewater. This is consistent with B&J's proposed facility being a "treatment works treating domestic sewage," described above.

Second, B&J intends to apply that septage to the land. While only incidentally described in its application materials and corresponding SEPA Checklist, B&J proposes and has indicated its intent to apply septage to the land. This classifies it as a "septage management facility," and by definition, a "treatment works treating domestic sewage." WAC 173-308-080.

Accordingly, the proposed facility should be classified as wastewater treatment, prohibited within the A-20 zone. The consideration of the proposed land use as a "utility" contravenes the specific consideration of "wastewater treatment" under the Code. Where statutes and codes contain both general and specific provisions, the more specific provision is intended to prevail.

Alternatively, if the proposed treatment of wastewater was somehow not considered to be "wastewater treatment," the proposed septage treatment facility should be considered a "commercial activit[y] associated with agriculture," separately addressed in the zoning code.² Commercial activities associated with agriculture are a conditional use requiring a conditional use permit (CUP) within the A-20 zone. B&J's commercial septage operations—including the construction, collection, and treatment of domestic and commercial septage—is clearly a "commercial endeavor." In fact, B&J is pursuing this commercial operation as a way of seeking to defray the costs and commercial expenses associated with disposal at the County's landfill, where it currently brings its septage. This use of agricultural land is recognized as a commercial venture, separate from farming.

The County has described the A-20 zone as "an area wherein farming, ranching and rural life styles are dominant characteristics" and codified the purpose and intent the A-20 zone "to preserve fertile farmland from encroachment by nonagricultural land uses; and protect the rights and traditions of those engaged in agriculture." KCC 17.29.010. By its code and adopted policy, the County has established that "[a]griculture has priority in matters dealing with conflicting land uses in agricultural areas." KCC 17.74.005. The proposed use conflicts with the priority agricultural use and is not permitted.

¹ See U.S. Environmental Protection Agency, *How Wastewater Treatment Works*. . . The Basics (EPA 833-F-98-002) (May 1998).

² This term is defined, in relevant part, as "any commercial endeavor including . . . services which are in support of, or supplemental to agricultural activities. . . ." KCC 17.08.165.

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Finally, the proposed location and property are not conducive to the proposed activity. Both the County and the public at large would be better served by B&J continuing to bring its septic to the county landfill and receiving facility for proper treatment and handling, or an alternate site should be identified. Specific to B&J's grading permit application, if the proposed land use and associated septage ponds could be permitted at all (which KRD disputes), the County should require a significant surety bond associated with any such construction. See KCC 14.05.090. The proposed location of the septage ponds in relation to the surface water and ditches bisecting the property and upgradient of KRD's North Branch Canal have the potential to lead to significant human health and safety issues associated with KRD's irrigation water and its downstream users. As the County is certainly aware, the release of human waste into irrigation canals can have catastrophic impacts on agricultural users and food crops vital to the Kittitas Valley and Central Washington. A surety bond of sufficient amount would be required to protect against such potential hazardous conditions.

Thank you in advance for your consideration of these comments. As proposed, the application and proposed land use should be denied.

Sincerely,



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cc: Kittitas Reclamation District