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KITTITAS COUNTY HEARING EXAMINER

Brown & Jackson Appeal of Issuance of )  
Determination of Significance )

) NO. SE-20-00003  
)

) **DECLARATION OF JEREMY**  
) **JOHNSTON**  
)  
)  
)

- 
1. My name is Jeremy Johnston. I am a U.S. citizen. I am over the age of 18, competent to make this declaration, and base this statement on my personal knowledge under penalty of perjury.
  2. I am the Planning Official of Community Development Services for Kittitas County in Ellensburg, Washington. I make this statement in that capacity.
  3. Kittitas County received a letter from the attorney for the Appellant in this matter on July 19, 2021. Attached thereto was a document dated July 8, 2021, from the Appellant's engineering firm. That letter is referenced in the Appellant's appeal letter in this matter. To clarify and produce a complete record, attached hereto as Exhibit "A" is a true and correct (and date-stamped) copy of that letter and its attachment.
  4. Attached hereto as Exhibit "B" are true and correct copies of GIS pictures that I downloaded and printed on October 1, 2021. The first depicts the property that is the subject of this appeal, and the second depicts the County's solid waste facility at Ryegrass.
  5. I make this declaration under the penalty of perjury under the laws of the State of Washington and affirm that the foregoing is true and correct.

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DATED this 5<sup>th</sup> day of October, 2021 in Ellensburg, Washington.

  
\_\_\_\_\_  
JEREMY JOHNSTON



WITHERSPOON  
BRAJCICH  
MCPHEE

TAUDD A. HUME

thume@workwith.com

July 15, 2021

Kittitas County  
Community Development Services  
c/o Jeremy Johnston  
411 N Ruby St, Suite 2  
Ellensburg, WA 98926

RECEIVED  
JUL 19 2021

Kittitas County CDS

RE: *SEPA Application (SE-20-00003)*

Dear Mr. Johnson,

This firm has been retained by Brown & Jackson, Inc. (the "Applicant") to advise regarding its attempt to permit two storage ponds on Kittitas County Parcel No. 295134 (the "Project"). Specifically, I am writing to you regarding the status of the SEPA process (SE-20-00003) and to address certain requests for information contained your March 12, 2021 letter (the "Letter") to the Applicant. Also, included with this communication is a letter dated July 8, 2021 from Western Pacific Engineering that addresses the technical information you requested in your Letter.

Our understanding is that in this situation Kittitas County (the "County") has jurisdiction over a grading permit made necessary for the construction of the ponds, and the Washington State Department of Ecology (as "DOE") has jurisdiction over the Project permit and ongoing oversight of the operation of the Project pursuant to WAC 173-350, WAC 173-308.

The following dates are relevant to the SEPA process thus far:

- On or about June 15, 2020 Applicant submitted a grading permit and SEPA Checklist to the County.
- On June 30, 2020 Applicant submitted an addendum to the SEPA Checklist based on DOE's comments.
- On September 11, 2020 the County sent the Applicant a compiled list of the public and agency comments and requested a response by September 24, 2020.

**A Professional Limited Liability Company**

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<sup>Δ</sup> Certified Specialist  
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California State Board of Legal Specialization

- On September 23, 2020 Applicant requested an extension to respond to the abundant amount of public and agency comments.
- On September 24, 2020 the County approved the extension, and on December 10, 2020 Applicant submitted their response to the public and agency comments along with the results from some additional studies performed.
- On January 11, 2021 Applicant submitted results from additional studies performed and a set of updated construction drawings. The pond was slightly re-located based on information gathered during an archeological study on the property.

Our understanding is that the SEPA process has been paused at this time, and that your Letter requests certain information from the Applicant before the process can proceed. While your Letter highlights various concerns raised by neighbors only once does it claim that such concerns are raised by an agency – which we are going to assume was a Consulted Agency (as that term is defined by WAC 197-11-724).<sup>1</sup>

As such, we are going to assume that the record, and the requests for mitigation and further study made in your Letter, are informed primarily on the basis of lay testimony and the non-expert consideration of the Responsible Official and/or the Community Development Services Department (the “Department”). Your Letter concludes by suggesting that “[d]ue to the apparent potential significant impacts associated with this application proposal, CDS is likely to issue a Determination of Significance.” It’s unclear which of the issues raised in your letter you consider to present a significant probable impact, so I will address each of them in turn below.

SEPA’s threshold determination requirements compel government agencies to determine and document environmental impacts of their proposed actions so that adverse consequences may be avoided, mitigated, or, at the very least, consciously chosen. KCC 15.04.020 adopts WAC 197-11-060(4)(a), which states “SEPA’s procedural provisions require the consideration of “environmental” impacts (see definition of “environment” in WAC 197-11-740 and of “impacts” in WAC 197-11-752), with attention to impacts that are likely, not merely speculative. (See definition of “probable” in WAC 197-11-782 and 197-11-080 on incomplete or unavailable information). Moreover, in order to issue a Determination of Significance (a “DS”), the Responsible Official must find that “a proposal is likely to have a significant adverse environmental impact, and therefore an Environmental Impact Statement (an “EIS”) is required. See WAC 197-11-310, WAC 197-11-360, WAC 197-11-736.

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<sup>1</sup> A “Consulted Agency” is defined as “any agency with jurisdiction or expertise that is requested by the lead agency to provide information during the SEPA process.” WAC 197-11-724 (emphasis supplied). An “Agency with Environmental Expertise” is defined by WAC 197-11-714 as “an agency with special expertise on the environmental impacts involved in a proposal or alternative significantly affecting the environment [which are] listed in WAC 197-11-920.”

WAC 197-11-740 defines "environment" as those elements listed in WAC 197-11-444. It is important to note that some of the "issues" raised in your Letter (e.g. property values, safety plan etc.) are outside the scope of this definition, and therefore not subject to review under SEPA.

WAC 197-11-752: "Impacts" are the effects or consequences of actions. Environmental impacts are effects upon the elements of the environment listed in WAC 197-11-444.

WAC 197-11-782: "Probable" means likely or reasonably likely to occur, as in "a reasonable probability of more than a moderate effect on the quality of the environment" (see WAC 197-11-794). Probable is used to distinguish likely impacts from those that merely have a possibility of occurring, but are remote or speculative. This is not meant as a strict statistical probability test.

WAC 197-11-794: (1) "Significant" as used in SEPA means a reasonable likelihood of more than a moderate adverse impact on environmental quality. (2) Significance involves context and intensity (WAC 197-11-330) and does not lend itself to a formula or quantifiable test. The context may vary with the physical setting. Intensity depends on the magnitude and duration of an impact. The severity of an impact should be weighed along with the likelihood of its occurrence. An impact may be significant if its chance of occurrence is not great, but the resulting environmental impact would be severe if it occurred. (3) WAC 197-11-330 specifies a process, including criteria and procedures, for determining whether a proposal is likely to have a significant adverse environmental impact.

All of the above definitions require, at the very least, some baseline professional opinion or testimony that suggests there is an actual impact that is likely to occur that would otherwise need to be mitigated – in SEPA language, that means non-speculative expert opinions and/or information that "a significant adverse environmental impact" will occur. We are unaware of that information in the record in this matter. As such, each of the items in your Letter are either unsupported by the opinions of Consulted Agencies or not appropriately addressed under SEPA. Moreover, the SEPA determination is overdue and the County must diligently work to finalize the SEPA process to avoid liability.

**1. Each Of The Items In Your Letter Are Either Unsupported By Professional Opinions In The Record Or Not Appropriately Addressed Under SEPA.**

In your Letter you made requests for information in the following categorical areas:

a. Critical Areas and Wildlife Impacts

Your Letter suggests that there are concerns regarding "potential" impacts from airborne contaminants and possible lagoon breaches. However, the only actual request you make is for the

Applicant to provide “clarification” regarding the nature of a possible third stream and its distance from the project area. While Western Pacific Engineering will be addressing the technical aspects of this particular request, it is worth noting that Avia Environmental Consulting (as “Avia”) prepared a report that was previously provided to the County that concluded that (1) the Project is not expected to impact the function of the critical area or buffers, and that although there Washington Department of Fish and Wildlife databased do show a third perennial stream, that field observations did not reveal any such stream.

As it relates to the unsupported allegations regarding airborne contaminants, any such work will necessarily have to comply with state and regional air quality standards (see WAC 197-11-660(e)) and would be subject to other permitting standards under the authority of the Department of Ecology (e.g. WAC 173-250, WAC 173-308) which would otherwise form the basis of a condition under SEPA. Based upon the information in your Letter it is entirely unclear how this issue could fit the WAC definitions of “impact,” “probable” or “significant.”

b. Flood Hazards

Your Letter requests a full Hydrologic Report with Floodplain Delineation based upon “several comment letters.” It is important to note that the project lies within Zone C of the FEMA mapping system. Zone C is defined by FEMA as areas with “minimal flooding” and are located higher than the elevation of 0.2 percent annual chance flood (FEMA MAP 530095 0465 B, Effective May 5<sup>th</sup>, 1981). Consulting the FEMA maps is an appropriate and customary method for seeking floodplain information. Your Letter does not indicate that FEMA itself (or any other Consulted Agency) has any issues with the Project location, but rather that “several comment letters” originated this concern. As such, we will assume that the record, and the requests for further study are informed primarily on the basis of this non-expert testimony since WAC 197-11-545 provides that a lack of comment from a Consulted Agency or any other agency may be construed as a lack of object to the environmental analysis.

The Applicant understands the concerns of the neighboring property owners, however, many of those concerns are in the form of generalized fears or speculative predictions that cannot form the basis for land use (or SEPA) decisions. *See Sunderland Family Treatment Services v. Pasco*, 127 Wn.2d 728 (1995) (holding that unsubstantiated fears of area residents about potential criminal behavior or nuisance activity are not a proper basis to deny a permit); *see also Maranatha Mining, -Inc. v. Pierce County*, 59 Wn.App. 795 (1990) (holding that land use decisions must be based upon reasons backed by policies and standards, not “community displeasure.”). Without supplying any specific details, the County alleges that the SEPA determination should have evaluated a host of unsubstantiated concerns. This speculation is not supported by the record in this matter, the Responsible Official is not a subject matter expert to independently analyze these issues (like a Consulted Agency would be), and the County may not exercise its SEPA substantive authority to address speculative impacts. *Boehm v. City of Vancouver*, 111 Wn.App. 711(2002) (the Boehms argued that the threshold determination should

be remanded because the City didn't consider the site specific impacts of Fred Meyer's proposed gas station. The court held that SEPA review need not address cumulative impacts when speculative; when a party can point to no specific impact, those impacts are speculative.); *Concerned Citizens of Hosp. Dist. No. 304 v. Board of Comm'rs of Pub. Hosp. Dist. No. 304*, 78 Wn. App 333 (1995) (remote impacts and impacts on property values need not be considered under SEPA); *Conservation Nw. v. Okanogan Cty.*, 194 Wash. App. 1034 (2016).

c. Ground Water and Irrigation Channel Impacts

As it relates to concerns regarding impacts to ground water, we believe this request for information is best addressed by Applicant's engineer. However, it is worth noting that the Consulted Agency with jurisdiction over this issue is the Department of Ecology did not express any concerns. Again, WAC 197-11-545 provides that a lack of comment from a Consulted Agency or any other agency may be construed as a lack of object to the environmental analysis.

Additionally, potential impacts to ground water and other operational issues are already addressed by the regulatory scheme that governs these types of operations. See WAC 173-350 et seq. Therefore, because WAC 197-11-660(e) provides that agencies should first determine whether other regulations will mitigate any presumed impacts before requesting such mitigation, this request/concern seems misplaced and cannot form the basis of a condition under SEPA.

The County should consider this issue to be adequately addressed under Applicant's SEPA review because (a) DOE did not comment on this issue, and as a Consulted Agency its lack of comment should be understood as a lack of objection under WAC 197-11-545 (which is adopted via KCC 15.04.150); (b) due to this lack of comment there is no expert opinion in the record to support the imposition of mitigation on this issue (see *Boehm v. City of Vancouver*, 111 Wn.App. 711(2002); *Concerned Citizens of Hosp. Dist. No. 304 v. Board of Comm'rs of Pub. Hosp. Dist. No. 304*, 78 Wn. App 333 (1995); *Conservation Nw. v. Okanogan Cty.*, 194 Wash. App. 1034 (2016); *Sunderland Family Treatment Services v. Pasco*, 127 Wn.2d 728 (1995); see also *Maranatha Mining, -Inc. v. Pierce County*, 59 Wn.App. 795 (1990)); and (c) because other regulations address the operational concerns raised, the County is compelled to consider those regulations as sufficient to address those matters pursuant to WAC 197-11-660(e).

d. Impacts to Adjacent Property

Your Letter alleges various unsupported "impacts" to neighboring properties due to the smell from the operation and requests the Applicant to produce an "independent assessment regarding potential impacts to property values related to smell and/or visual impacts that could result from this project." Presumably, the County is requesting some form of a before/after appraisal to understand the Project's effects on property values. However, impacts from a project on the values of surrounding properties is not an issue to be considered under SEPA. *Concerned Citizens of Hosp. Dist. No. 304 v. Board of Comm'rs of Pub. Hosp. Dist. No. 304*, 78 Wn. App 333 (1995) (remote impacts and impacts on property values need not be considered under

SEPA). Property values are not defined as “Elements of the Environment” under WAC 197-11-444. As such, a request for “an independent assessment regarding potential impacts to property values” is not mitigation that could be required by the County pursuant to its substantive authority under SEPA.

Additionally, it is worth noting that there are other examples of this exact facility already permitted in eastern Washington, including one owned and operated by the County, and the record herein is devoid of any claims of nuisance related to odor from these facilities. In fact, it is my understanding that the Kittitas County Solid Waste Department submitted a SEPA Checklist for an expansion at its Ryegrass facility in November 2020 and granted itself a MDNS. We understand that these are two different properties with different sets of environmental issues to mitigate. Nonetheless, the County did not impose a similar requirement on itself when acting as the Responsible Official under a SEPA review of the same type of project.

e. Wildlife and General Safety

Your Letter takes issue with a lack of fencing around the Project by alleging generalize concerns for trespassing youth from the neighboring Department of Children, Youth and Families operation and on behalf of unspecified wildlife. It is unclear by what a “robust safety plan” would incorporate, but “safety” concerns would also not be a SEPA-related issue under WAC 197-11-444. SEPA is concerned with mitigating demonstrable impacts to the environment.

It is also important to note that Washington Department of Fish and Wildlife, the Consulted Agency with regard to wildlife, did not express these concerns, and, through its lack of response, has indicated that it has no objections to the project. WAC 0197-11545. Without comment from a Consulted Agency on this issue there are no professional opinions beyond generalized speculation that could form the basis of a condition under SEPA. *Boehm v. City of Vancouver*, 111 Wn.App. 711(2002); *Concerned Citizens of Hosp. Dist. No. 304 v. Board of Comm'rs of Pub. Hosp. Dist. No. 304*, 78 Wn. App 333 (1995); *Conservation Nw. v. Okanogan Cty.*, 194 Wash. App. 1034 (2016); *Sunderland Family Treatment Services v. Pasco*, 127 Wn.2d 728 (1995); see also *Maranatha Mining, -Inc. v. Pierce County*, 59 Wn.App. 795 (1990).

However, in the interest of being a good neighbor, Applicant is willing to install a 6-foot fence around the perimeter of the ponds so that the potential risk to youth and wildlife is removed. This should be addressed in a Mitigated Determination of Non-Significance.

f. General Operations

Your Letter takes issues with “[f]acilities such as these” and the “serious issues” that tend to arise. Again, this assertion has multiple problems. First, there doesn’t appear to be anything in the record to support this assertion. In fact, we know that DOE permits “facilities such as these” through a regulatory scheme developed by the DOE, including the County’s Ryegrass Facility. It



is important to note that DOE has already reviewed and preliminarily approved the construction plans of the ponds, along with the application for coverage under the General Solids Permit for Biosolids Management. Similar to the Kittitas County Ryegrass Facility, Applicant's ponds and land application process will meet the requirements set forth by the Washington State Department of Ecology. Both facilities fall under the same constraints as outlined in General Solids Permit for Biosolids Management, including, but not limited to, the requirements for soil sampling and testing, pond liner inspections, annual reporting to DOE, DOE onsite inspections, and many other highly regulated conditions to uphold permit coverage. *See WAC 173-350 et seq.*

Again, the County should consider this issue to be adequately addressed under Applicant's SEPA review because (a) DOE did not comment on this issue, and as a Consulted Agency its lack of comment should be understood as a lack of objection under WAC 197-11-545 (which is adopted via KCC 15.04.150); (b) due to this lack of comment there is no expert opinion in the record to support the imposition of mitigation on this issue (*see Boehm v. City of Vancouver*, 111 Wn.App. 711(2002); *Concerned Citizens of Hosp. Dist. No. 304 v. Board of Comm'rs of Pub. Hosp. Dist. No. 304*, 78 Wn. App 333 (1995); *Conservation Nw. v. Okanogan Cty.*, 194 Wash. App. 1034 (2016); *Sunderland Family Treatment Services v. Pasco*, 127 Wn.2d 728 (1995); see also *Maranatha Mining, -Inc. v. Pierce County*, 59 Wn.App. 795 (1990)); and (c) because other regulations address the operational concerns raised, the County is compelled to consider those regulations as sufficient to address those matters pursuant to WAC 197-11-660(e).

Applicant is happy to provide a copy of the application materials submitted to DOE, but generalize concerns for "serious issues" is not a SEPA related issue (WAC 197-11-444) capable of forming a condition under the County's SEPA substantive authority.

## **2. The SEPA Determination Is Overdue And The County Must Diligently Finalize The SEPA Process To Avoid Liability.**

The process for receiving a grading permit, the granting of which is otherwise a ministerial act, should be wrapped up by this point. Pursuant to WAC 197-11-310(3) the Responsible Official must make a threshold determination no later than ninety days after the application and supporting documentation are determined to be complete.<sup>2</sup> Applicant's grading permit application was submitted over a year ago (June 15, 2020) and there is nothing in the record to suggest that it did not comply with the County's submittal requirements to otherwise have it declared complete. A grading permit is a ministerial permit.

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<sup>2</sup> Assuming no integrated project review for a grading permit under RCW 36.70B.060.

It should be noted that RCW 64.40 any delay in processing Applicant's grading permit opens the County up to liability for delay damage. RCW 64.40.020, Washington's "delay damages" statute provides in relevant part:

- (1) Owners of a property interest who have filed an application for a permit have an action for damages to obtain relief from acts of an agency which are arbitrary, capricious, unlawful, or exceed lawful authority, or relief from a failure to act within time limits established by law: PROVIDED, That the action is unlawful or in excess of lawful authority only if the final decision of the agency was made with knowledge of its unlawfulness or that it was in excess of lawful authority, or it should reasonably have been known to have been unlawful or in excess of lawful authority.
- (2) The prevailing party in an action brought pursuant to this chapter may be entitled to reasonable costs and attorney's fees.

The second part of subsection (1) above limits the government's liability to situations where the unlawful act is known or reasonably should have been known. Please consider this letter as notification of such. *Cox v. City of Lynnwood*, 72 Wash.App. 1 (1993) (City was liable to property owners for damages in connection with its denial of property owners' application for boundary line adjustment for three lots where property owners complied with requirements and city knew or should have known its conduct was unlawful.); *see also Lutheran Day Care v. Snohomish County*, 119 Wash.2d 91 (1992) (agency need not have knowledge of unlawfulness of its acts in order to be liable under statute for its arbitrary and capricious denial of property owner's application for permit.)

The County needs to be careful when it withholds processing of Applicant's application without justification. Arbitrary or irrational refusal or interference with processing a land use permit violates substantive due process. *R/L Assocs., Inc. v. City of Seattle*, 113 Wash.2d 402, 412 (1989); *Blanche Rd. Corp. v. Bensalem Township*, 57 F.3d 253, 267-68 (3d Cir.), *cert. denied*, 516 U.S. 915, 116 S.Ct. 303, 133 L.Ed.2d 208 (1995); *Bello v. Walker*, 840 F.2d 1124, 1129-30 (3d Cir.), *cert. denied*, 488 U.S. 868, 109 S.Ct. 176, 102 L.Ed.2d 145 (1988). In this case, the County's delay processing of Applicant's grading permit application and associated SEPA Checklist expose it to liability under RCW 64.40.020.

For example, in *Mission Springs, Inc. v. City of Spokane*, 134 Wash.2d 947 (1998) the City Council requested that the City Manager withhold a grading permit for which a real estate developer had previously satisfied all statutory criteria, to allow for the completion of additional studies. The Supreme Court held that "neither a grading permit, building permit, nor any other ministerial permit may be withheld at the discretion of local official to allow time to undertake a further study if applicant has satisfied all ordinance and statutory criteria;" and further found the City's conduct to be arbitrary and capricious entitling the developer to damages resulting from two-month delay in issuance of permit. *Id.* at 927.

### 3. Conclusion

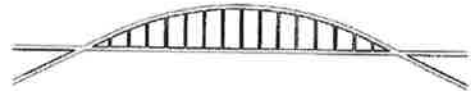
Again, each of the items in your Letter are either unsupported by the opinions of Consulted Agencies or not appropriately addressed under SEPA. Moreover, the SEPA determination is overdue and the County must diligently work to finalize the SEPA process to avoid liability. The intention of this letter is to help establish a mutually accepted baseline of understanding as to what issues are subject to review under SEPA, and to develop a plan for issuing the grading permit. After reading this letter, please contact me so that we can discuss how best to move forward.

Very Truly,

A handwritten signature in black ink, appearing to read 'Taud A. Hume', written in a cursive style.

Taud A. Hume  
WITHERSPOON BRAJCICH MCPHEE, PLLC

Attachments: *July 8, 2021 Letter from Western Pacific Engineering*



**WESTERN PACIFIC ENGINEERING & SURVEY**

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July 8, 2021

Kittitas County Community Development Services  
Attn: Jeremy Johnston  
411 N Ruby St, Suite 2  
Ellensburg, WA 98926

**RECEIVED**  
JUL 19 2021

Subject: SEPA Application (SE-20-00003)

Kittitas County CDS

Dear Mr. Johnston,

Western Pacific Engineering & Survey, Inc. (WPES), on behalf of Brown & Jackson, Inc. (Brown & Jackson), appreciates the opportunity to provide Kittitas County Community Development Services (KC CDS) with additional information regarding Brown & Jackson's SEPA Application (SE-20-00003), relating to the construction of two storage ponds on Kittitas County Parcel No. 295134 (Property). This letter is in response to your most recent letter dated March 12, 2021.

The proposed project will utilize storage ponds and land application of biosolids to provide the beneficial use of improving soil quality for the purposes of growing crops and return approximately 106 acres of arable land, that has lain fallow for several years, back to productive use. As longtime residents and business owners in Kittitas County, Brown & Jackson has approached site selection and project design with care. Brown and Jackson came to us, based upon our ability and experience in designing and permitting these types of facilities in other municipalities.

During the site selection process for this project, Brown & Jackson communicated with both Kittitas County Community Development Services and the Washington State Department of Ecology and have remained transparent in all of their actions and decisions in regard to this project. Additionally, they have sought out and hired the necessary professionals to perform design services, studies, and provide recommendations to ensure that the project serves the septage needs of their clients while minimizing impact to the surrounding area. It is important to Brown & Jackson that they provide sustainable biosolids management in Kittitas County while minimizing potential impacts from the proposed storage ponds and land application process.

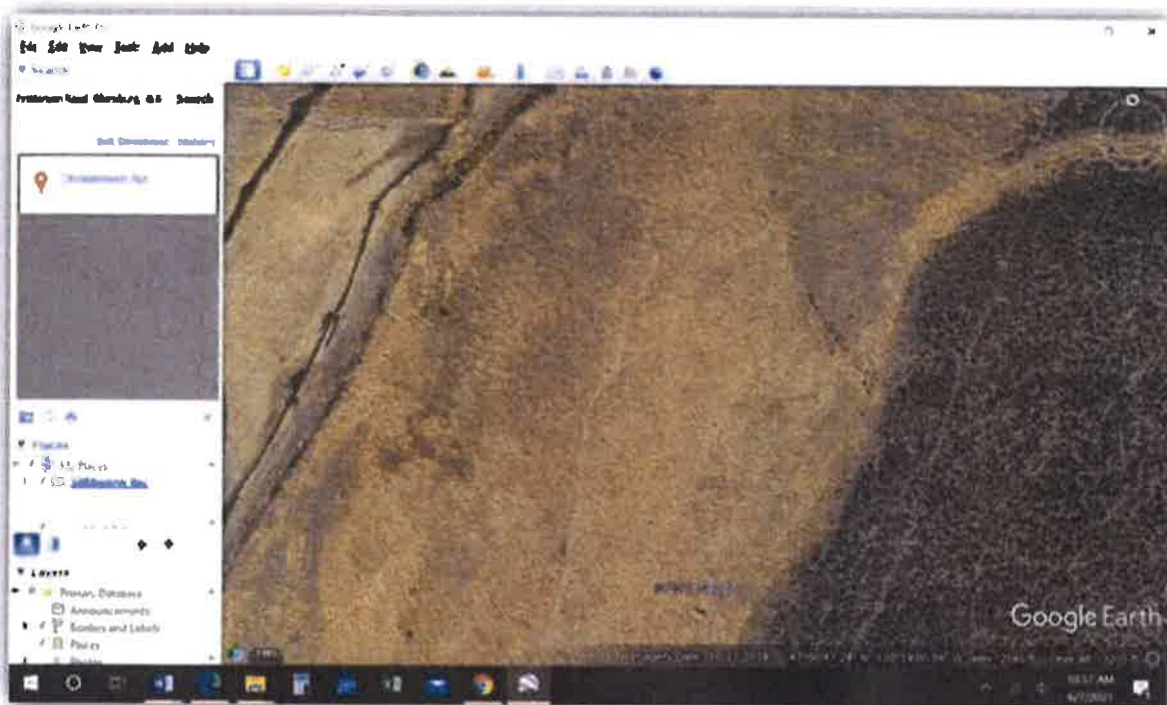
Having read though all of the environmental concerns that were mentioned in your March 12<sup>th</sup> letter, Brown & Jackson has planned for and is prepared to offer plans and recommendations for mitigation to aid the county in making a Mitigated Determination of Non-Significance for this project.

### Critical Areas and Wildlife Impacts

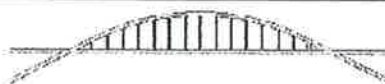
Brown & Jackson retained Avia Environmental Consulting (Avia) to evaluate the property for critical areas on and adjacent to the property. The report Avia prepared to document their methodology, observations, conclusions, and recommendations (Avia Report) was previously provided to KC CDS.

Avia determined that the proposed storage ponds are located entirely outside of any applicable regulatory buffer for critical areas (Avia Report, page 1). Avia also concluded that, although the existing access road crosses stream buffers, it is not expected to impact the function of critical areas or buffers and the remaining buffer provides more than compensatory area in additional buffer (Avia Report, pages 1, 5). Additionally, during their field work, Avia identified only two onsite streams and determined that the buffer for these Type 2 streams is 100 feet. (Avia Report, pages 1, 5). The construction plans and land application plan for this project adhere to the recommendations and requirements as outlined in this report.

In a follow-up email correspondence with Suzanne Tomassi, Senior Biologist at Avia Environmental Consulting, she stated that “the WDFW and county databases show a {3<sup>rd</sup>} perennial (year-round) stream there, but that certainly isn't what we saw. You can see in the Google Earth image below that there's no water, and there doesn't even seem to be evidence of a dry stream bed south of where it bends out of the shrub-steppe.”



*Figure 1 - Source: Avia Environmental Consulting, Via Google Earth*



Additionally, it is important to note Brown & Jackson's commitment to minimize project impact to the existing area. In December 2020, Plateau Archeological Investigations, LLC was retained to conduct a Cultural Resource Survey for the project area. Their findings were published in a report that has already been provided to KC CDS. The in-depth survey included 69 subsurface probes that ranged in depths from 15-55 inches (Plateau Report, page 9). There were findings of lythics in the far northeast portion of the project site (Plateau Report, page 11). To properly mitigate and protect the cultural resources, Brown & Jackson went back to the engineers at Western Pacific Engineering & Survey, Inc to have the ponds moved south of the identified archeological site.

### Flood Hazards

The Washington State Department of Ecology has published a SEPA checklist guidance for project applicant as well as the lead agencies. This information can be accessed on their website at: <https://ecology.wa.gov/Regulations-Permits/SEPA/Environmental-review/SEPA-guidance>. This guideline specifically states that FEMA maps should be consulted to determine a projects flood risk

As stated in the SEPA application, the project lies within Zone C of the FEMA FIRM mapping system. Zone C is defined by FEMA as areas with "minimal flooding" and are located higher than the elevation of 0.2 percent annual chance flood (FEMA MAP 530095 0465 B, Effective May 5<sup>th</sup>, 1981). The project is not located within a FEMA mapped flood zone, and therefore no mitigation should be necessary.

### Ground Water and Irrigation Channel Impacts

The construction plans of the ponds along with the application for coverage under the General Solids Permit for Biosolids Management, spill prevention plan, and all associated documents have been reviewed and preliminarily approved by the Washington State Department of Ecology (DOE) Biosolids Program as they fall under the DOE's jurisdiction.

Brown & Jackson has worked closely with the engineers at Western Pacific Engineering & Survey, Inc to ensure that the designed ponds and planned land application not only to meet DOE requirements, but also protect the local environment.

To protect local groundwater, the ponds will be lined with an approved 60 mil HDPE Drain liner, a secondary 60 mil WDPE smooth liner, and corresponding leak detection system. As part of the Operation Plan for this site, Brown & Jackson will check the ponds for any signs of leakage as part of our weekly inspection, as required by WAC 173-350-330 (6) (a) (v). Additionally when the ponds are emptied and cleaned each year, the liner will be inspected and DOE will be notified such that they have sufficient time and the opportunity to be present during the liner inspections, as required by WAC 173-350-330 (6) (a) (ix).

To give a frame of reference, the October 2015 Operating Plan for the Kittitas County Lagoons located at the Ryegrass Landfill, states that the two surface impoundments shall, at a minimum



include a “30 mil reinforced artificial liner placed on top of a structurally stable foundation to support the liner and waste and to prevent settlement that would destroy the liner”. Just like the ponds at Kittitas County Ryegrass facility, the Brown & Jackson ponds are designed to meet the requirements established by the Washington State Department of Ecology.

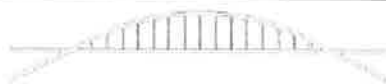
For this project, it is not expected that the local flood waters or stormwater runoff would rise to an elevation high enough to overtake or enter the ponds. The creeks are located significantly below grade in relationship to the ponds. The main concern during design, based on the location of the ponds, was the stormwater runoff coming from the hills located to the Northeast and East of the ponds. The potential for stormwater runoff from the surrounding area was taken into account in the design of the ponds and is discussed in detail within stormwater section of Engineering Report prepared by WPES, dated January 14, 2021. For your convenience, we have included some of the verbiage in this letter to further emphasize Brown & Jackson’s plan to mitigate for the potential of stormwater runoff.

*“For this site, the Stormwater design considerations were for a 25-year 24-hour storm. The ponds are located adjacent to hillsides to the north and southeast that converge to an arroyo that is located just southeast of the ponds. The ponds are designed and graded in such a manner that the runoff from the hillsides and arroyo will flow into the two foot (2 ft.) deep and two foot (2 ft.) wide channel. This channel diverts the flow of the runoff around the pond and to the native grade to the north and west of the ponds. Additionally, the edges of the ponds are raised above the adjacent grade, so that in the event of a severe storm the nearby surface runoff will be directed around the ponds.*

*Based on the surrounding topography the arroyo has the potential to collect Stormwater runoff from an approximately one square mile (1 sq. mi.) area of hillsides. Using an SCS Type IA Regional Storm Hydrograph, it was determined that the maximum design flow of surface runoff from the hillsides would be approximately 4.9 cubic feet per second (4.9 ft<sup>3</sup>/s). Using Manning’s equation, a roughness coefficient of 0.029 and a slope of two percent (2%), it was determined that the shallow trapezoidal channel, designed to divert the flow, has a capacity of handling a maximum flow that is larger than the design flow of surface runoff by safety factor greater than two.*

*Also, winter precipitation that occurs when the ponds are full, typically takes the form of snow and ice. Snow and Ice does not typically generate large amounts of runoff. Should rain occur, the warmer rains typically occur such that the ground can sufficiently absorb most of the expected runoff. However, with the edges of the ponds raised from the native ground and the channel to divert the flow of runoff, any Stormwater runoff that may occur will be re-directed away from the ponds.”*

The October 2015 Operating Plan for the Kittitas County Lagoons located at the Ryegrass Landfill, states that “Ground water is located several hundred feet below the site surfaces; there is no surface water. Storm water runoff, if any, is directed to drainage to the south which eventually reaches a local creek”. Similarly, as the location of Brown & Jackson’s proposed ponds, the groundwater is



several hundred feet below the site surfaces, and any existing stormwater runoff is directed to a localized seasonal creek.

Additionally, the purpose of land application is to treat the water in a way that not only safeguards surface and groundwater, but also makes beneficial use of the water and any included plant nutrients. The Crop Management Plan for this site, prepared by Soiltest Farm Consultants, Inc made recommendations of the types of crops and the areas of the site which would be most suitable for the proposed land application processes. Brown & Jackson's land application plan for the site follows these recommendations.

#### Impacts to Adjacent Property

To mitigate for the potential odor, WPES has worked with Brown & Jackson and have designed the storage ponds, day-to-day operations, and annual land application program to implement industry standard best management practices as recommended in Chapter 12 of the EPA's "Guide to Septage Treatment and Disposal". Any potential odor generated by the storage ponds will be mitigated by minimizing the turbulence and agitation of the ponds. Additionally, by extending receiving pipes below the water surface and by using quick disconnect fittings between the pumper truck and the receiving station, the "free fall" of septage is avoided and turbulence is further minimized.

Potential odor related to land application activities will be mitigated by both limiting the frequency of land application to once per year and promptly incorporating the land-applied septage into the soil by disking it into the soil within six hours of application. Odor mitigation by incorporation is recognized by both the EPA and Ecology. Section 11.5 of Ecology's General Permit for Biosolids Management outlines the requirements of reducing Vector Attraction and thus the potential for nuisance odors. Incorporating the septage within 6 hours after application is a common practice for reducing vector attraction and has been accepted by Ecology.

DOE has expertise and experience with odor prevention, management, and mitigation plans given their role as a permitting agency, which is key to all parties. DOE has already given preliminary approval for all the odor mitigation measures described. Based on this, KC CDS should issue a Mitigated Determination of Non-Significance for the proposed project.

Both the Kittitas County Ryegrass Facility's ponds and the proposed Brown & Jackson Pond sites are located in the vicinity of scattered rural residences. Additionally, both sites are located upgrade from the residences and each site contains a creek or water way in the vicinity of the current and proposed land application areas. To help better understand each sites location, and distance from the surrounding rural housing, there are two exhibits attached.

#### Wildlife and General Safety

The safety of the public, the Parke Creek Community Facility's youth, and the nearby wildlife is of the utmost importance to Brown & Jackson. They are willing to install a 6-foot fence around the perimeter of the ponds so that the potential risk to youth and wildlife is removed. We propose





that, in order to meet the needs of this concern, installation of a fence around the ponds be included in the Kittitas County's Mitigated Determination of Non-Significance for the project to meet the needs of this concern.

#### General Operations

Review of the construction plans of the ponds, along with the application for coverage under the General Solids Permit for Biosolids Management, and all associated documents have been reviewed and preliminarily approved by the Washington State Department of Ecology (DOE) Biosolids Program. Both the Regional Biosolids Program Coordinator and an engineer for DOE's Solid Waste Management Program have reviewed all of the necessary documents associated with a project such as this.

Similar to the Kittitas County Ryegrass Facility, the Brown & Jackson ponds and land application process will meet the requirements set forth by the Washington State Department of Ecology. Both facilities fall under the same constraints as outlined in General Solids Permit for Biosolids Management. This includes the requirements for soil sampling and testing, pond liner inspections, annual reporting to DOE, DOE onsite inspections, and many other highly regulated conditions to uphold permit coverage.

#### Similar Projects

The intent and scope of this project is not unique, outside of Kittitas County's Ryegrass Facility, there are several other privately owned and operated facilities scattered across the state that store septage and perform land application for the purpose of growing crops. The following is a list of just a few of the privately run facilities that have Septage Storage Lagoon/Ponds and/or a current Land Application Permit:

- BioRecycle located in Mason County
- Joe's Septic & Site Prep, Inc. located in George, Grant County
- Morgan & Son Septic Service located on Okanogan County
- Apple Valley Pumping, Inc. located in Quincy, Grant County
- Basin Septic Services, Inc. located in Moses Lake, Grant County
- Fire Mountain Farm, Inc. located in Lewis County
- Tee-Pee Septic Services, LLC located in Othello, Adams County
- Think Tank Sanitation, Inc. located in Mattawa, Grant County

For most of these projects, the county was the lead agency for the SEPA process. And in nearly every one of those instances, the involved counties chose to share the responsibility and become co-lead agencies with the Washington State Department of Ecology (DOE). The biosolids coordinators working for DOE are experts in the processes and procedures regarding the storage and land application of biosolids.



Most notably, an example of a county choosing to co-lead the SEPA process for a similar project is the additional ponds for the BioRecycle facility located in Mason County, WA. Mason County, with a population of 66,768 is of similar size to Kittitas County which has a population of 47,935 (US Census Bureau). Similar to Brown & Jackson, BioRecycle submitted to DOE an application for coverage under the General Solids Permit for Biosolids Management as well as a grading permit through Mason County.

During the Mason County Commissioner Briefing on April 22, 2018, Kell Rown, the senior planner for Mason County Department of Community Services, stated that “The Storage Lagoon is part of mitigation of SEPA done as part of Department of Ecology’s Biosolids General Permit, Mason County requested that Ecology join the county as SEPA co-lead, because we do not have county staff that have the technical ability to review the issues related to the biosolids piece of it..... Department of Ecology and the County issued a determination of non-significance.” (<https://www.youtube.com/watch?v=WyyiNiEEjes>)

More locally, the Kittitas County Solid Waste department submitted a SEPA for the additional land application of biosolids at their Ryegrass facility in November 2020. On February 11<sup>th</sup>, 2021 their proposal was granted a Mitigated Determination of Nonsignificance. The proposed land application process and existing site conditions show minimal variation compared to Brown & Jackson’s proposed land application process.

During our meeting held via zoom on March 23<sup>rd</sup>, 2021, with Jeremy Johnston and other staff members from KC CDS in attendance, it was explained that the KC CDS had not reached out to the Department of Ecology. In that same meeting Mr. Johnston explained that he was not an expert in these type of projects and that he needed more information from Brown & Jackson in order to make a determination for the SEPA application. Kittitas County Code 15.04.060 allows the county's responsible official to transfer their lead agency duties to the state agency which has jurisdiction. We recommend that the County become a co-lead agency with DOE, so that there may be a broader base of knowledge applied to the determination that is made.

#### SEPA Process

In 2018, the Washington State Department of Ecology published updates to their “State Environmental Policy Act Handbook” The purpose of the SEPA guidance is intended to be used in conjunction with the State Environmental Policy Act (Chapter 43.21C RCW) and the SEPA Rules (Chapter 197-11 WAC). This handbook outlines the typical timeline and course of action for a SEPA Review Processes.

Once the SEPA lead agency receives the submitted SEPA checklist it is their responsibility to provide a thorough review and written revisions, if necessary. Lead agencies are encouraged to consult with other agencies, such as the Department of Ecology, with the intent of gathering information from those with expertise.



During the review processes the lead agency has an obligation to identify possible mitigation measures. Mitigation is defined as the “the avoidance, minimization, rectification, compensation, reduction, or elimination of adverse impacts to built and natural elements of the environment. Mitigation may also involve monitoring and a contingency plan for correcting problems if they occur”.

It is then the duty of the lead agency to assess significance. The agency shall use the information provided to them to determine the severity of impact that the proposed project could have on the existing and surrounding environment. If there are no significant adverse actions within the proposal, the agency may choose to issue a Determination of Non-Significance (DNS) or a Mitigated determination of Non-Significance (MDNS). Finally, the lead agency must issue a notice of final decision to the applicant.

The flow chart below, from the DOE’s State Environmental Policy Act Handbook outlines the typical flow and timelines associated with the SEPA Process.



## SEPA REVIEW PROCESS

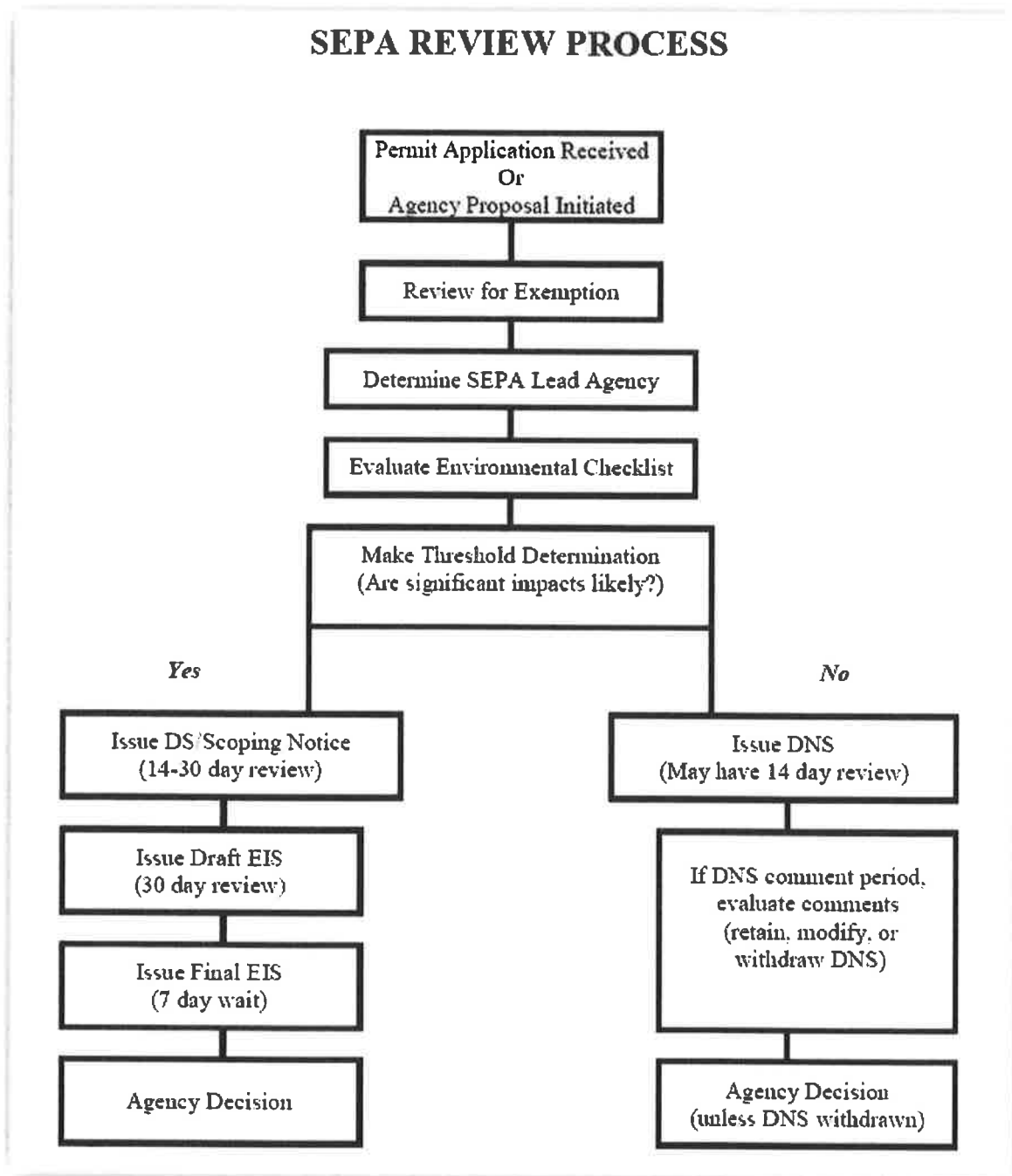


Figure 2 - Source: State Environmental Policy Act Handbook, Published 2018 by Washington State DOE



Specifically for this project, Brown & Jackson is still waiting for the Kittitas County Community Development Services department to issue a determination, based on the SEPA checklist and other supplementary information that we have thus far provided.

For reference, here is a timeline of events in regards to our project:

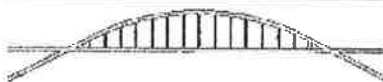
- June 15<sup>th</sup>, 2020 - The grading permit and initial SEPA checklist were submitted to KC CDS
- June 30<sup>th</sup>, 2020 - An addendum to the SEPA checklist, based on DOE's comments, was submitted to the KC CDS
- September 11<sup>th</sup>, 2020 - KC CDS sent Brown & Jackson a compiled list of the public and agency comments and requested a response by September 24<sup>th</sup>, 2020
- September 23<sup>rd</sup>, 2020 - Brown & Jackson requested an extension to respond to the abundant amount of public and agency comments
- September 24<sup>th</sup>, 2020 - KC CDS approved the extension
- December 10<sup>th</sup>, 2020 - Brown & Jackson submitted their response to the public and agency comments along with the results from some additional studies performed
- January 11<sup>th</sup>, 2021 - Brown & Jackson submitted results from additional studies performed and a set of updated construction drawings. The pond was slightly re-located based on the information gathered in the archeological study
- February 18<sup>th</sup>, 2021 - KC CDS requested that Brown & Jackson withdraw their SEPA checklist and re-submit. This was later corrected in an email from Jeremy Johnston dated February 19<sup>th</sup>, 2021
- March 12<sup>th</sup>, 2021 - Brown & Jackson received a letter from KC CDS outlining a list of items that were defined as raising concern in regards to their impact on the environment.
- March 23<sup>rd</sup>, 2021 - Brown & Jackson met with KC CDS via Zoom to discuss the March 12<sup>th</sup> letter. KC CDS stated that they have not yet made a determination and that more information from Brown & Jackson is warranted.

### Population Growth

According to the Washington State Employment Security Department and the U.S. Census Bureau, the population of Kittitas County grew 17.2% from April 1<sup>st</sup>, 2010 to July 1<sup>st</sup>, 2019. This rate exceeds the state's overall growth rate of 13.2% in the same time frame. The population growth is driven the student population at CWU, an increase of people retiring and moving to Kittitas County, and most recently it is expected that the County will see a more accelerated rate of growth due to the effects of Covid-19 and our working economy. "This pandemic has enabled some employees who formerly lived and worked in large metropolitan areas, such as the Seattle-Bellevue-Everett primarily Metropolitan Statistical Area (PMSA), to telework from and reside in less-densely populated areas (such as Kittitas County)."

(<https://esd.wa.gov/labormarketinfo/county-profiles/kittitas>)

As the population of Kittitas County continues to grow, the need for additional capacity to handle septage from across the county will continue to develop. The meeting minutes from the January 8<sup>th</sup>, 2019 Kittitas County Solid Waste, Maintenance and Fair Office study session state that the Solid Waste department had requested a "permit revision from the Department of Ecology to allow

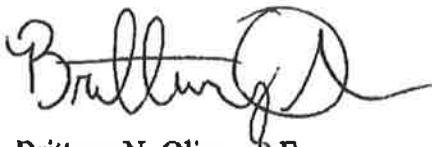


the 4<sup>th</sup> lagoon at Ryegrass to accept septage. Currently it only allows leachate from the closed landfill." Brown & Jackson intends to construct facilities large enough to handle their current septage pumping operations, leaving much needed open capacity at the County's Ryegrass facilities for the growing volume of septage being produced and pumped across the county.

Summary

It is our hope that the information contained within this letter, will aid Kittitas County Community Development Services in continuing to process Brown & Jackson's SEPA application and ultimately make a Mitigated Determination of Non-Significance.

Sincerely,



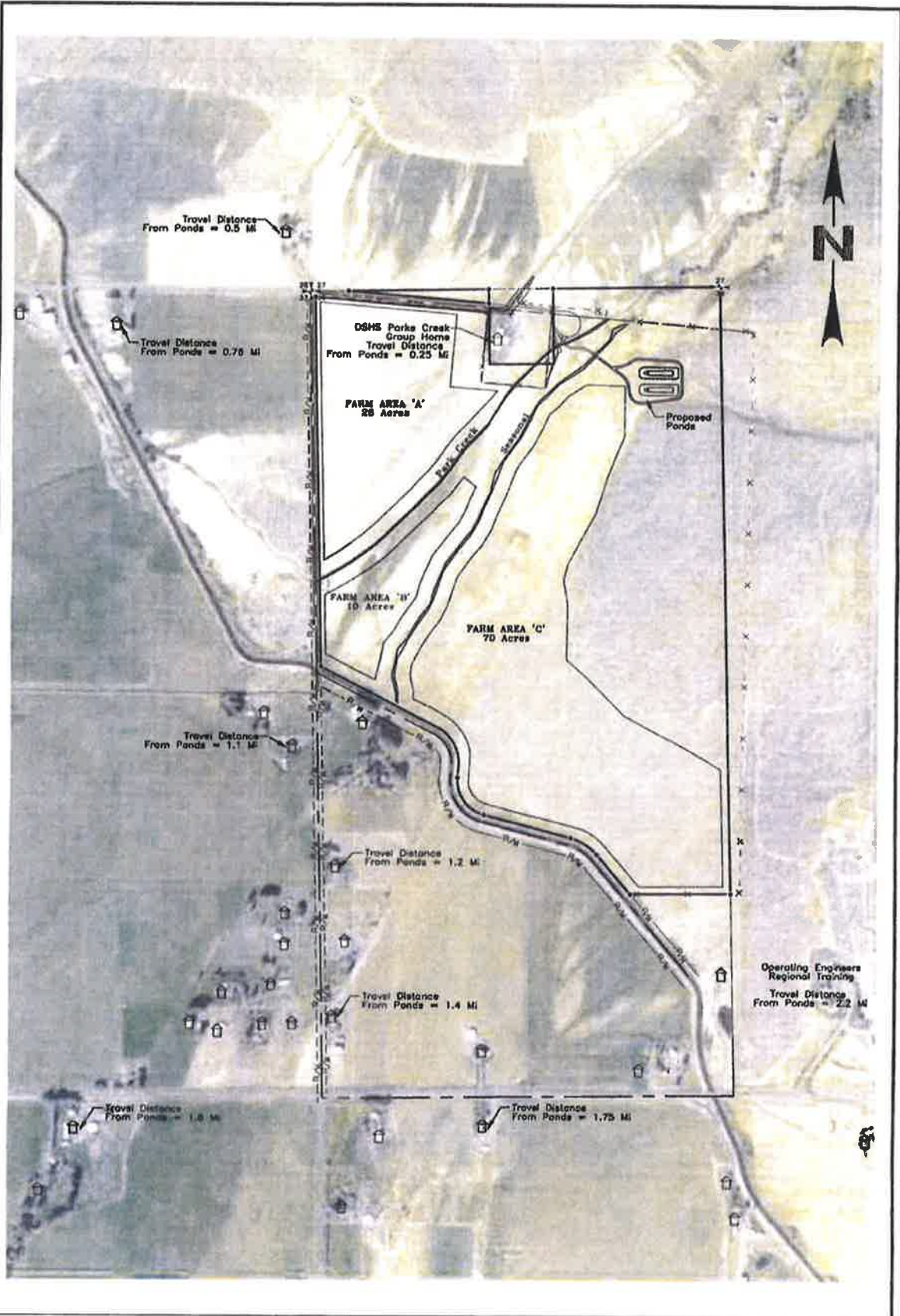
Brittney N. Oliver, P.E.  
WESTERN PACIFIC ENGINEERING & SURVEY

**Attachments:**

**Exhibit A: Brown & Jackson Distances Exhibit**

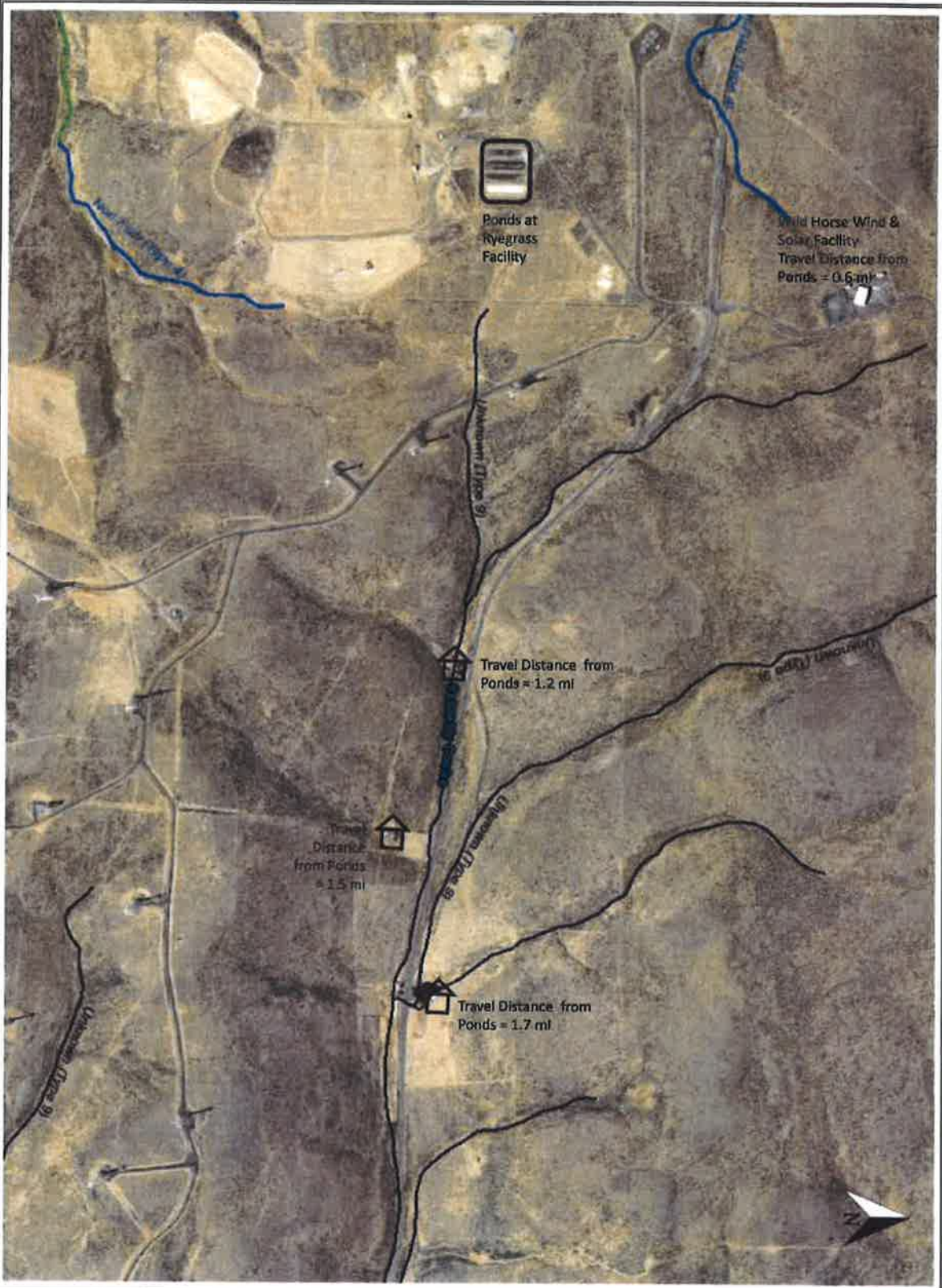
**Exhibit B: Kittitas County Solid Waste Distances Exhibit**





**BROWN & JACKSON  
SEPTIC/  
PORTABLE TOILETS**

**Distances Exhibit  
Kittitas County, Washington**



**KITTITAS COUNTY  
SOLID WASTE  
Ryegrass Facility**

**Distances Exhibit**  
Kittitas County, Washington



# EXHIBIT B

