

June 10, 2022



Kelly Bacon
Kittitas County Community Development Services
411 N. Ruby Street, Suite 2
Ellensburg, WA 98926

RE: *SEPA File No. SE-22-00002 (Cape)*
SEPA Comments on the Determination of Nonsignificance

Dear Ms. Bacon:

This firm represents Jon Hoekstra and Jen Steele. Mr. Hoekstra and Ms. Steele own property and reside at 1101 Alice Road, Cle Elum, WA 98922 (Parcel No. 355834), located along Alice Road and immediately to the north of the proposed improved access road south of Alice Road. This letter sets forth supplemental comments on the Determination of Nonsignificance (DNS) issued by Kittitas County under SEPA File No. SE-22-00002 and associated grading permit application (GP-22-00009). These comments are provided pursuant to chapter 43.21C RCW, WAC 197-11-340 and WAC 197-11-500, *et. seq.*, and Kittitas County Code chapter 15.04, Art. V.

INTRODUCTION

A DNS should only issue “[i]f the responsible official determines there will be no probable significant adverse environmental impacts from a proposal.” WAC 197-11-340(1). The County’s threshold determination of a DNS should be withdrawn because (1) the SEPA checklist and application materials did not properly disclose the number of lots served by the access road and apply the correct County standards; (2) the project site includes steep slopes that require further evaluation; (3) actual identification and evaluation of emergency access, fire protection and public safety is necessary; (4) in issuing the DNS, the County failed to evaluate impacts to Alice Road as part of the project; and (5) any threshold determination should, at a minimum, include all necessary mitigating conditions as evinced by the comments received. Mr. Hoekstra and Ms. Steele respectfully request the County reconsider the DNS pursuant to WAC 197-11-340, and withdraw the determination.

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COMMENTS

Roadway Standards – Traffic Safety

First, the County’s SEPA review did not properly consider application of appropriate Title 12 standards applicable to the project in reviewing the application as a “driveway” proposal.

Kittitas County Code is clear in denoting the proper classification of the subject “access road” as a “private road” and not a “driveway”. Kittitas County Code defines a “driveway” as being an “[a]ccess road used by no more than two privately maintained residential, commercial, agricultural or industrial properties.” KCC 12.02.020(T) (emphasis added). In contrast, the Code defines a “private road” as “[a]n access road serving three or more lots, residences or multi-family units that is privately owned and maintained for the use of the owner(s) or those having expressed or implied permission from the owner(s).” KCC 12.02.020(AI) (emphasis added). Comments submitted by Mr. Hoekstra and Ms. Steele show that the proposed access road serves nine properties or lots, at least five of which are already developed with residential structures.¹ In fact, while undercounting the actual lots and developed residences, the applicant’s own application materials also note the existence of existing residences and properties accessing the subject access road.² Accordingly, under County Code provisions, the access road proposed for improvements is properly characterized as a “private road” and not a “driveway” for purposes of the County review and Code application.

Based on the above, the application materials’ reliance on Table 4-4B (Driveway Design Standards) is erroneous.³ Table 4-4B is applicable only to single and joint-use “driveway[s].” Rather, Table 4-4A (Private Road Minimum Design Standards) provides the applicable required standards for this project. Further, as the subject access “private road” serves at least nine separate “lots” (and,

¹ See SEPA Comment Letter of Jon Hoekstra and Jen Steele dated June 9, 2022.

² See SEPA Checklist at ¶ 14.f. noting “existing driveway that serves four parcels.” The Applicant’s civil drawings note the necessity for and preservation of multiple existing property accesses along the “access road.” The Applicant’s subsequent Drainage Report, possibly cognizant of this deficiency and limitation, ignores the number of parcels actually served, and notes it “appears there are (3) or less parcels with single-family residences.” In fact at least nine parcels and at least five improved properties all rely on the access road for access to their respective properties.

³ See, e.g., Civil Sheet 1 (noting improvements to “standards per Table 4-4B; see also Grading Permit Application (attached Drainage Report) (noting “[t]he proposed work would include improving an existing access . . . per Table 4-4B”).

upon completion of the applicant's project would serve at least six residences or improved properties), the standards in Table 4-4A applicable to a "private road" serving 3-14 parcels and/or units need to be evaluated and satisfied.

As neither the SEPA checklist nor the application materials identify the appropriate standards, it is evident that the County's review was based on either insufficient or incorrect information. The County's roadway standards, as codified in chapter 12.01 KCC, are specifically designed with general safety considerations in mind and to ensure proper safety, drainage, maintenance, and related considerations. See KCC 12.01.010; see also KCC 12.01.070(A) (Noting Title 12 KCC provisions "shall be regarded as the minimum requirements for the protection of the public health, safety, and welfare of the residents of Kittitas County") (emphasis added). These are all relevant SEPA considerations that should be properly identified and evaluated as part of the County's threshold determination process.⁴

Critical Areas and Steep Slopes

Second, related to the above, the proposed access road is across property on steep slopes in excess of 15% (and as part of a larger site with slopes in excess of 25%). Steep slopes in excess of 15% are located near the intersection with Alice Road and present safety, erosion, and drainage concerns that necessitate careful evaluation under both the Title 12 standards and SEPA. These acknowledged steep slopes exceed the maximum grade allowable under Title 12 (Table 4-4A).

Emergency Access

In addition to the general concerns outlined above, the steep slopes and grade associated with the proposed improvements raise issues that do not appear to have been identified or evaluated with respect to fire and emergency access. Steep terrain (here in excess of permitted County standards) is often inaccessible to emergency vehicles and fire response apparatus. Further, as Public Works has commented, Alice Road would need to be certified up to the point of an approved fire apparatus turnaround. Lacking from the SEPA checklist or documents reviewed is any identification or evaluation of how the proposal will meet the minimum access requirements of the International Fire Code as adopted by the County, see KCC 12.04.070(A), where an approved

⁴ Based on this apparent mischaracterization of the project as a "driveway", it is uncertain whether the other proper standards in Title 12 have been evaluated and applied to this project. This evaluation is required as a predicate to a threshold determination and permit approval.

fire apparatus turnaround exists or is being proposed, see KCC 12.01.095(E), or other related and associated emergency access and public safety considerations.

Alice Road – Traffic Safety and Improper Piecemealing

Third, the application materials and SEPA Checklist include no identification of or evaluation of the probable impacts to Alice Road. Kittitas County Public Works has commented that improvements to Alice Road would likely be required such that it can be properly approved and certified, requiring issuance of a road certification permit.⁵ Despite this comment by Public Works, the impacts to Alice Road and necessary County review as part of the proposal have not been identified or evaluated.⁶ This raises significant concerns regarding probable construction impacts, and uncertainty regarding emergency and fire access (including without limitation, appropriate fire apparatus turnarounds), intersection and access point considerations, and ongoing maintenance obligations.

Review by the County of only the “access road” without consideration of the impacts to and project component related to Alice Road would constitute improper piecemealing under SEPA. See, e.g., *Merkel v. Port of Brownsville*, 8 Wn. App. 844, 851 (1973); see also WAC 197-11-960 (confirming SEPA checklist “appl[ies] to all parts of [the] proposal, even if [the applicant] plan[s] to do them over a period of time or on different parcels”). In this regard, to avoid misleading, piecemeal environmental review, the SEPA Rules require that ‘proposals or parts of proposals that are related to each other closely enough to be, in effect, a single course of action shall be evaluated in the same environmental document.’⁷ See WAC 197-11-060(3)(b).

Proper review by the County must consider all of these impacts. The DNS should be withdrawn so a complete SEPA Checklist can be submitted identifying these impacts such that they can be properly evaluated by the County.

⁵ See SEPA Comments of Public Works dated February 17, 2022.

⁶ In fact, the SEPA Checklist in response to the question “[w]ill the proposal require any new or improvements to existing roads” answers “no.” See SEPA Checklist at 14.d. This answer appears incorrect in light of the proposed required improvements to the subject “access road” together with Public Works’ comments that Alice Road would also “need to be certified up to the point of an approved fire apparatus turnaround.”

⁷ SETTLE, RICHARD L., WASHINGTON STATE ENVIRONMENTAL POLICY ACT: A LEGAL AND POLICY ANALYSIS § 11.01 (2021) (citing WAC 197-11-060(3)) (emphasis added).

Mitigating Conditions

Fourth, following proper review, in any subsequent threshold determination, such determination should include and impose appropriate necessary mitigating conditions as part of an MDNS. These should include, without limitation, mitigating conditions that:

- Require all improvements (to both the access road and Alice Road) meet Title 12 standards.
- Requirements to satisfy emergency access and fire protection.
- Address and incorporate the comments provided by Kittitas County Public Works.⁸
- Incorporate and confirm the proposed conditions proffered by the applicant, as may be appropriately modified or clarified by the County.⁹
- Include appropriate conditions to address comments from Washington Department of Fish & Wildlife regarding stream crossings, construction impacts, and culverts.¹⁰
- Imposition of and confirmation of maintenance obligations.¹¹
- Such other and further mitigating conditions based on the comments received and County review.

Each of these categories, at a minimum, should be included as mitigating conditions on any threshold determination.

Miscellaneous SEPA Considerations.

A DNS must be based upon “information reasonably sufficient to evaluate the environmental impact of a proposal.” WAC 197-11-335; *see also Moss v. City of Bellingham*, 109 Wn. App. 6, 14 (2001). Therefore, to receive a DNS, an applicant must furnish reasonably complete information about the impacts. In this regard, SEPA cases instruct that “the [local jurisdiction] must demonstrate

⁸ See SEPA Comments of Public Works dated February 17, 2022.

⁹ See Drainage Report Parcel #19162 Access Improvements (Granite Civil Services, LLC) dated May 4, 2022.

¹⁰ See Email SEPA Comments from WDFW dated February 4, 2022 and May 20, 2022.

¹¹ See, e.g., KCC 12.04.070(F).

that it actually considered relevant environmental factors before [issuing the threshold determination]. Moreover, the record must demonstrate that the [local jurisdiction] adequately considered the environmental factors in a manner sufficient to be a prima facie compliance with the procedural dictates of SEPA.” *Boehm v. City of Vancouver*, 111 Wn. App. 711, 718 (2002).

The SEPA rules require that the lead agency withdraw a DNS where “new information is presented indicating a proposal’s probable significant environmental impact,” WAC 197-11-340(3)(a)(ii), or where the “DNS was procured by misrepresentation or lack of material disclosure.” WAC 197-11-340(a)(iii).¹² Here, commentors, including Mr. Hoekstra and Ms. Steele, have raised new information not clearly disclosed in the SEPA checklist or evaluated by the County related to the number of lots served by the access road and the appropriate design criteria intended to ensure safety for the traveling public and other considerations, including issues related to Alice Road impacts and requirements, and others. This new information requires withdrawal of the DNS. WAC 197-11-340(3)(a)(ii). Similarly, the lack of material disclosure on these issues requires withdrawal of the DNS. WAC 197-11-340(a)(iii). Withdrawal of the DNS will permit the County to ensure proper SEPA review consistent with WAC 197-11-335 and applicable law.

CONCLUSION

The County’s SEPA evaluation and pending DNS fail to address significant environmental impacts of the proposed action. Given these substantial deficiencies, and in accordance with the provisions of WAC 197-11-340(3) we respectfully request the County withdraw the DNS issued on May 26, 2022 to ensure all appropriate impacts are evaluated and mitigated.

We request notice, directed to the undersigned, of any action the County takes relating to this threshold determination and the underlying grading permit application.

¹² See also KCC 15.05.120(4).

Kelly Bacon
Kittitas County Community Development Services
June 10, 2022
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Thank you in advance for your consideration of these comments. Please feel free to contact me if you have any questions or require any additional information. We appreciate the County's careful review of this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Rehberger". The signature is fluid and cursive, with the first name "J" and last name "Rehberger" clearly distinguishable.

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JR:en

cc: Jeremy Johnston, Kittitas County Planning Official
Jon Hoekstra and Jen Steele

From: [Joe Rehberger](#)
To: [Kelly Bacon \(CD\)](#)
Cc: [Jeremy Johnston](#); [CDS User](#); [Eleanor Nickelson](#)
Subject: SEPA Comments (SE-22-00002) (Cape)
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Re: SEPA File No. SE-22-0002 (Cape)
Project File No. GP-22-0009

Ms. Bacon:

Please find attached a comment letter submitted on behalf of Jon Hoekstra and Jen Steele related to SEPA File No. SE-22-00002 (Cape), associated with the grading permit application No. GP-22-00009. Please let me know if you have any difficulty opening or downloading the attached letter. **Please acknowledge and confirm receipt of these comments.**

By this email, our office further requests notice of any decisions or actions related to the above-referenced project.

We appreciate the opportunity to provide comments and appreciate your consideration of the same.

Thank you.

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