

**KITTITAS COUNTY
LAND USE HEARING EXAMINER**

IN THE MATTER OF)	
)	DECISION ON SEPA APPEAL
Cascade Field and Stream)	
CU 13-3/SEPA Appeal)	

THIS MATTER having come on for hearing in front of the Kittitas County Hearing Examiner for a closed record hearing on July 11th, 2013 on a SEPA Appeal of the mitigated determination of non significance, the hearing Examiner, having considered that record existing at the time of the County rendering the MDNS decision, hereby renders the following Findings of Fact, Conclusions of Law and Decision.

I. FINDINGS OF FACT

1. On October 17th, 2011, Cascade Field and Stream Club, thru Agent Chris Cruse, 2013, applicant, submitted a Conditional Use Permit Application for the operation of a shooting range at 2380 Hayward Road, within Kittitas County, Washington.
2. On December 16th, 2011, Kittitas County issued a Notice of Application with a comment period ending January 3, 2012.
3. The Applicant’s application was processed utilizing the optional DNS process authorized by the Kittitas County Code and WAC 197-11-355.
4. Numerous agency and public comments were received prior to the comment period ending on January 3, 2012.
5. As part of the application materials, the applicant prepared and submitted a SEPA Environmental checklist.
6. Based upon the Agency and public comments received. Kittitas County provided the applicants with an opportunity to respond to the public comments. The applicant’s attorney responded to these comments by email dated April 12th, 2013.
7. Following the submittal of these materials, Kittitas County performed its own independent analysis of the environmental concerns raised by this application.
8. On February 8th, 2013, Kittitas County issued a mitigated determination of non significance setting forth 11 mitigation measures covering impacts related to transportation, land and air, water and sewer, fire, life safety, cultural resources, light and glare and noise.

9. On February 22nd, 2013, Appellants Dean and Daniel Tonseth, David Homquist, Margaret Towle and Ken Fyall (hereinafter Appellant's) filed an appeal of the MDNS issued by Kittitas County.
10. The appeal filed by Appellant's listed 6 separate areas of appeal of the MDNS.
11. After a pre-hearing conference regarding this SEPA appeal, the hearing examiner entered a Stipulation and Order on SEPA appeal dated May 21, 2013 setting forth the procedures that would be utilized in the SEPA Appeal hearing. This process was stipulated to by James Carmody, attorney appellant's, Jeffrey Slothower, Attorney for Applicants and Michael Nigrey, Deputy Prosecuting Attorney for Kittitas County.
12. In this process as stipulated by the parties, the parties were provided an opportunity to submit legal argument prior to the closed record hearing. It was stipulated that no new evidence will be offered during the SEPA Appeal phase of the hearing on July 11th, 2013.
13. In utilizing the optional DNS process, the County provided the public, as well as agencies, with the opportunity to provide comment as to perceived environmental impact from the project. Based upon those comments, Kittitas County identified certain issues and requested additional information from the applicant specifically relating to noise.
14. The process utilized by Kittitas County does not require the County to give the public or agency additional opportunities to submit on-going comments.
15. The County correctly identified that there would be environmental impacts related to noise, requested additional information from the applicant regarding noise, and then independently considered the evidence before it and in issuing the mitigated determination of non-significance, considered that evidence in setting forth appropriate measures intended to mitigate the noise impacts of the proposed use.
16. It should be noted that WAC 173.60 sets forth environmental noise levels as authorized by the Washington Administrative Code. It shall also be pointed out that WAC 173.60.050 contains an exception to the noise code for sounds created by the discharge of firearms on an authorized shooting range. Nevertheless, the MDNS issued in this case does require mitigation measures intended to reduce the impacts of noise generated by this shooting range.
17. Additionally, the County adequately considered and addressed the potential environmental impacts related to the lead that may be deposited on the shooting range as part of the activity that will take place on the shooting range. The US Environmental Protection Agency has set forth best management practices for lead collection at outdoor shooting ranges. The County will require that the Applicant utilize these best management practices and in fact has required the applicant to following these practices within the MDNS that was issued in this matter.
18. The appellant has argued that the project description and timing was vague and/or unclear and therefore impacted the validity of the issuance of the MDNS. The Hearing Examiner finds that the project description was specific enough in order to identify anticipated environmental impacts and to thoughtfully consider and impose mitigation measures addressing said impacts.

19. Accordingly, even though the Washington Administrative Code exempts noise from shooting ranges from the requirements of WAC 173.60.040, Kittitas County has proposed, and in fact the applicant has agreed, to specific and extensive measures to mitigate the sounds emanating from the shooting range to the limited number of residences in the area.
20. Based upon the record before the planning department, the Hearing Examiner is convinced that the record demonstrates the environmental factors identified by appellant were considered in a manner sufficient to amount to compliance with the procedural requirements of the State Environmental Protection Act and that the MDNS was based on information sufficient to evaluate the proposal's potential environment impacts.
21. The Hearing Examiner has reviewed the proposed scope of the use of the property as proposed by the applicant. The scope of their use is for a shooting range in a remote area of Kittitas County that is currently occupied by multiple wind turbines. The environmental on-site impacts are fully capable of being mitigated by those conditions set forth in the MDNS.
23. The SEPA checklist was adequately prepared and identified potential environmental impacts of the project. It is clear from the record generated prior to the issuance of the MDNS that the County did independently evaluate the responses in the environmental checklist of the applicant and also adequately considered those comments that were submitted by agencies and the public.
24. It is significant to the Hearing Examiner that the County independently investigated this project and recognized that there were some potential environmental impacts associated with this project and therefore issued a mitigated determination of non significance as opposed to simply a determination of non significance.
25. Any Conclusion of Law that is more correctly a Finding of Fact is hereby incorporated as such by this reference.

II. CONCLUSIONS OF LAW

1. The Hearing Examiner has been granted authority to render this recommended decision.
2. Washington Law requires that an agency's threshold determination must be afforded substantial weight.
3. The issuance of a threshold determination is reviewed under the clearly erroneous standard.
4. A SEPA determination is clearly erroneous if although there is evidence to support the determination, a Court reviewing the entire evidence is left with the definite and firm conviction that a mistake has been committed.
5. An MDNS must be upheld if the entire evidence under consideration demonstrates that environmental factors were considered in a manner sufficient to amount to prima facie compliance with the procedural requirements of SEPA and that the decision to issue the MDNS was based on information sufficient to evaluate the proposal's environmental impact.

6. In reviewing a SEPA threshold determination, and subject to the clearly erroneous standard set forth above, reviewing body defers to the expertise of the administrative agency.
7. The SEPA determination rendered February 8th, 2013 in the above referenced matter was based on information sufficient to evaluate the proposal's environmental impact.
8. The issuance of the MDNS in the above referenced matter was not clearly erroneous.

III. RECOMMENDED DECISION

Based on the above Recommended Findings of Fact and Recommended Conclusions of Law, the Hearing Examiner hereby ***AFFIRMS*** in all respects the MDNS dated February 8th, 2013 as the issuance of this MDNS was not clearly erroneous.

Dated this 25th day of July, 2013.

KITTITAS COUNTY HEARING EXAMINER

Andrew L. Kottkamp

This decision is subject to appeal according to those procedures adopted by the Kittitas County Code.