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KITTITAS COUNTY HEARING EXAMINER

Kittitas County LPL Expansion SEPA Appeal )  
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 ) NO. CU-21-00003  
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 ) COUNTY'S BRIEF  
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**OVERVIEW**

COMES NOW RESPONDENT KITTITAS COUNTY, by and through its attorney of record, Neil A. Caulkins, and files its brief in the above captioned appeal of a State Environmental Policy Act (SEPA) threshold determination. The purpose of SEPA is to prevent significant environmental impacts. The LPL expansion will have none, as the record reveals. There will be no significant environmental impacts related to re-vegetation, species habitat, nor to groundwater. The SEPA threshold determination was proper and must be affirmed.

**FACTS**

Kittitas county has had leachate septage lagoons at its Ryegrass facility since 2004. (Administrative Record [AR] pgs. 370-383). The facility is being expanded to provide the existing level of service to a growing community. AR 452. A SEPA addendum was filed dated 2021. (AR pgs. 389-394) SEPA specifically allows the use of previously existing SEPA documents and addenda thereto in this situation. WAC 197-11-600. Numerous comments were received (AR 414-446) and they were adequately and thoroughly responded to (AR 447-454).

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1 **STANDARD OF REVIEW**

2 Considerable deference is given to an interpretation by an agency charged with enforcing a  
3 statute. In addition, a court accords deference to an interpretation of law in matters involving the  
4 agency's special knowledge and expertise. *Cashmere Valley Bank v. Dep't of Revenue*, 181 Wn.2d  
622, 635-6, 334 P.3d 1100 (2014).

5 **ARGUMENT**

6 This case appears to contain four issues: (1) Are the re-vegetation provisions adequate? (2)  
7 Is protection for species habitat adequate? (3) Is the groundwater monitoring plan adequate? (4)  
8 Are the Department of Ecology's concerns about LPL expansion met? The record clearly reveals  
9 all these questions are answered with "Yes". Hence, the SEPA threshold determination must be  
10 affirmed.

11 **1. Re-Vegetation Provisions.**

12 Appellant argues that the re-vegetation provisions are not sufficient. The record contains an  
13 email exchange between the County and a WDFW employee about this question that occurred on  
14 June 29, 2021. AR 485-488. In short, the WDFW employee points out that the re-vegetation  
15 provisions are not in the SEPA DNS. In response the County pointed out that a CUP condition  
16 required re-vegetation to be done in coordination with, and to the approval of, WDFW. *Id.* That  
17 sufficed for WDFW's concern.

18 SEPA does not require every environmental condition or consideration be done as a part of  
19 the SEPA review. WAC 197-11-158(1) allows a jurisdiction to not evaluate things, as part of the  
20 SEPA process, if they are adequately dealt with under development regulations or comprehensive  
21 plans for counties that plan under the GMA. Kittitas County is a GMA county. Our conditional  
22 use permit regulations provide adequate review and mitigation opportunities for issues such as re-  
23 vegetation. That is what the County did-relied upon its conditional use regulations to impose a re-  
24 vegetation provision, hence, obviating the need to deal with the issue under SEPA. This was  
satisfactory to WDFW and should be satisfactory in this matter.

**2. There are No Critical Habitat for Endangered Species.**

Appellant argues that there needs to be protection for critical habitat for endangered species,  
but the record reveals this site contains neither. In the above cited email with WDFW (AR 485-  
488), the employee from WDFW provides a list of species present. None of them are endangered

1 and nowhere does he say this is “critical habitat”. There is nothing in the record to support the  
2 proposition that the County’s LPL expansion project fails this issue. The record reveals an absence  
3 of endangered species and that this is not “critical habitat.”

3 **3. Groundwater Monitoring Program is Maintained.**

4 Appellants argue that the groundwater monitoring program is non-functional because wells  
5 are dry. There is no evidence in the record that test well are dry. Instead, the record contains the  
6 County’s detailed 2020 groundwater management plan prepared by HWA GeoSciences. AR 232-  
7 355. In it, it describes the use of wells B3, B7, and Clerf #4 as test wells. AR 236. It also explains  
8 why the Poison Spring well will not be used. *Id.* There is no indication that these wells are non-  
9 functional. Instead, the record reveals that the groundwater monitoring effort is robust. AR 565.  
10 There is also no evidence in the record that any agency with expertise raised a question about the  
11 groundwater monitoring program. There is no merit to the position that the County’s groundwater  
12 monitoring program is derelict.

11 **4. Department of Ecology Concerns Answered.**

12 Department of Ecology employee Kimberly Grieves commented on the project on April 26,  
13 2021. AR 453-454. There she voiced the need for an application for operation expansion and  
14 concerns about accepting carpet and cardboard. *Id.* On May 4, 2021 the Department wrote back,  
15 after a site visit, that it had received all necessary paper work and that the specification that neither  
16 carpet nor cardboard would be accepted into the LPL in bulk satisfied its concerns. *Id.* Hence, the  
17 questions raised by Ms. Grieves have been answered to her satisfaction.

16 **CONCLUSION**

17 Kittitas County’s LPL expansion project received proper SEPA review. It was shown to  
18 raise no issues of significant environmental impacts. The re-vegetation issues are adequately dealt  
19 with in the conditional use conditions as allowed by SEPA under WAC 197-11-158. There is no

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1 evidence of endangered species, critical habitat thereto, nor infirmity to the County's groundwater  
2 monitoring program. Finally, the concerns voiced by the Department of Ecology have been  
3 adequately addressed. For these reasons, the SEPA threshold determination must be affirmed.

4 DATED this 14<sup>th</sup> day of September 2021.

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6 By   
7 Neil A. Caulkins  
8 WSBA # 31759  
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