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6 BEFORE THE COUNTY OF KITTITAS HEARING EXAMINER

7 **IN RE WALLACE RANCH CONSERVATION**
8 **PLAT,**

9 CHIMPANZEE SANCTUARY NORTHWEST,

10 APPELLANTS,

11 WALLACE RANCH II, LLC,

12 APPLICANT,

13
14 KITTITAS COUNTY COMMUNITY
15 DEVELOPMENT SERVICES,

16 RESPONDENT.

CASE NO.: LP-19-00003; SD-19-00002

DECISION ON MOTION FOR
SUMMARY JUDGMENT

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18 **I. BACKGROUND FACTS**

19 1. On November 17, 2020, Kittitas County Community Development Services Department issued a
20 Mitigated Determination of Non-Significance (MDNS) in the matter of Wallace Ranch Conservation
21 Plat (LP-9-00003 and SD-19-00002).

22 2. On December 1, 2020, Jeff Kray, attorney with Marten Law, acting on behalf of Chimpanzee
23 Sanctuary Northwest, submitted an appeal of this SEPA determination.

24 3. On December 17, 2020, Dauna Koloušková of the law firm, Johns Monroe Mitsunaga
25 Koloušková, PLLC, on behalf of the Applicant, filed what is termed "Motion to Dismiss the SEPA
26 Appeal for Lack of Standing and in the alternative, a Motion to Dismiss Specific Issues". Submitted
27 with this Motion was the Declaration of Mark Kirkpatrick. With the submission of this evidence, the
28 Hearing Examiner determined this to be a Motion for Summary Judgment.
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1 4. On January 7, 2021, Kittitas County, through its attorney, Neil Caulkins, submitted the County's
2 response to the Applicant's Motion for Summary Judgment.

3 5. On January 8, 2021, the SEPA Appellant, through its attorney, Jeff Kray, submitted the
4 Appellant's response. Including a declaration from John Mulcahy.

5 6. On January 14, 2021, Ms. Koloušková, on behalf of the Applicant/moving party, submitted the
6 Applicant's reply to the SEPA Appellant's response to the Motion for Summary Judgment.

7 7. On January 19, 2021, the hearing on the Applicant's Motion for Summary Judgment was held.

8 8. At this hearing, appearing on behalf of the Applicant/moving party was Duana Koloušková.
9 Appearing on behalf of the SEPA Appellant/responding party was Steve Odell. Appearing on behalf of
10 Kittitas County was Neil Caulkins.

11 II. FINDINGS

12 9. The Hearing Examiner finds that there are no disputed material facts and that this Motion may be
13 decided as a matter of law.

14 10. I should also note that the Hearing Examiner is addressing the issues specified in the SEPA
15 Appellant's Notice of Appeal. Other issues raised in the Declaration of John Mulcahy, that were not part
16 of the issues submitted in the SEPA Notice of Appeal, have not been considered by the Hearing
17 Examiner.

18 III. STANDING

19 11. In its December 1, 2020 appeal, under the heading "Appellant's Interests" the SEPA Appellant
20 states that they are an adjacent landowner to the project. The SEPA Appellant states in its Appeal, "[I]ts
21 interests in the Decision therefore stem largely from its status as an adjacent landowner and its concerns
22 about the potentially significant environmental impacts likely to arise from the Proposed Project . . .".

23 12. The Hearing Examiner finds that the SEPA Appellant has failed to demonstrate sufficient
24 evidentiary facts to establish that it will suffer injury in fact, or that its interests are within the zone of
25 interest meant to be protected by the SEPA determination.

26 13. The Hearing Examiner specifically finds that the SEPA Appeal alleges no facts identifying a
27 specific and perceptible harm to the SEPA Appellant associated with the MDNS decision.

1 14. Washington law requires that for an individual or entity to have standing, the Appellant's interest
2 must be within the zone of interest to be protected or regulated by the statute or constitutional guarantee
3 in question and second, that the proposed action will specifically and perceptively harm the SEPA
4 appellant. Economic interests are not within the protected zone of interest. An organization or nonprofit
5 group can have standing but only if it has members who provide declarations or affidavits reflecting
6 individual standing, i.e. that "one or more of its members are specifically injured by a government action."

7 15. The SEPA Appellant has argued that the County, in Title 15, does not require a SEPA appellant
8 to show standing. The Hearing Examiner finds that this is incorrect reading of the Kittitas County Code.
9 The Hearing Examiner finds that Kittitas County Code Title 15 refers to, in relation to SEPA appeals,
10 the standing requirements set forth in Kittitas County Code Title 15A (See KCC 15.04.210 (3)).

11 16. Although issue based standing is not required, the Hearing Examiner concludes that the Kittitas
12 County Code and Washington law, requires standing on the collective SEPA appeal issues raised.

13 17. The Hearing Examiner concludes that being an adjacent property owner does not, by itself, give
14 a SEPA appellant standing.

15 18. In looking at the specific issues raised in the SEPA appeal, the Applicant/moving party agrees
16 that issues two and five stated in the SEPA appeal do raise environmental issues. The Applicant/moving
17 party argues that the remaining issues raised are project review issues and not subject to a SEPA appeal.
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19 19. The Hearing Examiner finds that there is no allegation of specific and perceptible injury (injury
20 in fact) to the SEPA Appellant regarding any of the issues stated in the appeal, and the declaration of
21 Mr. Mulcahy, (as specifically limited to the issues raised in the original SEPA Appeal), does not raise
22 any allegations of specific and perceptible injuries to the SEPA Appellant, and instead raises concerns
23 based on speculation and fears. This declaration also raises new issues not raised in the SEPA appeal
24 document. These new issues are not considered by the Hearing Examiner in this Decision.
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26 20. The Hearing Examiner concludes that the SEPA Appellant has not submitted facts to establish
27 that it has standing and therefore has not established standing to bring this SEPA appeal. Therefore, this
28 SEPA Appeal must be dismissed.

29 21. The Hearing Examiner would note, as stated at the Summary Judgment hearing that the SEPA
30 Appellant is not precluded from raising issues set forth in the SEPA Appeal and the Declaration of Mr.

1 Mulcahy, during project review and at the open record public hearing, should the project proceed to that
2 point.

3 Based on the above Findings and Conclusions, the SEPA appeal filed in this matter by Chimpanzee
4 Sanctuary Northwest is HEREBY DISMISSED.
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9 DATED this 22 day of January, 2021.

10 COUNTY OF KITTITAS HEARING EXAMINER

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12
13 ANDREW L. KOTTKAMP

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