

January 25, 2021

Kelly Bacon  
Designated Permit Coordinator  
Kittitas County Community Development Services  
411 N. Ruby Street, Ste. 2  
Ellensburg, WA 98926

Re: Project Name: Brown and Jackson  
File Number: SE-20-00003  
Land Use and Zoning Issues

Dear Ms. Bacon:

This firm represents the Kittitas Reclamation District (KRD). By letter dated September 1, 2020, KRD commented on the proposed application of Brown & Jackson, Inc. (B&J) to construct a septage management facility on Parcel No. 295134 in Kittitas County, and provided authority establishing that the proposed land use is not an authorized use in the Agriculture 20 (A-20) zone. We have had an opportunity to review B&J's response to comments submitted on December 10, 2020, including its response regarding the land use and zoning issues raised. Nothing in B&J's response on this issue changes our position.

First, as B&J appears to acknowledge in its response, the proposed activities are characterized as wastewater treatment. As such, the proposed use is prohibited within the A-20 zone. Specifically, B&J responds that its proposed land use "constitutes 'treatment'" of the collected septage, later describing it as "sewage treatment."<sup>1</sup> In the supplemental documents submitted in conjunction with its response to comments, B&J included its application to Ecology for coverage under the General Permit for Biosolids Management. In that application, B&J described its proposed activities as a septage management facility and a wastewater treatment plant, noting that its proposed "facility type" falls under the classification "Wastewater Treatment Plants that Land Apply Biosolids"<sup>2</sup> Separate from the general utility designation, the Kittitas County Code *specifically* addresses "[w]astewater treatment" as a potential industrial use, and one not allowed within the A-20 zone. See KCC 17.15.060.1. Under the zoning code, "those uses not specifically enumerated as allowed uses under the provisions of KCC Chapter 17.15" are prohibited. KCC 17.08.550(6). Based on B&J's own description and apparent acknowledgment, the proposed land use should be denied as a prohibited use.

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<sup>1</sup> See Brown and Jackson's Initial Response to Public Comments at 3-4 (Dec. 10, 2020).

<sup>2</sup> See Brown and Jackson's Initial Response to Public Comments at Exhibit A (Application for Coverage Under the General Permit for Biosolids Management at 4-5).

Second, the distinction between sewage and septage should be clarified. B&J's response asserts that it falls within the county code's definition of a utility because it claims its proposal constitutes treatment of "sewage."<sup>3</sup> However, B&J does not operate a sewage utility and is not proposing to operate a sewage utility, and in fact does not handle or process sewage at all. Rather, B&J is a private commercial septic pumper and commercial septage hauler. Septic systems are by definition separate and independent, in contrast to sewer utilities and systems. Pumped septage and sewage also are of a different character. As EPA has noted:

Compared to *sewage* entering a [Publicly Owned Treatment Works] through a sewerage system, domestic *septage* is often partially digested and has higher concentrations of solids and heavy metals . . . .<sup>4</sup>

(Emphasis added.) With respect to septage handling and treatment, and as distinguished from sewage, EPA has noted:

Its physical characteristics make septage difficult and objectionable to handle and treat. High levels of grease, grit, hair, and large solids in septage can clog pipes and pumps, and the parasites, viruses, and bacteria that septage normally contains can cause disease. The anaerobic nature of septage results in the presence of odorous compounds (e.g., hydrogen sulfide, mercaptans, and other organic sulfur compounds), which are released with greater frequency when septage is exposed to the turbulent conditions that can occur at a [wastewater treatment plant] or during discharge to agricultural land. Foaming can also be a problem in processes where air is blown into the septage. For these reasons, septage treatment facilities should be isolated from homes and businesses in the community.<sup>5</sup>

Applicable state regulations also recognize the distinction between septage and sewage. *Compare* WAC 246-272A-0010 ("**Sewage**' means any urine, feces, and the water carrying human wastes, including kitchen, bath, and laundry wastes from residences, buildings, industrial establishments or other places.") *with* WAC 246-

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<sup>3</sup> See Brown and Jackson's Initial Response to Public Comments at 3.

<sup>4</sup> U.S. Environmental Protection Agency, *Guidance Manual for the Control of Wastes Hauled to Publicly Owned Treatment Works* at 2-4 (EPA-833-B-98-003) (Sept. 1999), available at <https://www3.epa.gov/npdes/pubs/hwfinal.pdf>.

<sup>5</sup> U.S. Environmental Protection Agency, *Guide to Septage Treatment and Disposal* at 5, § 2.1.1 (EPA-625-R-64-002) (Sept. 1994), available at <https://www.epa.gov/sites/production/files/2018-11/documents/guide-septage-treatment-disposal.pdf>.

272A-0010 (“**Septage**’ means the mixture of solid wastes, scum, sludge, and liquids pumped from within septic tanks, pump chambers, holding tanks, and other OSS components.”). B&J handles septage and not sewage, and does so as a private commercial operation, and not as part of or in conjunction with any utility operations. As such, B&J’s proposed commercial septage management and treatment facility is not a sewer (sewage) utility, and is not an authorized use in the A-20 zone.

Third, in addition to the above, reading the county code as a whole, it is evident that B&J’s proposed commercial septage management and treatment facility is not a sewer utility, nor part of any sewer utility, as contemplated by the county code. Kittitas County recognizes sewer utilities and the collection of sewage into a sewer system utility, and distinguishes the same from on-site septic systems and the pumped septage originating from the same. See, e.g., KCC 13.04.060 (“Connection of any premises where sewage originates shall be made to a public sewer system where there is an adequate public sewer system within two hundred feet of the premises, and such connection is permitted by the sewer utility.”) (emphasis added); see also KCC 13.04.180 (“A proposed OSDS to be located within the boundary of any operating public sewer utility shall be approved by the sewer utility prior to the issuance of a permit.”) (emphasis added).<sup>6</sup> This distinction is consistent with state regulations recognizing the same distinction. See, e.g., WAC 246-272A-0025 (recognizing distinction between OSS and sewer utility). Based on the foregoing, it is evident that *septic systems* are distinct from *sewer utilities*. Correspondingly, B&J’s proposed commercial septage management and treatment facility and its proposal to bring pumped septage to this parcel, is not part of any utility, but a proposed independent commercial operation. As such, it is not a utility and an allowed use within the A-20 zone.<sup>7</sup>

Finally, the proposed industrial use is neither permitted nor compatible with the rural working agricultural zone. Permitting such an industrial use would run counter to the intent and paramount objective of preserving and protecting

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<sup>6</sup> Statutes or code provisions relating to the same subject matter must be construed together, in order to ascertain their purpose. See *cf. Hallauer v. Spectrum Props.*, 143 Wn.2d 126, 146, 18 P.3d 540, 550 (2001) (“In ascertaining legislative purpose, statutes which stand in *pari materia* are to be read together as constituting a unified whole, to the end that a harmonious, total statutory scheme evolves which maintains the integrity of the respective statutes.”).

<sup>7</sup> Regardless, consideration of whether the proposed use fits within the *general* use category of “utility” (which KRD maintains it does not) is ultimately unnecessary as the zoning code *specifically* and separately addresses wastewater treatment, and confirms it is not an authorized use within the A-20 zone. Where statutes and codes contain both general and specific provisions, the more specific provision is intended to prevail. See *cf. Hallauer*, 143 Wn.2d at 146; see also *Ass’n of Wash. Spirits & Wine Distribs. v. Wash. State Liquor Control Bd.*, 182 Wn.2d 342, 356, 340 P.3d 849 (2015) (“A general statutory provision must yield to a more specific statutory provision.”).

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farmland within the county. The Kittitas County Code makes clear that the agriculture A-20 zone “is an area wherein farming, ranching and rural life styles are dominant characteristics” and the “intent of this zoning classification is to preserve fertile farmland from encroachment by nonagricultural land uses; and protect the rights and traditions of those engaged in agriculture.” KCC 17.29.010. The county received numerous comments stating concerns about the potential impact on the farming community. Kittitas County Code describes and classifies “[w]astewater treatment” as an industrial use. See KCC 17.15.060.1. Siting of the proposed septage management wastewater treatment facility in the location being proffered, would run counter to the intent of the zoning code.

We are providing you these supplemental comments now to the extent they may be helpful in your processing and decision-making surrounding this application. Thank you in advance for your consideration.

Pursuant to this letter, we also reiterate and confirm KRD’s request for notice of any decision on the application, including any threshold determination under SEPA, and any and all permit decisions associated with the proposed project.

Sincerely,



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cc: Kittitas Reclamation District