

WHATCOM COUNTY
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WHATCOM COUNTY
PLANNING & DEVELOPMENT SERVICES

JUN 14 2010

SEPA Appeal Form

RECEIVED

Appeal of:

Determination of Significance
Determination of Non-Significance
Mitigated Determination of Non-Significance

APPELLANT:

NAME South Fork Heritage Association c/o Starkenburg-Kroontje, Attorney at Law P.S. PHONE (360) 354-7822
ADDRESS P.O. Box 231 CITY Lynden
STATE WA ZIP 98264 FAX (360) 354-6929 EMAIL starkenburgkroontje@msn.com
Property Interest of Appellant Association of neighboring owners & interested parties.

PROPERTY OWNER:

NAME Whatcom County PHONE (360) 733-2900
ADDRESS 3373 Mount Baker Highway CITY Bellingham
STATE WA ZIP 98226 FAX: N/A EMAIL: N/A
Property Interest of Appellant _____

Date Determination Became Final: June 2, 2010

Associated SEPA file: SEP2010-00031

Assessors Parcel

Number(s): Township 37 North, Range 5 East, Sections 8,9,15,16,21 & 22 (ptn.)

A Statement is Attached to this Application Containing:

- Why I believe the determination or interpretation is not correct, and
- What I believe to be the correct determination or interpretation, and
- How the decision adversely affects me or my property

I/ We certify that all of the above statements and the statements contained in any papers or plans submitted herewith are true to the best of my/our knowledge and belief.

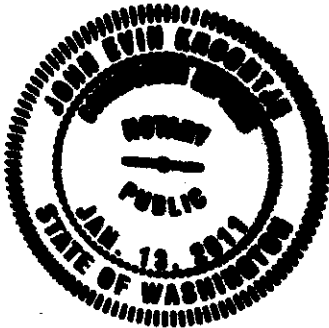
Signature of Appellant

[Handwritten Signature]
Signature of Attorney/ Agent

Date

6-14-10
Date

Subscribed and sworn to before me this _____ of _____, 20____.



[Handwritten Signature]
Print Name J

Notary Public in and for the State of Washington

Residing at Lynden WA

My appointment expires: 1 / 13 / 11

FOR COUNTY USE ONLY:

Appeal Number: APL 2010-00015 Appeal Fee: \$ 750.⁰⁰
Receipt Number: 11999000000000002312 Date Received: 6-14-2010

Statement for Appeal to the Hearing Examiner Of Administrative Officer's Decision

1. Incorrect Interpretation:

- A. Whatcom County is incorrect by stating that no significant adverse environmental impacts are likely in their issuance of the Determination of Nonsignificance ("DNS") for SEP2010-00031. In addition, Whatcom County is not mandating timely and early consideration of impacts by allowing compartmentalization of the project without review.

2. Correct Interpretation:

- A. The DNS is incorrect and should not stand. Instead, the entire project should be reviewed and an MDNS or EIS should be issued. SEPA review was for a project consisting of a trailhead, trails, a parking lot for 30 vehicles and an associated restroom facility. A proposal of this type is a permitted use in the Agricultural District, the Rural Forestry District and the Commercial Forestry District.

However, it is clear from a review of Whatcom County Parks and Recreation District ("Parks")'s records that the planned project is actually much more significant than that allowed as permitted uses under the Whatcom County Code.

In January, 2010 Parks submitted a Resolution to the Whatcom County Council seeking approval of the South Fork Regional Park Conceptual Plan. Parks neglected to complete SEPA review prior to submitting this proposal and as a result the Resolution was withdrawn and SEPA review commenced.

The Resolution clearly states that the purpose of the Resolution is to obtain approval for a conceptual design for a regional park. The conceptual design attached to the Resolution includes:

- 1) park entry signs
- 2) vehicle parking areas
- 3) informational kiosks
- 4) trails for hiking, biking and horses
- 5) restrooms in more than one location
- 6) picnic shelters
- 7) historic farm buildings available for tour
- 8) River access
- 9) wildlife viewing areas
- 10) meadow and wetland management
- 11) caretaker's residence

While Parks did not submit the draft Resolution for SEPA review they did submit a Draft Environmental Assessment for South Fork Park ("EA") which contains the same maps attached to the Resolution. This document states that the purpose of the project is to develop a regional park. The objectives described in this document include:

...providing shoreline access, open space, trails, protections of wildlife habitat and education and interpretations of natural and cultural history.

This document describes the "park" as including:

...nearly three miles of Nooksack River shoreline, large areas of forested lands, creeks and wetlands, hay fields and a historic farm.

The EA describes various activities that will take place within the "park" including the restoration of farm buildings that will be periodically open for guided tours as well as a trail system that will provide visitors access to fields, orchards, Nessel Creek and the Nooksack River.

The activities described in both the Resolution and the EA clearly encompass a large scale park proposal. The types of activities described are those activities that must be permitted as a conditional use in the Agricultural Zone, the Commercial Forestry Zone and the Rural Forestry Zone.

SEPA review must be completed at this time for the entire proposal and not only certain elements on the proposal. The review should result in an MDNS or EIS.

- B. SEPA mandates timely and early consideration of impacts. SEPA, without question, mandates consideration of the environmental review "at the earliest possible time to ensure that planning and decisions reflect environmental values..." WAC 197-11-055.
- C. "Phased review" is not appropriate. While WAC 197-11-055(2)(b) recognizes that "phased review" may be appropriate in certain circumstances, the County's decision to approve a DNS was not conditioned on the "phased review" procedures in WAC 197-11-060(5). However, even if the proper procedures were followed, phased review is not appropriate as the proposal to create the trails and trailhead is closely related to the regional park for the subject property and therefore does not qualify for "phased review."
- D. Compartmentalizing the project is not appropriate. As clearly set out in the SEPA rules:

Appropriate consideration of environmental information shall be completed before an agency commits to a particular course of action.

Before the County Council is asked to issue even a preliminary indication as to a park design and build-out they must be fully informed of the environmental consequences of their action. If the County approves a trail system for this property, then when a project application for a park does come forward, the County will be in the untenable position of reviewing (for the first time) the environmental effects of a regional park project in a location that the County has already determined a trail system and park amenities are appropriate.

By characterizing the project as a series of trails and a trailhead allows Parks to proceed forward to create a park without the required review. The "snowball effect" that Washington State courts have discussed as inappropriate will clearly take place if this project is allowed to proceed. A review of whether the area is appropriate for a park under the Comprehensive Plan or other planning policies is sidestepped by creating a large series of trails and associated services without calling the project a "park" and obtaining the proper permits.

This "bootstrapping" of the actual intended project must be stopped through SEPA review otherwise the actual impact to the environment will avoid review.

- E. The DNS ignores environmental impacts that must be addressed at this time. The issuance of the DNS fails to recognize impacts that should be mitigated through SEPA or that should be addressed through an EIS.

In issuing the DNS the responsible official fails to consider the impact of, or mitigate the impact of, public use on the Nooksack River shoreline and its resources, public use on the designated and protected Agricultural lands, public use on the designated and protected Forestry lands, the setbacks that are imposed on forestry uses through the zoning code when a park is in the vicinity and the impact of wildlife displacement.

3. Impact of Decision on Appellant or Appellant's Property

- A. The Appellant is an association of property owners and residents within the South Fork area. The impact of allowing a regional park will be directly felt by the residents through increased noise, traffic, displacement of wildlife and the loss of agriculture and timber resources.

WHATCOM COUNTY
Planning & Development Services
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CUSTOMER RECEIPT

Receipt: 119990000000002312
Payor: STARKENBURG-KROONTIE
Date: June 14, 2010

Description	Amount
APL2010-00015	
Hearing Examiner: Appeal (B)	750.00
Total:	\$ 750.00
Check # 13694 Paid	\$ 750.00
STARKENBURG-KROONTJE	

Thank you!