

BEFORE THE OKANOGAN COUNTY HEARINGS EXAMINER

IN THE MATTER OF)

B2G Composting)

Appeal of SEPA Mitigation)

FINDINGS OF FACT, CONCLUSIONS, AND DECISION

This matter, an appeal of a SEPA mitigation requirement was heard by the Okanogan County Hearings Examiner on August 24, 2023.

FINDINGS OF FACT

1. This matter was originally scheduled for hearing on July 13, 2023. This Hearing Examiner declined to take the matter under advisement at that time, reasoning that the County Code specifically prohibited appeals of Mitigate Determinations of Non-Significance (MDNS) The County’s Prosecuting Attorney’s office took that notion under advisement, and based on an analysis of codes and ordinances advised that the Hearing Examiner did have the authority to hear and rule on such an appeal.
2. As advised by the County Prosecutor’s office the Hearing Examiner has the authority to review and make a decision on this appeal.
3. The entire Planning Department file on this matter is made a part of the official record as if fully set forth herein.
4. Stephanie Palmer, the Okanogan County Planning Director (the Director) provided a detailed staff report which won’t be repeated here, but rather reference is made to the County file of record on this matter.
5. The Director is the designated SEPA official for Okanogan County.
6. The appellant specifically appeals the mitigation measure related to site- fencing, specifically I. Fencing, in the MDNS.
7. The other mitigations in the MDNS are not under appeal.
8. The appellant timely appealed.
9. The appellant has standing to appeal.
10. The Washington Administrative Code (WAC) 173-350-220 regulates composting facilities.
11. The State Department of Ecology, by letter dated July 6, 2023, noted that the project was exempt from their permitting requirements.
12. RCW 43.21C.075(3) provides that procedural determinations (emphasis added) made by the SEPA official shall be entitled to “substantial weight.” Here, the appellant is appealing only a condition imposed as a mitigation in the MDNS.

13. The Director argues that WAC 173-350-220 (6)(a)(iv) requires a site obscuring fence, but that citation actually only requires that “access to the facility is restricted when the facility is closed,” without specifying the means.
14. At the hearing, all testimony was taken under oath.
15. At the hearing, the appellant, Kate Wynne, provided detailed written and oral testimony arguing that the condition under appeal is unreasonable and unwarranted given the nature and scope of the project. She also argues that the County has failed to articulate a substantial adverse environmental impact that rises to the level of requiring mitigation, in particular, the fencing condition.
16. At the hearing, the Director argued that the site would be essentially an attractive nuisance inviting people to use it as a dumping opportunity.
17. The Hearing Examiner visited the site on August 29, 2023, and evaluated the appealed conditions with respect to conditions on the ground.

CONCLUSIONS

1. The Hearing Examiner is accorded the authority to rule on this matter, and the following decision is final and binding subject to appeal provisions of the County code.
2. The Director has failed to make a convincing argument that the condition being appealed is necessary to mitigate a substantial adverse environmental impact.
3. The argument by the Director related to concerns of illegal dumping is speculative and not supported by evidence in the record.
4. The “fencing” condition is unreasonable given the scope and scale of the project.

DECISION

Based upon the information contained in the application materials, and additional information provided at the hearing, and considering conditions on the ground, SEPA Appeal 2023-4, is **GRANTED**, and Mitigation Condition I, Fencing, is ordered revoked in its entirety. This matter is remanded back to the Planning Department for any additional proceedings that might be necessary as a result of this decision.

So ordered this 30th day of August, 2023.

OKANOGAN COUNTY HEARING EXAMINER

DANIEL BEARDSLEE

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