

# DOUGLAS COUNTY

## DEPARTMENT OF HEARING EXAMINER

140 19<sup>th</sup> Street NW  
East Wenatchee, WA 98802-4109

### BEFORE THE DOUGLAS COUNTY HEARING EXAMINER

<b>IN THE MATTER OF</b>	)	<b>FINDINGS OF FACT,</b>
	)	<b>CONCLUSIONS OF LAW, AND</b>
Rocky Reach Trial	)	<b>DECISION</b>
SP 02-87/RO 06-01	)	

THIS MATTER having come on for hearing in front of the Douglas County Hearing Examiner on December 7, 2017, the Hearing Examiner having taken evidence hereby submits the following Findings of Fact, Conclusions of Law, Decision and Conditions of Approval as follows:

#### I. FINDINGS OF FACT

1. The Rocky Reach Trail is owned and operated by the Washington State Parks and Recreation Commission (State Parks).
2. Douglas County approved a Shoreline Management Substantial Development Permit (SP-02-87) and a Recreational Overlay zone change (RO-06-01; Resolution TLS 08-09B) authorizing construction and operation of the trail.
3. The design and management plan for the trail and the authorizing approvals issued by Douglas County included measures to mitigate potentially adverse impacts of the trail identified in the permitting process.
4. The Douglas County Board of Commissioners established a review condition in Resolution TLS-08-09B as follows: "Two years after the Rocky Reach Trail has been opened for use, the Douglas County Hearing Examiner shall hold a public hearing to review and consider the effectiveness of the mitigation measures required by this approval. The review shall be performed in accordance with the procedures in place at that time and shall determine whether or not the mitigation measures should be modified."
5. The purpose of the two-year review is narrow in scope to the effectiveness of the existing mitigation measures in minimizing the potential adverse consequences of the trail. It does not include revisions to the issued permits, which would need to be addressed through the filing of applications for permit revision.
6. State Parks has stated that the official opening date for the Rocky Reach Trail was July 9, 2015.

7. Douglas County issued notice of the two-year review that invited comments regarding the effectiveness of the mitigation measures.
8. Public notice of the two-year review was published in The Wenatchee World and The Douglas County Empire Press, was mailed through the US Postal Service to property owners in the vicinity of the trail and other potentially interested persons/agencies, was sent via email to an "Interested Parties" distribution list, and was posted on the county's website and social media.
9. The public comment period was open from August 31, 2017 through October 2, 2017.
10. Seventy-one pieces of correspondence were received during the comment period and one comment was received later, but before the hearing.
11. Most of the comments requested approval to eliminate the security gates intended to restrict access during periods of closure established by State Parks and as a condition of approval.
12. No written opinions were issued by the Washington State Tree Fruit Experiment Station and the Washington State University Agricultural Extension Service that the April 1-June 30 morning seasonal closure was no longer necessary, or was otherwise not an effective mitigation measure. In fact, neither the Washington State Tree Fruit Experiment Station nor the Washington State University Agricultural Extension Service commented regarding the subject of this hearing.
13. No comments were submitted documenting how, if the security gates were to be left open or removed, State Parks could "...take all reasonable actions to ensure, at the time of trail closure, that the trail is vacant of users."
14. Comments were received from some property owners in the area expressing satisfaction with the mitigation measures.
15. Douglas County Dept. of Transportation and Land Services has no record of receipt of complaints asserting noncompliance with any of the approvals issued to the Rocky Reach Trail.
16. Revisions to trail design and operation that are beyond the authority of administrative modification may be authorized after applications for revisions are processed and improved.
17. Notice of the hearing before the Douglas County Hearing Examiner was published in The Wenatchee World on November 22, 2017 and The Douglas County Empire Press on November 23, 2017. Notice was also sent through the US Postal Service to property owners in the vicinity of the trail and other potentially interested persons/agencies. Notice was also sent via email to an "Interested Parties" distribution list, and was posted on the county's website.
18. An open record public hearing after legal notice was held on December 7, 2017.
19. Members of the public appearing were:

19.1 Matt Morrison, Area Manager, Washington State Department of Parks. Mr. Morrison testified that his department has kept a log book since 2014 tracking, among other things, violations, complaints and wildlife interactions. Mr. Morrison testified that in 2014 the complaints were mostly parking issues, in 2015 the complaints were related to pets, early entries, trespassing, cars on the trail, camping and ATV use. In 2016 the complaints related to pets, people on closed agricultural areas, early entries, trespass and ATVs and cars on the trail. In 2017 the complaints centered on pets and people in closed agricultural areas. Overall Mr. Morrison testified that there have been very few violations regarding the original concerns.

19.1.1 The Hearing Examiner believes this lack of violations demonstrates that the mitigation measures in place have likely contributed to the lack of complaints and/or violations regarding the original concerns.

19.2 However, Mr. Morrison did testify that the gate issue (opening and closing the gates) is hard on their staff. First of all, there is the seasonal gate closure. Also, there is overnight gate closure due to the park being closed. Mr. Morrison testified that his staff was not always available to sweep the trail at closing. He testified that he documented in the following years the number of times that the gates did not get closed:

19.2.1 2014: 8;

19.2.2 2015: 28;

19.2.3 2016: 17;

19.2.4 2017: 55.

Mr. Morrison indicated that there were very few instances where the gates, having been closed, were not opened on time. He indicated that there were no complaints of users causing problems.

19.2 Robert Johnson. Mr. Johnson submitted Exhibit 1 which was his written comment. His testimony was consistent with Exhibit 1.

19.3 Jeff Bullioun. Mr. Bullioun is the owner of Lisa B's Fruit Stand. They have access to the trail from their property. He requested that the trail closures be removed.

19.4 Shannon Huehn. Mr. Huehn is an orchard owner along the trail. He requested that the mitigation measures remain unchanged.

19.5 Mike Sorrensen. Mr. Sorrensen lives next to the trail. Mr. Sorrensen requested that the trail not be closed. Mr. Sorrensen submitted Exhibit 2 which was admitted into the record. Mr. Sorrensen's testimony was consistent with Exhibit 2.

19.6 Doug Pauly. Mr. Pauly testified that he has worked for Northern Fruit for over thirty years. His testimony was that while the spray drift was real, he did not think that the current plan was effective and could be improved. He testified that his opinion was that it was safer for bicycles to travel down the trail due to prevailing winds during

the spraying time of the year. He also testified as to his opinion that children riding bicycles on a highway is much less safe than children riding their bicycles on the trail. He is a passionate proponent of children exercising. His proposed solution was to either use electric gates that were solar powered that automatically opened in the morning and closed at dark or to let orchardist block the trails themselves when they are spraying. Mr. Pauly submitted Exhibit 3 which were his written comments and Exhibit 4 which were Wenatchee World articles into the record. The remainder of Mr. Pauly's testimony was consistent with Exhibit 3.

- 19.7 Robbie Scott. Mr. Scott requested that the conditions be changed so that the gates were open at all times. His opinion was that the gates played no role in reducing problems with orchardists. Mr. Scott also offered the opinion that the failure of the Washington State Tree Fruit Experiment Station and Washington State University Agricultural Extension Services Offices not commenting was not equal to their support for the current condition.
  - 19.8 Jason Vandersluis. Mr. Vandersluis is an orchardist on Cascade and his orchard property does border the trail. He is in support of the current gate closures. He indicated that orchardists at time spray at night due to high daily temperatures. Having the trail close at night makes his spraying activities safer.
  - 19.9 Dolly Buckingham. Ms. Buckingham is a trail user and cycles the loop nearly every day. She testified about the hardship this trail closure is on hand cyclist. The Hearing Examiner assumes that she is discussing the morning closures of the trail during April, May and June. She testified that cyclists can protect themselves and that the reason there have been problems is unrelated to the gate closures.
  - 19.10 Andy Dappen. Mr. Dappen testified consistent with this written comments already on file. Mr. Dappen suggested that the gates be removed in their entirety as a test. He agreed that it is safer to ride your bike on the trail than on the roadway and that the solar gate that had been suggested was a good idea.
  - 19.11 Lisa Stanton. Ms. Stanton testified that she is a farmer, mother and lives next to the trail, is a trail user and is a business owner. She has observed people violating the closed gates by traveling around them when the trail is closed. She allows people to use her access to the middle of the trail to get to the trail when the trail gates are closed. She believes trail users should be held to the standard of using the trail at their own risk.
  - 19.12 Craig Eaton. Mr. Eaton testified that while he is new to the area he is an avid cyclist and believes that the gates should be open at all times. He believes our riverfront trails system attracts visitors and new residents.
  - 19.13 Matt Morrison. Mr. Morrison followed up on his earlier testimony by stating that all parks are closed at dusk pursuant to the Washington Administrative Code and that his parks staff, does, and will, enforce this closure.
20. At the open record public hearing, the entire planning staff file was admitted into the record.

21. Public agencies with potential jurisdiction over this project were given an opportunity to review the proposal. Agencies that responded with comments were admitted into the record and considered by the Hearing Examiner in rendering this Decision.
22. Any Conclusion of Law that is more correctly a Finding of Fact is hereby incorporated as such by this reference.

## II. CONCLUSIONS OF LAW

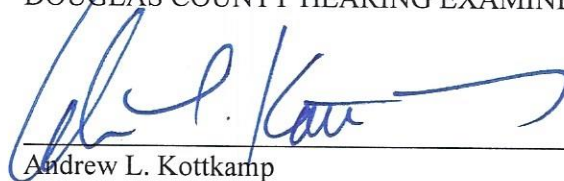
1. The Hearing Examiner has been granted authority to render this decision.
2. Douglas County has provided adequate notice of the two-year review including the opportunity to submit written comments and present oral testimony to the Douglas County Hearing Examiner.
3. Nothing in the comments received during the August 31-October 2, 2017 comment period indicate that the mitigation measures for the Rocky Reach Trail are ineffective.
4. No additional, scheduled review of the approvals granted to the Rocky Reach Trail is necessary.
5. In this proceeding, the Hearing Examiner has no authority to modify, eliminate or add any Conditions of Approval/mitigation measures that have been approved in the past. The purpose of this hearing is solely to determine whether the existing mitigation measures were effective in reducing, eliminating or at the very least, controlling a potential adverse consequence of this trail traveling through active orchards.
6. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.

## III. DECISION

Based on the above Findings of Fact and Conclusions of Law, the Hearing Examiner determines that the mitigation measures in place are effective.

Dated this 19<sup>th</sup> day of December, 2017.

DOUGLAS COUNTY HEARING EXAMINER

  
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Andrew L. Kottkamp