Emails between Friends of Toppenish Creek and the City of Sunnyside

From: Jean Mendoza < jeanrmendoza@icloud.com>

Sent: Friday, June 23, 2023 2:32 PM

To: Trevor Martin < tmartin@sunnyside-wa.gov>

Subject: Manure Bio-Digester

Hello Mr. Martin,

I am trying to learn about the permitting process for the manure bio-digester that is currently proposed for the Port of Sunnyside. I was told that you might be in a position to help. Can you tell me where the City of Sunnyside and the Port of Sunnyside are in that process? Is it possible to obtain a copy of permit applications and SEPA documents?

Thank you so much.

Jean Mendoza

509-874-2798

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On Jun 23, 2023, at 3:55 PM, Trevor Martin <tmartin@sunnyside-wa.gov> wrote:

Good afternoon Jean,

Attached is the SEPA notice and the MDNS that was just issued.

Please let me know if you have any questions.

Thank you,

Trevor

Trevor Martin, AICP

Community and Economic Development Director

City of Sunnyside

818 E. Edison Ave.

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June 26, 2023

Hello Trevor,

Thank you for this information. May I visit your offices on Monday afternoon, June 26 to review the supportive documents for this SEPA application and DNS? Best wishes.

Jean Mendoza

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June 26, 2023

Good morning Jean,

Yes, the Planning file is available for inspection. There are some files that our Public Works department has that are not part of the Planning file. If there is something specific you are looking for, I would be happy to get it from them.

Please let me know if you have any questions.

Thank you, Trevor

Trevor Martin, AICP
Community and Economic Development Director
City of Sunnyside
818 E. Edison Ave.
Sunnyside, WA 98944

P: 509.836.6393 E: tmartin@sunnyside-wa.gov

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June 29, 2023

Hello Trevor.

I appreciate your offer to provide additional documentation regarding the proposed Sunnyside Renewable Natural Gas (RNG) facility that is proposed for the Port of Sunnyside. Would you please send me these documents related to the Sunnyside RNG Determination of Nonsignificance?

1.

The traffic report for SR 241 that is on file with the City of Sunnyside and has been reviewed by WSDOT.

2. The Geotechnical Report and Phase 1 ESA, prepared by GeoProfessional Innovation in Fall 2022

3.

Any communications from the Yakima Health District regarding health impacts.

4.

Documentation to support the statement, "The project will generate direct and indirect tax revenue of approximately \$6 million annually to support schools and other community services."

5.

Critical Aquifer Recharge Area (CARA) maps for the site.

6.

Plans by the Port of Sunnyside to develop additional access to the industrial park from Alexander Road.

- 7. The proprietary scheduling model that was used to calculate number of vehicle trips per day to the proposed facility.
- 8. The Stormwater Pollution Prevention Plan (Erosion Sediment Control Plan) for the facility, including documentation of depth to groundwater, permeability of soils, and anticipated flow to the underlying aquifer.
- 9. Notice of Intent to apply for an exemption from solid waste handling permits for the facility.

10.

Plans by the City of Sunnyside and the Port of Sunnyside to install, improve, and expand right-of-way for the proposed vehicle traffic this development will cause.

Thanks so much for your help. Jean Mendoza

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On Jun 29, 2023, at 8:21 AM, Trevor Martin tmartin@sunnyside-wa.gov> wrote:

Good morning Jean,

I have received your request. Please allow me a 2-3 days to contact the parties involved and gather all of the information you have requested. From what I understand, the engineering plans are around 60% completed and submittals are at various points. If I do not have something, I will let you know. I have also CC'd the City Clerks to start an official public records request file number.

Please let me know if you have any questions in the meantime.

Thank you,

Trevor

Trevor Martin, AICP

Community and Economic Development Director

City of Sunnyside

818 E. Edison Ave.

Sunnyside, WA 98944

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July 6, 2023

Hello Trevor,

Please see the attached appeal of the City of Sunnyside's Mitigated Determination of Non-Significance for the Sunnyside Renewable Natural Gas Project. If Sunnyside requires a different format please let me know as soon as possible, since July 7 is the last day for appeal. Would you confirm receipt?

Thank you for your courteous and professional help during this process. Jean Mendoza



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From: Jean Mendoza < jeanrmendoza@icloud.com>

Sent: Friday, July 7, 2023 7:54 AM

To: Jacqueline Renteria <<u>irenteria@sunnyside-wa.gov</u>>; Monica Guillen <<u>mguillen@sunnyside-wa.gov</u>>; Trevor

Martin <tmartin@sunnyside-wa.gov>

Subject: Appeal Fee

CAUTION: This email originated from outside of this organization. Please exercise caution with links and attachments, and verify any instructions with the sender in person or over the phone.

Good Morning Trevor et al,

Is it possible to pay the fee for our appeal of the MDNS for SS RNG by credit card over the telephone?

Thanks

Jean Mendoza

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July 7, 2023

Hi Jean,

Yes you sure can pay by phone, I'm out of the office the rest of today and will be back on Tuesday. I will contact you

Tuesday we can get this done for you, Thank you for your patience ©

Thank You,

Debbie Espinoza

Permit Coordinator



City of Sunnyside 818 E. Edison Ave. Sunnyside, WA 98944

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July 12, 2023

Good Morning Trevor,

I hope you are doing well, and I thank you for your help as Friends of Toppenish Creek studies the proposed Sunnyside RNG project.

In the May 17, 2023 Notice of Environmental Review there is a reference to "Existing Environmental Documents: SEPA#2022.0046". Is it possible for us to see a copy of this document?

Thanks Jean Mendoza

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On Jul 12, 2023, at 8:51 AM, Trevor Martin <tmartin@sunnyside-wa.gov> wrote:

Please see attached



July 17, 2023

City of Sunnyside, WA

Trevor Martin commented on Completeness Review:

"Application is complete. Composing notice and setting a public hearing date of August 23, 2023 for a close record public appeal hearing"

Where: 0

Type: Appeal to Hearing Examiner

Number: APP-23-1

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From: Jean Mendoza < jeanrmendoza@icloud.com>

Sent: Thursday, July 20, 2023 8:42 AM

To: Trevor Martin < tmartin@sunnyside-wa.gov>

Subject: Re: Sunnyside RNG

Good Morning Trevor,

I hope you are doing well. Have you been able to find the documents we requested in June?

Thanks

Jean Mendoza

* * * * * * *

July 24, 2023

Good morning Jean,

I was pre occupied most of last week and out of the office Friday, Please see attached

Thank you,

Trevor

On Jun 29, 2023, at 5:25 AM, Jean Mendoza < jeanrmendoza@icloud.com> wrote:

Hello Trevor,

I appreciate your offer to provide additional documentation regarding the proposed Sunnyside Renewable Natural Gas (RNG) facility that is proposed for the Port of Sunnyside. Would you please send me these documents related to the Sunnyside RNG Determination of Nonsignificance?

The traffic report for SR 241 that is on file with the City of Sun

The traffic report for SR 241 that is on file with the City of Sunnyside and has been reviewed by WSDOT.

There is currently no traffic report on file with WSDOT. I have attached the email form JUB Engineering.

2.

The Geotechnical Report and Phase 1 ESA, prepared by GeoProfessional Innovation in Fall 2022

The Geotechnical Report and Phase 1 ESA was not provided by Pacific Ag or their consultant for review.

3.

Any communications from the Yakima Health District regarding health impacts.

No comments were submitted by Health District – Attached SEPA Notice Email

4.

Documentation to support the statement, "The project will generate direct and indirect tax revenue of approximately \$6 million annually to support schools and other community services."

This City does not have this information to support this statement.

5.

Critical Aquifer Recharge Area (CARA) maps for the site.

See attached

6. Plans by the Port of Sunnyside to develop additional access to the industrial park from Alexander Road.

See Attached

7. The proprietary scheduling model that was used to calculate number of vehicle trips per day to the proposed facility.

Proprietary information was not provided by Pacific Ag. This information was not provided to the City

8. The Stormwater Pollution Prevention Plan (Erosion Sediment Control Plan) for the facility, including documentation of depth to groundwater, permeability of soils, and anticipated flow to the underlying aquifer.

The SWPPP document is a requirement imposed on Pacific Ag by Ecology if they should have a discharge from the site, or if there land disturbance is in excess of that allowed by Ecology. To the best of our knowledge this document has not been prepared and is typically prepared prior to permit issuance. Civil Engineering plans of any nature have not been provided to the City. A SWPPP is required in the MDNS prior to the issuance of any development permits.

9. Notice of Intent to apply for an exemption from solid waste handling permits for the facility.

We have no knowledge of a Notice of Intent. No documents have been submitted by the applicant.

10. Plans by the City of Sunnyside and the Port of Sunnyside to install, improve, and expand right-of-way for the proposed vehicle traffic this development will cause.

A plan sheet of the new access on Alexander Road is attached. No existing right-of-way will be expanded. No existing roadways will be improved unless required by the TIA which has not been submitted. The Port of Sunnyside is its own agency.





Item 6 - Alex...Access.pdf 3.2 MB



Department...AP Data.pdf 1.9 MB



Notice of En...e_Notice.pdf 9.7 MB



Mail Attachment.eml 311 KB

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City of Sunnyside, WA

Trevor Martin commented on Post Notice on Site, Online, and Newspaper:

Message: "All Items are posted"

Where: 0

Type: Appeal to Hearing Examiner

Number: APP-23-1

City of Sunnyside, WA

Trevor Martin commented on Post Notice on Site, Online, and Newspaper:

Message: "Preparing staff report, will have report to HE on August 19,

2023"

Where: 0

Type: Appeal to Hearing Examiner

Number: APP-23-1

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From: Jean Mendoza < jeanrmendoza@icloud.com>

Sent: Friday, July 28, 2023 5:15 AM

To: Trevor Martin < tmartin@sunnyside-wa.gov>

Cc: Jacqueline Renteria <irenteria@sunnyside-wa.gov>; Monica Guillen <mguillen@sunnyside-wa.gov>

Subject: SS Hearing Examiner

Good Morning Trevor,

I need your assistance. Would you send me the name and contact information for the Sunnyside Hearing Examiner so I can submit motions and interrogatories? Would you tell me how to access Rules of Procedure for appearing before the Sunnyside Hearing Examiner?

Thanks so much.

Jean Mendoza

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On Jul 31, 2023, at 11:23 AM, Trevor Martin tmartin@sunnyside-wa.gov> wrote:

Good morning Jean,

The hearing Examiner should not be contacted by any parties outside of the public hearing. If there is any additional information that needs to be submitted, it can be entered into the record at the public hearing. All parties need to have the opportunity to submit information and ask questions about submitted information during the same time.

During the public hearing, the hearing examiner, will ask staff to present their report in regards to the appeal, then ask the appellant to present their case, which includes the submission of any additional information, and then allow the representative for the PacificAg project to respond. Once all parties have presented, the hearing examiner may come back to the parties for additional questions.

If there is insufficient time to answer the additional information, the hearing may be continued on to a date certain, that will be discussed at the public hearing.

If you have something you feel needs to get to the hearing examiner prior to the public hearing, please contact me, and I will contact him and get his opinion.

Please let me know if you have any additional questions.

Thank you,

Trevor

Trevor Martin, AICP

Community and Economic Development Director

City of Sunnyside

818 E. Edison Ave.

Sunnyside, WA 98944

P: 509.836.6393 E: tmartin@sunnyside-wa.gov

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July 31, 2023

Hello Trevor,

It is crucial for me to read the Rules of Procedure for appearing before the City of Sunnyside Hearing Examiner. I cannot participate effectively without this information.

I want to file a pre-hearing motion and engage in discovery. I simply do not have enough information about the project to present an appeal without engaging in discovery.

Thanks for your help. Jean Mendoza

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August 2, 2023

Dear Mr. Martin:

FOTC is preparing our presentation to the Sunnyside Hearing Examiner. We have questions. Would you kindly present these questions to the Sunnyside Hearing Examiner and send us his/her answers as soon as possible?

- Will FOTC be allowed to cross examine the staff who present on behalf of the City of Sunnyside Department Community and Economic Development?
- Will FOTC be provided, ahead of time, with the names of people from the City of Sunnyside Department Community and Economic Development who will present their report?
- Will FOTC be allowed to introduce experts who are only able to testify by video conferencing?
- Are there any restrictions on the experts and impacted people FOTC may introduce?
- What restrictions will be imposed on the "submission of additional information" by appellants?
- Will FOTC be allowed to cross examine experts from Pacific Ag who respond to our presentation?

Once again, FOTC needs to read the Rules of Procedure for appearing before the City of Sunnyside Hearing Examiner in order to effectively participate in the hearing. Sincerely,

Jean Mendoza

On Aug 2, 2023, at 11:00 AM, Trevor Martin <tmartin@sunnyside-wa.gov> wrote:

Good morning Jean,

I emailed the hearing Examiner your questions and I will get back to you as soon as I have a response.

The appeal hearing is supposed to follow

— https://www.codepublishing.com/WA/Sunnyside/#!/Sunnyside19/Sunnyside1905.html#19.05.030 of the Sunnyside municipal code.

Trevor Martin, AICP

Community and Economic Development Director

City of Sunnyside

818 E. Edison Ave.

Sunnyside, WA 98944

P: 509.836.6393 E: tmartin@sunnyside-wa.gov

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From: Jean Mendoza < jeanrmendoza@icloud.com>

Sent: Thursday, August 3, 2023 6:03 AM

To: Trevor Martin < tmartin@sunnyside-wa.gov>

Subject: Re: SS Hearing Examiner

Dear Mr. Martin,

Thank you for this response. It seems strange that our communications with the Hearing Examiner must be channeled through the City of Sunnyside Department of Community and Economic Development, our opponent in this appeal.

Would you also forward these questions to the Hearing Examiner?

- 1. How can the Friends of Toppenish Creek (FOTC) submit a pre-hearing motion?
- 2. How can the Friends of Toppenish Creek obtain relevant information ahead of the hearing? To our thinking this would be through a legal process called discovery.

We appreciate the reference to Sunnyside Code 19.05. This section of the Sunnyside Code is entitled "Open Record Public Hearings". We were informed that this appeal would be conducted as a "Closed Public Record Public Hearing". Please clarify.

Sincerely, Jean Mendoza

On Aug 3, 2023, at 8:41 AM, Trevor Martin <martin@sunnyside-wa.gov> wrote:

Good morning Jean,

The appeal is processed as a closed record public hearing following

— https://www.codepublishing.com/WA/Sunnyside/#!/Sunnyside19/Sunnyside1906.html#19.06 but the rules as procedures from the open record public hearing apply.

Here is the Hearing Examiner chapter of the Sunnyside Municipal Code

- https://www.codepublishing.com/WA/Sunnyside/#!/Sunnyside02/Sunnyside0246.html#2.46.150

Below and attached is the repose from the Hearing Examiner regarding the questions you previously submitted, I am still awaiting a response on a two questions from this morning.

Hello Trevor — Attached please find the Hearing Examiner Rules of Procedure adopted in 2000 for the City and County of Yakima which I have used since 2003 to fill in any gaps that may exist in the procedures prescribed by statutes, the WACs or the City's ordinances. The cross examination procedure is in Rule 4.4(A). Since parties should usually direct their comments to the Hearing Examiner rather than to other people present at the hearing, any questions to be asked of any person who testifies should either be written in advance to have the Hearing Examiner ask or should be presented verbally to the Hearing Examiner at the hearing to ask of the person, with the possible exceptions noted in Rule 4.4(A). In an appeal, Rule 4.1 is slightly different in that the planning department staff report and recommendation serves as the introduction to the matter. It is followed by the testimony of the appellant and any supporting testimony for the appellant, which is followed by opposing testimony in support of the SEPA determination which can either be the applicant if the applicant is not the appellant or by other City representatives if the applicant is the appellant. There is then an opportunity for rebuttal by the appellant and surrebuttal by whomever is in opposition to the appeal. Note that in a SEPA appeal, since Sunnyside has adopted WAC 197-11-680 for SEPA appeals in SMC 18.04.190, WAC 197-11-680(3)(a)(viii) requires the procedure in RCW 43.21C.075(3)(c) be followed. That includes the requirement that all testimony presented, including that of the planner, must be under oath. As a side note relevant to the introductory comments at the hearing, perhaps you can clarify for me whether or not a SEPA appeal determination can be appealed to the City Council by an applicant, the City staff (SMC 2.46.170) or the appellant since SMC 18.04.190I, like RCW 43.21C.060, only gives a right of appeal to the City Council if a proposal is conditioned or denied on the basis of SEPA (i.e. an MDNS or project denial as opposed to a DNS), yet SMC 2.46.150 seems to say any Hearing Examiner decision including a SEPA appeal decision under SMC 2.46.090(B)(5) can be appealed to the City Council? Hopefully this information will help. Feel free to let me know if there are other specific questions in addition to the cross examination procedure that I will follow which are not answered by this explanation. - Gary

Hello Trevor — I scanned and emailed you the Hearing Examiner Rules of Procedure that are authorized by SMC 2.46.120l even though they were initially adopted for the City and County of Yakima. Per the Rule 4.4(A), I probably would not allow cross examination of staff or experts at the hearing unless attorneys are involved in the hearing. Without some context, I can only generally try to provide some guidance in response to the other questions that have been asked. Written questions can be submitted to you for answers or for you to submit to others for answers prior to the hearing that will be included in the record at the hearing. Questions can also be submitted in writing or verbally at the hearing for me to ask of staff or witnesses. You can advise whom you expect will testify from the City with the caveat that evidence that may be presented may warrant the testimony of others and that the disclosure of witnesses is mutual. If Sunnyside has the capability to create the requisite verbatim record of testimony by video conferencing whereby questions could be asked by the Hearing Examiner, that would be permissible. The main restrictions on the witnesses is that their testimony be relevant to this property and this matter, that it be to the point and that it not be unreasonably cumulative. A time limit may be imposed if testimony becomes unreasonably cumulative. Relevance of any written evidence can be established by highlighting the relevant statements rather than requiring a search for the relevant statements. In short, the evidence should be manageable and presented in an orderly fashion to make a point rather than overwhelm by sheer numbers or volume. All evidence should be presented at the hearing and there is no guarantee that any additional information will be allowed to be presented by way of a continuation of the hearing. The Hearing Examiner Rules of Procedure that I emailed indicate that the hearing generally will not be conducted according to technical rules relating to evidence and procedure such as the discovery procedures allowed by court rules. But as I indicated there is the ability to submit questions before or during the hearing to be posed to staff or witnesses as appropriate. —Sunnyside Hearing **Examiner Gary Cuillier**

Please let me know if you have any additional questions,

Thank you,

Trevor

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August 3, 2023

Good afternoon Jean,

I just heard back from the Hearing Examiner, please send me any motion. I will forward your motion to the Hearing Examiner, the applicant of the Pacific Ag project, and respond to the motion from the City's point of view. You will be CC'd on all motion responses.

Thank you, Trevor

Trevor Martin, AICP

Community and Economic Development Director City of Sunnyside 818 E. Edison Ave. Sunnyside, WA 98944

P: 509.836.6393 E: tmartin@sunnyside-wa.gov

* * * * * * *

August 4, 2023

Hello Sunnyside,

A bit of housekeeping. I see that the law requires a document attesting to the fact that I believe statements in the FOTC to be true. Here it is.

Thanks

Jean Mendoza



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August 5, 2023

Dear Mr. Martin,

Would you please forward the three attached documents to the Hearing Examiner for the City of Sunnyside?

Thank you for your assistance.

Jean Mendoza



Aug 9, 2023

Dear Mr. Martin,

The Sunnyside Hearing Examiner stated in his email to you that, "Written questions can be submitted to you for answers or for you to submit to others for

answers prior to the hearing that will be included in the record at the hearing." This is a request from the Friends of Toppenish Creek for answers to questions and production of relevant documents regarding SEPA 2023-0200.

Thank you for your assistance Jean Mendoza

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From: Gary Cuillier < tcbgc@aol.com > Sent: Monday, August 7, 2023 12:30 PM

To: Trevor Martin < tmartin@sunnyside-wa.gov >

Subject: Re: SEPA 2023-0200 -- Reply

To Trevor Martin -- Since I have not received any information regarding this matter from any source, the only questions that you forwarded to me that I am able to answer are that I have not discussed the SS RNG project with staff or board members for the YRCAA or provided legal advice on the propriety of commenting on the SS RNG SEPA Review or any written or verbal advice whatsoever on any other aspect of the matter. It also appears likely to me that any MDNS reference should be to WAC 197-11-350 rather than RCW 197-11-350 and that this will be an open record public appeal hearing rather than a closed record public hearing which I understand would be held by the City Council if the applicant, city staff or appellant were to appeal whatever decision I may issue. Let me know if that is correct and please confirm that you and the applicant will be answering the other questions that I have no knowledge or information about with a copy to me prior to the hearing. Thank you. -- Sunnyside Hearing Examiner Gary Cuillier

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On Tuesday, August 8, 2023 at 03:04:54 PM PDT, Trevor Martin < tmartin@sunnyside-wa.gov > wrote:

Good afternoon Gary,

Would you like me to forward your response onto Friends of Toppenish Creek, or should this be something that is addressed at the beginning of the hearing?

Thank you,

• * * * * * * *

Trevor

From: Gary Cuillier <tcbgc@aol.com> Sent: Tuesday, August 8, 2023 3:55 PM

To: Trevor Martin < tmartin@sunnyside-wa.gov>

Subject: Re: SEPA 2023-0200 – 2nd Reply

Hi Trevor -- Assuming the statement is correct that this will be an open record public appeal hearing and that the decision can be appealed to the City Council to consider the matter at a closed record public hearing, my response should be forwarded on to the appellant now. Answers of the applicant and yourself as to their other questions should also be forwarded to them prior to the hearing if possible so the hearing will proceed as orderly as possible without the need for continuing it due to lack of prior knowledge of these details. Also the Hearing Examiner Rules of Procedure and my emails of explanation of August 2 and August 3 should also be forwarded to the appellant now if they have not been forwarded already. Thank you. – Gary

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On Aug 10, 2023, at 1:15 PM, Trevor Martin tmartin@sunnyside-wa.gov> wrote:

Good afternoon Jean,

Please see the attached following emails from the Hearing Examiner.

Thank you,

Trevor

Trevor Martin, AICP

Community and Economic Development Director

City of Sunnyside

818 E. Edison Ave.

* * * * * * * *

From: Jean Mendoza < jeanrmendoza@icloud.com>

Sent: Thursday, August 10, 2023 4:30 PM

To: Trevor Martin < tmartin@sunnyside-wa.gov> **Subject:** Re: SEPA 2023-0200 -- 2nd Reply

CAUTION: This email originated from outside of this organization. Please exercise caution with links and attachments, and verify any instructions with the sender in person or over the phone.

Hello Trevor,

Thanks for this information. Do you know whether there are video conferencing capabilities for the hearing, and whether we will be able to introduce witnesses via video conferencing?

Thanks Jean

* * * * * * *

August 10, 2023

RE: SEPA 2023-0200 -- 2nd Reply Jean,

Yes, that will be available. The Wednesday before the hearing, I will send out a zoom link to all participants, along with an agenda, staff report, and a copy of the record.

-Trevor

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August 16, 2023 at 2:30 PM

Hello Trevor,

Would you please forward this appeal brief from the Friends of Toppenish Creek to Mr Cuillier and anyone else who should see it? Thanks for your assistance.

Jean Mendoza



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Aug 16, 2023 at 2:57 PM

Details

Appeal Cancellation Good afternoon,

After consultation with the City's legal team, it has been discovered that the Mitigated Determination of Nonsignificance (MDNS) issued on June 22, 2023, cannot at this time be appealed. The reason the MDNS cannot be appeal is because the MDNS only serves as an advisory statement on behalf of the City. In order to process an appeal, the MDNS is required to be tied to a development permits, such as a land use review, engineering permit, or building permit. None of those items have been issued for the site at this time, therefore the City cannot process a standalone MDNS appeal. See - Ellensburg Cement Products, Inc. v. Kittitas County, 179 Wn.2d 737 (2014).

Please let me know if you have any questions.

Thank you,

Trevor

Trevor Martin, AICP

Community and Economic Development Director

City of Sunnyside

818 E. Edison Ave.

Sunnyside, WA 98944

P: 509.836.6393 E: tmartin@sunnyside-wa.gov





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August 16, 2023 at 4:45 PM

Dear Mr. Martin.

Would you please send me the official signed document cancelling the scheduled open record appeal of SEPA 2023-0200?

Thank you. Jean Mendoza

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August 17, 2023

Dear Mr. Martin.

Please add me to your list of people who should be notified for any and all applications, notices, and actions regarding the Sunnyside Renewable Natural Gas project.

Thanks for your help.

Jean Mendoza

* * * * * * * *

August 17, 2023

Hello Mr. Martin,

Please see the attached reply to your email.

Best wishes. Jean Mendoza



SS RNG Lett...ust 23.docx

158 KB

Download Open in Pages