

February 9, 2022

VIA EMAIL <[bocc@co.kittitas.wa.us](mailto:bocc@co.kittitas.wa.us)> AND EXPEDITED DELIVERY

**Kittitas County Board of Commissioners**

205 W 5th Avenue, Ste. 108  
Ellensburg WA, 98926-2887

\*Also OR Bar Member  
\*\*Also State Bar of CA Member  
+Of Counsel  
++Retired

Re: LPF-22-00001 / Phase 2 Black Horse at Whiskey Creek

Dear Commissioners Wright, Osiadacz, and Wachsmith:

This firm represents Ellensburg Water Company, (“EWC”), which exercises statutory irrigator authority under Kittitas County Code Sections 16.18.030 and .035 to confirm that irrigation-related improvements, including stormwater control systems, are satisfactory for purposes of proposed new land uses. On November 16, 2021, EWC provided such written confirmation to the Board of County Commissioners, in connection with D.R. Horton’s (“Horton”) Application for Phase 1 Final Plat Approval of the Black Horse at Whiskey Creek Project, LPF-21-00011 (“EWC Phase I Signoff”).

We have reviewed Horton’s recently submitted Final Plat Application for a modified “Phase 2,” to incorporate all remaining phases and divisions of the Black Horse project, including lands south of 29<sup>th</sup> Avenue (the “Phase 2 Application”). Additionally, we have reviewed Public Works Director Mark Cook’s Memorandum of February 4, 2022, a copy of which is enclosed herewith and which requests return of the Phase 2 Application as incomplete, because Horton has not yet complied with its November 2, 2021, Agreement with Kittitas County, requiring construction of a permanent pumping station in the southwest portion of the Black Horse site, as well as onsite stormwater monitoring and reporting over a *minimum* two-year period, as a precondition on any final plat approvals south of 29<sup>th</sup> Avenue (“County Mitigation Agreement”).

Understanding that any Board action on the Phase 2 Application may be in the manner of a Closed Record review, we submit that EWC nevertheless is entitled to comment in this case – not only under its Chapter 16.18 KCC irrigator authority, but also as a party to a companion agreement with Horton, which incorporates all of Horton’s stormwater obligations under the County Mitigation Agreement.

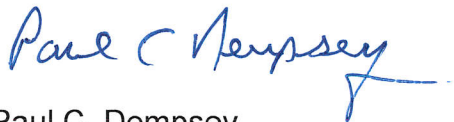
For the same reasons as described in the enclosed Public Works Memorandum, EWC asserts that the Phase 2 Application is premature. As provided under the EWC Phase 1 Signoff:

... EWC retains full legal authority to review and certify future phased final plat applications, informed by Applicant's demonstrated ability to meet stormwater control requirements under the County [Mitigation] Agreement, and, as necessary, to request additional stormwater control conditions on a "per-phase basis."

Until such time as Horton constructs and demonstrates functionality of all Black Horse stormwater controls under the County Mitigation Agreement, EWC cannot exercise additional Chapter 16.18 KCC irrigator authority for any phases south of 29<sup>th</sup> Avenue.

Very truly yours,

**HALVERSON | NORTHWEST LAW GROUP P.C.**



Paul C. Dempsey

cc: (via email)

Mark R. Cook, Public Works  
Jeremiah Cromie, Community Development Services  
Neil Caulkins, Deputy Prosecuting Attorney  
Dan Carlson, Community Development Services  
Larry Browne, EWC Manager

Encl.




## **KITTITAS COUNTY DEPARTMENT OF PUBLIC WORKS**

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**TO:** Jeremiah Cromie, Planner 1

**COPY:** Candie Leader, Administrative Supervisor

**DATE:** February 4, 2022

**FROM:** Mark R. Cook, Director 

**RE:** LPF-22-00001 Black Horse at Whiskey Creek Phase 2

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Public Works requests that Community Development Services (CDS) return the final plat application of Phase 2 Black Horse at Whiskey Creek (LPF-22-00001) for being incomplete. On November 2, 2021, the applicant (DR Horton) and Kittitas County Department of Public Works executed an agreement requiring two years of stormwater facility performance monitoring prior to any further final plat actions associated with the plat (EXHIBIT 1 attached). Additionally, the letter dated February 16, 2021, from CDS Director Carlson to DR Horton; reinforces the implementation of pond monitoring and the prohibition of subsequent plat recordings south of 29<sup>th</sup> Avenue for a two-year period from the final plat recording of Phase 1 (EXHIBIT 2 attached). Phase 1 approval was granted by the Board of County Commissioners on December 21, 2021.

Please let me know if you have any questions regarding our request deeming the Phase 2 Final Plat application (LPF-22-00001) as being incomplete.

C: Deputy Prosecuting Attorney Neil Caulkins  
CDS Director Dan Carlson  
Public Works Plan Review Team