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STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

15 W Yakima Ave, Ste 200 • Yakima, WA 98902-3452 • (509) 575-2490

October 9, 2014



Mr. William Schmidt
310 Mission View Drive
Ellensburg, WA 98926-5115

Dear Mr. Schmidt:

Thank you for your letter to Mark Kemner dated August 6, 2013 and the follow-up letter to me of August 20, 2014 regarding your development activities on Mission View Drive.

In 2011, Ecology indicated that concurrent pursuit of the Aztec Estates (7 lots), Eagles Landing Short Plat (3 new lots created, not including a pre-existing use of water), Tiger Plat (7 lots), and Wildcat Plat (8 lots) would constitute one 25-lot project. As a result, we concluded your project would not be eligible for the groundwater permit exemption and that it required a water right permit. To help you meet your development goals, Ecology provided two recommendations/options:

1. Acquire water right(s) for the listed subdivisions, or
2. Stagger the development into small and distinct elements/projects separated by at least five years.

Your August 6, 2013 letter indicated that you plan to pursue Option 2. Pursuit of Option 2 would require that you establish regular beneficial use under the Aztec Estates-Eagles Landing 10-lot project, AND, in Ecology's opinion, allow at least five years to elapse before beginning a new project.

Since you began your conversation with Mark Schuppe in 2010, much has happened to Kittitas County's land development regulations with respect to groundwater protection. In 2011, the Supreme Court found the County's land development regulations to be non-compliant with the Growth Management Act. The County's omission in its development regulations of elements of the 2001 *Campbell & Gwinn* decision by the Supreme Court was a key factor in that 2011 decision. In 2014, Kittitas County updated its development regulations to address the deficiency.

With adoption of new regulations earlier this year, Kittitas County incorporated review of necessary groundwater protections into its subdivision and building permit review and approval processes. It is no longer necessary for a land developer or building permit applicant to elicit a separate review from Ecology in order for the County to proceed with its decision to approve or deny a land use action. County staff will review your proposals as provided in Title 13.35 – Adequate Water Supply Determination and Title 16 - Subdivisions.



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Your December 10, 2013 letter asks for a letter from Ecology “authorizing water use on two parcels.” Ecology doesn’t permit new uses outside the framework of the water code. We do try, as Mark Schuppe and Mark Kenmer attempted, to assist prospective water users like you to understand the requirements of the water code and to help you understand how to proceed.

The better approach at this point would be to present your proposal(s) to the County in the form of subdivision applications or building permit applications, as appropriate. As part of their review they will necessarily determine what uses are new uses of groundwater and what uses are existing uses. The new uses will require mitigation to offset the consumptive use – just as if Ecology were to approve your proposal under a new groundwater permit. If the proposed new uses are sequenced in a way that would, when considering the several *Campbell and Gwinn* factors, exceed the limits of the groundwater permit exemption then Ecology would require you to obtain a new groundwater permit.

And that, again, was the point of the previous letters from Mark Schuppe and Mark Kemner. If you keep your development proposals sufficiently spaced in time (more than 5 years apart) and sufficiently small (fewer than 15 homes per proposal) the likelihood of triggering the need for a groundwater permit is relatively low. The mitigation requirement (the full offset of the consumptive use or your proposal) would apply whether your project requires a permit or is exempt from permitting.

Sincerely,



Robert F. Barwin, P.E.
Acting Section Manager
Water Resources Program

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cc: Robert “Doc” Hansen, Kittitas County Community Development Services
Erin Moore, Kittitas County Public Health Department