

Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

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JAN 03 2013

KITTITAS COUNTY
CDS

Kittitas County
Community Development Services
ATTENTION: Kittitas County Hearing Examiner
411 N. Ruby St., Suite 2
Ellensburg, WA 98926

Thursday, January 03, 2013

RE: Sasse Ridge Long Plat (LP-11-00002)

I appreciate the opportunity to provide comments to the Kittitas County Hearing Examiner regarding the proposed Sasse Ridge Long Plat (LP-11-00002).

Please find attached correspondence to me from my fisheries staff. I concur with the findings of the report for fisheries protection. As you may know, substantial funding is being invested in the Yakima River Basin, to allow it to once again support a viable salmonid and resident fish population. The proposed land division may add to the cumulative negative effects that result in a degraded watershed.

Please contact my staff regarding your response to the mitigation measures noted in the attached memo. John Marvin can be reached at 509-966-7406.

Sincerely,

Phil Rigdon
Deputy Director of Natural Resources
Yakama Nation

CC Yakama Nation Office of Legal Council
Scott Nicolai
File

MEMORANDUM

TO: Phil Rigdon, Deputy Director, DNR
THROUGH: Scott Nicolai, Yakima Subbasin Habitat Coordinator, YKFP
FROM: John Marvin, Habitat Biologist, YKFP
DATE: Wednesday, January 2, 2013
RE: Sasse Ridge Long Plat (LP-11-00002)

The Kittitas County Hearing examiner is conducting a public hearing on the Sasse Ridge Long Plat (LP-11-00002) on January 10th at 6:00 pm. The project proposes to subdivide 30 acres into 10 single-family lots, with water provided by a community water system.

Groundwater

The project proposes to provide potable water with a Group A water system. Staff sees nothing in the record that the proponent has, or proposes to acquire any water rights. The DOE letter submitted on November 14, 2007 also states that the proposal, and the two adjacent proposals, will be required to acquire water rights. The 2007 DOE letter is also prior to the Upper Kittitas Groundwater "Moratorium". On July 16, 2009, the Department of Ecology filed a temporary, emergency rule that closed northern Kittitas County to all new groundwater withdrawals. The Department of Ecology adopted a permanent rule (Chapter 173-539A WAC), effective on January 22, 2011, for managing ground water resources in upper Kittitas County. The new rule withdraws from appropriation all groundwater in Upper Kittitas County with the exception of uses for structures for which a building permit was granted and vested prior to July 16, 2009 and uses which are determined to be water budget neutral. The rule establishes a pathway for developers, contractors, and/or individuals to construct water budget neutral projects by identifying water rights that can be placed into the trust water right program to offset their consumptive use of groundwater.

The Washington State Supreme Court (Court) issued its opinion in *Kittitas County v. Eastern Washington Growth Management Hearings Board* (Board) (No. 84187-0) on July 28, 2011. In its opinion, the Court found that Kittitas County violated the Growth Management Act (GMA) on a number of issues, including the failure to protect water resources.

The Court affirmed that the Board correctly interpreted and applied the law when it found that the County's subdivision regulations violate the GMA by failing to protect water resources. The Court affirmed the Board's conclusions that resulted from connecting the GMA's mandates to protect water resources with the Courts interpretation of RCW 90.44.050 in *Campbell & Gwinn* " that the total group groundwater use in a residential development must be considered, rather than the separate use of each residential lot, for purposes of determining if use is in excess of 5,000 gallons per day for permit exemption." *Campbell & Gwinn*, Slip. Op. at p. 34. In *Campbell & Gwinn*, the Court interpreted the permit exemption of RCW 90.44.050 and held that commonly owned developments are not exempt from the state groundwater permit requirement if the total

development uses more than 5,000 gallons of water per day. The Supreme Court in *Kittitas County* held that:

... several relevant statutes indicate that the County *must* regulate to some extent to assure that land use is not inconsistent with available water resources. The GMA directs that the rural and land use elements of a county's plan include measures that protect groundwater resources. RCW 36.70A.070(1), (5)(c)(iv). Additional GMA provisions, codified at RCW 19.27.097 and 58.17.110, require counties to assure adequate potable water is available when issuing building permits and approving subdivision applications.

Kittitas County, supra, Slip Op. at p. 38 (citation omitted)

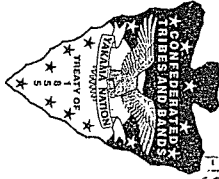
The Court concluded "... that the County is not precluded and, in fact, is required to plan for the protection of water resources in its land use planning." Slip Op. at pp. 38-39

The GMA requires that counties provide for the protection of groundwater resources and that county development regulations comply with the GMA. The Court affirmed that the Board properly interpreted the GMA's mandate to protect water to at least require that the County's subdivision regulations conform to statutory requirements by not permitting subdivision applications that effectively evade compliance with water permitting requirements. The proposal should be required to conform to the findings of the Washington State Supreme Court (Court) in its opinion in *Kittitas County v. Eastern Washington Growth Management Hearings Board* (Board) (No. 84187-0).

Staff Recommendation

- The proposal is within jurisdiction of, and should be required to conform to Chapter 173-539A WAC. The proposal should also be required to be consistent with the findings of the Washington State Supreme Court (Court) in its opinion in *Kittitas County v. Eastern Washington Growth Management Hearings Board* (Board) (No. 84187-0).

c: file
Yakama Nation Office of Legal Council



FISHERIES RESOURCE MANAGEMENT
Confederated Tribes and Bands
of the Yakama Nation

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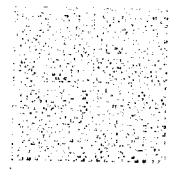
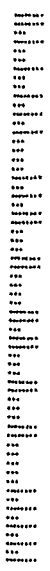
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