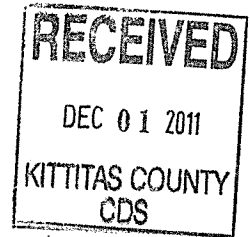




STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

November 29, 2011



Dan Valoff
Kittitas County Community Development
411 N. Ruby St., Suite 2
Ellensburg, WA 98926

Re: LP-11-00002

Dear Mr. Valoff:

Thank you for the opportunity to comment during the optional determination of nonsignificance process for the subdivision of approximately 30.61 acres into 10 lots, proposed by Sasse Ridge, LLC. We have reviewed the documents and have the following comments.

WATER QUALITY

It has recently come to the attention of Ecology staff that there are lands in the areas around Ronald, Roslyn, and Cle Elum that are contaminated with coal mine tailings and/or coal mine waste rock. Potential human and environmental health and safety risks are associated with coal mine byproducts. Preliminary information indicates that the property under application may contain such coal waste material. Metals, sulfate, ammonium and toxic organic compounds are some of the contaminants associated with coal particles remaining in the waste materials. Gases from coal degradation, such as methane, carbon dioxide, and/or hydrogen sulfide can build up over time causing health and safety risks to the overlying building occupants. Explosion and fire may result from methane gas build-up and coal residues. Sink holes may occur as the coal continues to degrade over time. Construction or grading activities using coal waste material could result in dust inhalation. Therefore, adequate characterization of coal mining related by products will be required for this site.

Contaminants associated with the materials may also impact surface water bodies or leach to groundwater due to erosion or percolation of rain or snow through the materials. Discharges of



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stormwater from contaminated sites have the potential to violate surface water quality standards. Discharges that are not in compliance with these standards are not authorized. Therefore, a Construction Stormwater General Permit will not be considered for this site until a full site characterization has been received by the Department of Ecology delineating all areas of the property where coal mine tailings or waste materials may exist or are located.

Erosion control measures must be in place prior to any clearing, grading, or construction. These control measures must be effective to prevent soil from being carried into surface water by storm water runoff. Sand, silt, and soil will damage aquatic habitat and are considered pollutants.

Any discharge of sediment-laden runoff or other pollutants to waters of the state is in violation of Chapter 90.48, Water Pollution Control, and WAC 173-201A, Water Quality Standards for Surface Waters of the State of Washington, and is subject to enforcement action.

Best management practices must be used to prevent any sediment, oil, gas or other pollutants from entering surface or ground water.

If you have any questions or would like to respond to these Water Quality comments, please contact Lynda Jamison at (509) 575-2434.

WATER RESOURCES

Total Scope of the Project Pursued by the Proponent

The proponent of this application (LP-11-00002) has pursued several subdivisions in the same area under several Limited Liability Company (LLC) names. These LLCs are controlled by Newport Hills Land Company Incorporated (Newport Hills) and managing interests. In total, the project consists of 5 contiguous subdivisions and 8 adjacent lots amounting to 60 lots within an area of approximately 215 acres (figure 1). Ecology is aware of the subdivisions listed below in Table 1; not all have been approved by Kittitas County to date (see figure 1 for precise location.)

| Table 1 Subdivisions Pursued by Newport Hills Land Co. Inc. in T21N/R14E Section 21 | | |
|--|--------------------|-------------|
| LLC | Subdivision | Lots |
| Newport Hills Land Co. | Anna Bell | 14 |
| Cedar Grove | Cedar Grove | 14 |
| Newport Hills Land Co. | Hex Mountain | 8 |
| Jolly Mountain Group | Eagle Nest | 14 |
| Sasse Ridge | Sasse Ridge | 10 |

Ecology records show that Newport Hills has drilled 7 wells in the subject area (see Table 2). The wells were drilled under controlling LLCs or managing parties.

| Table 2 Wells Drilled by Newport Hills Land Co. Inc in T. 21 N. / R. 14 E.W.M. Sec 21 | |
|--|---------------------------------|
| Well Tag No. | ¹ Name or LLC |
| AFH679 | Newport Heights |
| AFH680 | Nathan Weis |
| APG953 | Anna Bell Water Club |
| APG997 | Greg Maras |
| APG996 | Marion Weis |
| APE780 | Jolly Mountain Group LLC |
| APE751 | Sasse Ridge LLC |

¹ Each well was drilled under a managing interest of Newport Hills Land Co. Inc.

SEPA Checklist

In 3.a.1) of the SEPA checklist, the proponent proposes to use groundwater for the subject application. Under A.9. and 10. of the checklist, the proponent acknowledges that approval from the Department of Ecology regarding water use ‘may’/’will’ be necessary. We agree that water use will require authorization from Ecology.

Applicable Law, Rules, and Court Decisions

In the state of Washington, withdrawals of groundwater from 1945 onward require a water right permit or certificate unless the use is specifically exempt from the state permitting requirements. These exempt uses can be found in RCW 90.44.050. This statute is commonly referred to as 'the permit exemption' or simply 'the exemption' (see attachment for additional information). The use of groundwater under the permit exemption has been interpreted in two Attorney General Opinions (AGO 1997 No. 6 and AGO 2005 No. 17) and by the State Supreme Court in the *Campbell & Gwinn v. Ecology* decision. The recent Upper Kittitas Ground Water Rule (WAC 173-539A) provides additional guidance with respect to defining what uses are 'exempt' from water right permitting.

With regard to this project/application, there are no valid 'exemptions' under RCW 90.44.050. Thus, all use of water must be covered or withdrawn under the authority of a water right permit or certificate. To date, the proponent has not applied for any Water Right Permits for the project.

In Summary

The Department of Ecology has concluded that the Sasse Ridge (LP-11-00002) subdivision is part of a project as defined by WAC 173-539A and AGO Opinion 197 No. 6. The project includes the 5 contiguous subdivisions and 8 adjacent lots amounting to 60 lots within an area of approximately 215 acres shown in figure 1. Ecology has determined that a Water Right Permit is required for the project, including those listed in LP-11-00002. The proponent acknowledges that water use authorization from Ecology will be necessary. However, the applicant has not applied for any Water Right Permits for the project. Thus, Ecology will reserve judgment regarding future applications and any mitigation offered. If mitigation is offered as a part of this application, all commenting agencies and persons should have an opportunity to address any potential concerns with or the adequacy of the mitigation offered.

Ecology has had multiple correspondences with the proponent's attorney, Anne Watanabe, regarding the matter of water right permitting for the Newport Hills Land Co. Inc. project. Ms. Watanabe has requested that certain parts of the project be exempted from Water Right

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Permitting. Ecology has consistently informed Ms. Watanabe that a Water Right Permit(s) is (are) required for the project¹.

If you have any questions or would like to respond to the Water Resources comments, please contact Kurt Walker at (509) 454-4237.

Sincerely,



Gwen Clear
Environmental Review Coordinator
Central Regional Office
(509) 575-2012

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Enclosure

¹ Ecology letter dated October 18, 2011 from Melissa Downes, Operations Unit Supervisor to Anne Watanabe, Newport Hills Land Company, Inc.

Newport Hills Land Co. Inc. Land Holdings and Subdivisions in T21N / R14E Sec 21

