

## Lindsey Ozbolt

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**From:** Lindsey Ozbolt  
**Sent:** Thursday, January 10, 2013 3:05 PM  
**To:** 'John Marvin'; Doc Hansen  
**Subject:** RE: Sasse Ridge LP-11-00002

John,

I have received your comments and they will be entered into the record tonight.

Thank you,  
Lindsey Ozbolt

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**From:** John Marvin [mailto:jmarvin@Yakama.com]  
**Sent:** Thursday, January 10, 2013 2:45 PM  
**To:** Lindsey Ozbolt; Doc Hansen  
**Subject:** Sasse Ridge LP-11-00002

Please enter the attached documents into the record for tonight's hearing on Sasse Ridge LP-11-00002.

Please confirm receipt.

Thank you,

John L. Marvin  
Habitat Biologist  
Yakama Nation  
Yakima/Klickitat Fisheries Project  
760 Pence Rd  
Yakima, WA, 98909  
1-509-966-7406 office  
1-509-949-2176 cell  
1-509-966-4972 fax  
[jmarvin@yakama.com](mailto:jmarvin@yakama.com)

## Lindsey Ozbolt

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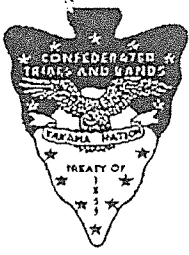
**From:** John Marvin [jmarvin@Yakama.com]  
**Sent:** Thursday, January 10, 2013 2:45 PM  
**To:** Lindsey Ozbolt; Doc Hansen  
**Subject:** Sasse Ridge LP-11-00002  
**Attachments:** Image.jpg; SasseRidge.doc; DOEMeadow1.jpg; DOEMeadow2.jpg; Sasse Ridge (Newport Hills) LP-11-00002, 11-28-11.docx

Please enter the attached documents into the record for tonight's hearing on Sasse Ridge LP-11-00002.

Please confirm receipt.

Thank you,

John L. Marvin  
Habitat Biologist  
Yakama Nation  
Yakima/Klickitat Fisheries Project  
760 Pence Rd  
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Confederated Tribes and Bands  
of the Yakama Nation

Established by the  
Treaty of June 9, 1855

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 10<sup>th</sup> 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

**FW: Kittitas Permit Question**

Dunbar, Mark (ECY) [MDUN461@ECY.WA.GOV]

**Sent:** Wednesday, January 09, 2013 9:53 AM**To:** John Marvin**Cc:** Park, Sage (ECY) [SUEB461@ECY.WA.GOV]; Reed, Catherine D. (ECY) [CRAJ461@ECY.WA.GOV]**Attachments:** Sasse Ridge (Newport Hill~1.docx (751 KB) ; G4-35251 Superseeding ROE ~1.pdf (6 MB)

Mark Dunbar  
Water Resources Program  
Dept. of Ecology  
Central Regional Office  
(509) 575-2024

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**From:** Walker, Kurt (ECY)  
**Sent:** Tuesday, January 08, 2013 6:58 PM  
**To:** Dunbar, Mark (ECY)  
**Cc:** Park, Sage (ECY)  
**Subject:** RE: Kittitas Permit Question

**Meadow Springs LP0700015 and Tamarac Ridge LP0700018 have water rights.**

These two long plat applications are part of a larger project known as "Meadow Springs" which is covered under permit G4-35251. G4-35251 is a mitigated permit. Some of conditions (17 and 20 particularly) have not yet to be satisfied. Thus, full water use is not currently authorized (see attached ROE).

**Sassy Ridge LP 1100002 does not have water rights.**

The Sassy Ridge long plat application is part of a larger development effort by Newport Hills Land Company Incorporated and managing interest (see attached SEPA WR comments). In total, the project consists of 5 contiguous subdivisions and 8 adjacent lots amounting to 60 lots within an area of approximately 215 acres.

Ecology has had multiple correspondences with the proponent's attorney, Anne Watanabe, regarding the matter of water right permitting for the subject project. Ms. Watanabe has requested that the project be exempted from WAC 173-539A and Water Right Permitting. To be clear, Ecology has consistently informed Newport Hills that a Water Right Permit(s) is required for all water use by the project.

For additional information/detail regarding any of these subdivisions, please feel free to email or stop by my cube.

Hope this helps.

**Kurt Walker**

WA Dept of Ecology, CRO

Water Resources Program

(509) 454-4237

kwal461@ecy.wa.gov

*Winston Churchill*

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**From:** Dunbar, Mark (ECY)  
**Sent:** Monday, January 07, 2013 1:19 PM  
**To:** Walker, Kurt (ECY)  
**Subject:** FW: Kittitas Permit Question

Mark Dunbar  
Water Resources Program  
Dept. of Ecology  
Central Regional Office  
(509) 575-2024

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**From:** Park, Sage (ECY)  
**Sent:** Monday, January 07, 2013 10:59 AM  
**To:** Dunbar, Mark (ECY)  
**Subject:** Kittitas Permit Question

Mark,  
John Marvin from the Yakama Nation contacted us to determine if the following long plats have received a WR permit. They are in upper Kittitas.

Meadow Springs LP0700015  
Tamarac Ridge LP0700018  
Sassy Ridge LP 1100002

I believe you can find these on Kittitas County's Planning website to find our comment letters. I would check with Kurt and Melissa to see if they recognize the names. Johns phone number is 966-7406. He would like to know by this Wed am if possible.  
Thanks!

Sage Park  
Permitting Unit Supervisor  
Water Resources Program  
Washington State Department of Ecology  
Central Regional Office  
15 W. Yakima Ave, Suite 200 | Yakima, WA 98902  
phone (509) 454-7647 | fax (509) 575-2809

## Water Resources SEPA Comments for Kittitas County Long Plat Application LP-11-00002, Sasse Ridge

Thank you for the opportunity to comment on the Sasse Ridge Long Plat (LP-11-00002) application.

### 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. Ecology is aware of the subdivisions listed below in Table 1; not all have been approved by Kittitas County to date (see map below for precise location.)

Table 1 Subdivisions Pursued by Newport Hills Land Co. Inc. in T. 21 N. / R. 14 E. W.M. 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.	<sup>1</sup> 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

<sup>1</sup> 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.&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.

### **Correspondence with Proponent**

Ecology has had multiple correspondences with the proponent’s attorney, Anne Watanabe, regarding the matter of water right permitting for the subject project. Ms. Watanabe has requested that the project be exempted from WAC 173-539A and Water Right Permitting. To be clear, Ecology has consistently informed Newport Hills that a Water Right Permit(s) is required for all water use by the project.

### **In Summary**

The Sasse Ridge (LP-11-00002) subdivision is part of a larger project as defined by WAC 173-539A and AGO Opinion 197 No. 6. As a result, all water use by the project, including LP-11-0002, must be withdrawn and used under an authorized Water Right Permit(s).

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.

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

