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July 22, 2008

Planning Commissioners
Kittitas County Courthouse
205 W. 5th Street
Ellensburg, WA 98926

Via Electronic Mail:
trudie.pettit@co.kittitas.wa.us

RE: Tumbling Ridge Re-Zone (Z-01-16) and Preliminary Plat (P-07-61)

Dear Commissioners:

I am writing in my capacity as authorized agent for Tumbling Ridge LLC on the above referenced land use applications ("Tumbling Ridge proposal"). This letter is provided as a brief response to Joe Mentor's letter dated July 3, 2008, written on behalf of Suncadia, LLC, and addressed to the County Planning Commission regarding the above referenced land use applications.

Mr. Mentor claims in his letter that because the Tumbling Ridge LLC property is surrounded on three sides by Suncadia property, unmitigated environmental impacts from the Tumbling Ridge proposal will cause Suncadia "irreparable harm." Mr. Mentor requests that the county require an environmental impact statement (EIS) and impose additional conditions to mitigate environmental impacts from the proposal. Mr. Mentor is concerned with impacts to water resources and Tumbling Ridge LLC's potential violation of the exempt groundwater rule established in RCW 90.44.050. Mr. Mentor's further suggestion that Tumbling Ridge LLC, "intends to develop two parcels as a single project, but is attempting to avoid comprehensive review through piecemeal applications,"[1] is an inflammatory accusation unsupported by the record.

Mr. Mentor's requests should be discarded on procedural, legal and factual grounds because he has wrongly tangled potential impacts from the Tumbling Ridge proposal with speculative impacts from activities on an adjacent parcel owned by a different land owner and for which no project application has been submitted for the county's review. There simply is no project application or proposal submitted by any party to the county to develop the adjacent parcel.[2]

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[1] Letter from Joe Mentor to Kittitas County Commissioners, dated July, 2008, page 3 (Mentor Letter).

[2] This adjacent parcel is owned by the Nathan and Lisa Weis Family LLC (Weis Family LLC). The fact that the Weis Family LLC drilled a well on this parcel in May 2008 and staked preliminary lot locations does not equate into a "project application" for which the county can review and take government action on. Mr. Mentor incorrectly suggests that there is "common ownership" as to Tumbling Ridge LLC and the Weis Family LLC, and we note that in any case, WAC 197-11-060(3)(c)(i)-(ii) refers to "common aspects" of proposals and equates that to common timing, types of impacts,

Mr. Mentor is asking the county to do something it procedurally, legally and factually cannot do: consider both parcels as one proposal in its SEPA review of the Tumbling Ridge proposal.

The Tumbling Ridge proposal is a land use action application submitted to the county and deemed a complete application for development of only the property owned by Tumbling Ridge LLC as so depicted on the plat maps with the application. On May 30, 2008, the county issued a SEPA MDNS for the Tumbling Ridge proposal. The adjacent landowner, however, has not submitted a land use action application to the county and therefore it is not possible for the county to consider impacts from speculative development of that adjacent parcel let alone in conjunction with the Tumbling Ridge proposal. Under the circumstances, it is procedurally, legally and, factually impossible for the county to do what Mr. Mentor suggests and include the adjacent parcel in the county's SEPA review for the Tumbling Ridge proposal. [3]

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alternatives, geography, methods of implementation, environmental media or subject matter. The SEPA regulations simply do not identify common ownership as a "common aspect" that would justify a lead agency to deem separate proposals as a similar action. Regardless of who owns the adjacent parcel, no party has submitted a project application to the county for which a SEPA determination can be made.

[3] Mr. Mentor cites WAC 197-11-060(3)(b) to validate his suggestion that the Tumbling Ridge proposal and the adjacent parcel are "one proposal" for purposes of SEPA. Again, there is only one proposal – the Tumbling Ridge proposal – which can be reviewed under SEPA. WAC 197-11-060(3)(b) does not apply in this matter. WAC 197-11-060(3)(b) states that "proposals or parts of proposals that are related to each other closely enough to be, in effect, a single course of action shall be evaluated in the same environmental document," if they:

> (i) Cannot or will not proceed unless the other proposals (or parts of proposals) are implemented simultaneously with them; or
> (ii) are interdependent parts of a larger proposal and depend on the larger proposal as their justification or for their implementation. WAC 197-11-060(3)(c)(i).

Neither of these conditions apply to either parcel. Even if a project application for the adjacent parcel had been or may be submitted to the county in the future, each parcel can be developed on its own accord and can proceed independently of the other. Mr. Mentor's application of WAC 197-11-060(3)(b) is misplaced in this matter.

Mr. Mentor continues on this line of reasoning and suggests that the county's MDNS failed to consider cumulative impacts of the project as required under WAC 197-11-060(4) and WAC 197-11-792(2)(c) noting the SEPA requires consideration of the direct, indirect and cumulative impacts of a proposed action. Again, this analysis can only be done when there are proposals submitted in accordance with the Kittitas County Code. In this case, only the Tumbling Ridge proposal has been submitted to the county.

Mr. Mentor suggests that because both parcels must access from the same private road (Jenkins Drive), they are suddenly "functionally related." This is simply an overreaching, over assumptive interpretation of the facts. If this logic were applied, Suncadia, Tumbling Ridge LLC, the Weis Family LLC, and every other individual landowner who shares an access easement along Jenkins Drive would be "functionally related." Mr. Mentor is attempting to establish an overly broad restriction on property rights, namely, that lots on the same street are "functionally related" and subject to SEPA review as "one proposal" in accordance with WAC 197-11-060(3)(b).

And because Mr. Mentor's concerns completely spin off this false premise that impacts from the adjacent parcel are somehow up for the county's review, the remainder of the issues raised in his letter are inconsequential and irrelevant in determining the potential impacts from and mitigation measures for the Tumbling Ridge proposal for a 14-lot development. As such, Mr. Mentor's suggestion that the county failed to address impacts of the proposals is simply incorrect, misleading and based on speculation. The county's MDNS adequately addresses potential impacts from the Tumbling Ridge proposal as presented in the land use action applications and adequately incorporates all public comments received during the comment period including comments submitted by the Department of Ecology.[4]

Neither Suncadia, LLC nor Mr. Mentor filed timely SEPA appeals and neither submitted any comments into the record during the 30-day comment period. Mr. Mentor's July 3rd letter requesting the county to prepare an EIS and impose additional mitigating conditions is also untimely.

Mr. Mentor's concerns with impacts to water resources are based on his concerns with potential future development of the adjacent parcel, not with the Tumbling Ridge proposal as presented to the county in the land use applications. Contrary to Mr. Mentor's assertions, the Tumbling Ridge proposal is consistent with *Ecology v. Campbell & Gwinn (Campbell & Gwinn,)*[5] RCW

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[4] Comment letter on the Tumbling Ridge Rezone and Preliminary Plat from Gwen Clear, Washington Department of Ecology, Environmental Review Coordinator, Central Regional Office, to Dan Valoff, Staff Planner, Kittitas County Community Development Services, February 19, 2008.

[5] 146 Wn.2d 1, 43 P.3d 4 (2002). Mr. Mentor's application of *Ecology v. Campbell & Gwinn* is misplaced under the facts at hand and he again makes broad leaps in his assumptions about the nature of the relationship between the two separate land owners and their activities on their respective properties. The primary point against Mr. Mentor's requests to the county is that there is no project application submitted for the adjacent parcel. As a point of order, we note that Mr. Mentor incorrectly assumes that Tumbling Ridge LLC and the Weis Family LLC are one and the same "developer." Mr. Mentor cites several conclusions from the *Campbell & Gwinn* ruling, which ruled against a single "developer" and held that multiple exempt withdrawals for a 20-lot subdivision constituted a single group domestic use and that the developer in that case, not the homeowners, was the one seeking the exemption and that therefore, the developer cannot claim multiple exemptions for the homeowner. And the Attorney General Opinion No. AGO 1997 No.6, which is regularly cited by the Department of Ecology, is consistent with *Campbell & Gwinn* and states that, "where water is withdrawn by a property owner for a single housing development, within a reasonable short period of time, a single "withdrawal" occurs for purposes of applying RCW 90.44.050 and determining whether the withdrawal requires a water rights permit, no matter how many individuals wells or other withdrawal mechanisms are employed." The Tumbling Ridge proposal is consistent with *Campbell & Gwinn* and AGO 1997 No. 6. Notably, the court's ruling in *Campbell & Gwinn* is specific to the fact pattern presented in that case, which differs from the fact pattern at hand which involves two property owners who have independently submitted NOIs and drilled wells non-contemporaneously with one another, and one parcel which has no development application associated with it. The pivotal footnote (footnote #7) expressed in AGO 1997 No. 6 is: "Our conclusion is limited to the fact pattern you have specified. **If the facts are varied, such as withdrawals independently made by different persons, or a series of separate withdrawals occurring over a long period of time, the answer might well be different."**(emphasis added).

90.44.050, RCW 58.17.110[6], and the MOA between the County and Ecology regarding exempt wells.[7] Tumbling Ridge LLC has applied for and drilled an exempt ground water well[8] to serve the 14 lots which shall be limited to one withdrawal not to exceed 5,000 gallons per day. The county's SEPA MDNS, "Section III Water/Stormwater" for the Tumbling Ridge proposal specifically states the following conditions for groundwater withdrawals:

> III.C. Withdrawals of groundwater on the subject property are subject to the rules and regulations adopted and administrated by the Washington State Department of Ecology; this includes the use of water for irrigation. Legally obtained water must be used on-site.
>
> III.D. The applicant shall develop a "Group B" water system to be used to serve all 14 lots. Water withdrawals shall not exceed the single daily withdrawal exemption of 5,000 gallons per day cumulatively, as set forth by the Department of Ecology.
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> III.E. Flow meters shall be installed both at the well head and on each individual lot and records documenting water usage both at the well head and on each individual lot shall be maintained and available for public inspection by a Satellite Management Agency.
>
> III.F. The "Group B" water system cannot be used for irrigation purposes.
>
> III.G. Washington Administrative Code (WAC) 173-150 provides for the protection of existing rights against impairment, i.e. interruption or interference in the availability of water. If the water supply in your area becomes limited your use could be curtailed by those with senior water rights.[9]

To the extent that Mr. Mentor's concerns are relevant to the project application at hand, those concerns have been adequately addressed in the MDNS and the additional conditions Mr. Mentor believes must be imposed are already included in the MDNS.[10]

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[6] RCW 58.17, the Subdivision Act. RCW 58.17.110(2) states that a proposed subdivision of land "shall not be approved unless" the agency finds that "[a]ppropriate provisions are made" for potable water supplies and public health and safety.

[7] Memorandum of Agreement Between Kittitas County and the State of Washington, Department of Ecology Regarding Management of Exempt Ground Water Wells in Kittitas County, April 7, 2008. While Mr. Mentor also suggests that the county should have required Tumbling Ridge LLC to provide a hydrogeologic report, the MOA clearly makes this requirement discretionary.

[8] Tumbling Ridge LLC filed a Notice of Intent to drill a well with the Department of Ecology on August 18, 2006, and drilled the well on or about February 8, 2007.

[9] Kittitas County Development Services, Mitigated Determination of Nonsignificance (MDNS), Tumbling Ridge Re-zone (Z-07-16) and Tumbling Ridge 14-Lot Preliminary Plat (P-07-61), May 30, 2008.

[10] Mr. Mentor asks the county to include 3 additional conditions, each of which is already imposed on the proposal. First, he requests a plat note indicating that the Tumbling Ridge property and the

We appreciate the uniqueness of the project location being inside the Suncadia Master Planned Resort (MPR) boundaries and believe the Tumbling Ridge proposal offers land use opportunities and provides open space consistent with Suncadia's adjacent property, the greater MPR and other surrounding land uses, including the Cle Elum Urban Growth Area and Planned Mixed Use zoning within Cle Elum city limits. The Tumbling Ridge proposal has been submitted, reviewed and processed in accordance with the county's Comprehensive Plan and development regulations. The MDNS complies with SEPA, the county code and the MOA.

Mr. Mentor has clearly tangled the Tumbling Ridge proposal with speculation about future activities on the adjacent parcel for which there is no project application before the county. Given that simple fact, it is procedurally, legally and factually impossible for the county to do what Mr. Mentor seeks. The county has properly reviewed the Tumbling Ridge proposal as presented and has properly prepared the MDNS for impacts and mitigations for the Tumbling Ridge proposal only. As such, we respectfully instruct the Planning Commission and the Board to dismiss Mr. Mentor's comments as untimely, irrelevant and otherwise adequately addressed in the MDNS.

Respectfully submitted,

Anne Watanabe

cc: Dan Valoff, Kittitas County, CDS
Tom Tebb, Washington Dept. of Ecology

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adjacent parcel shall be considered as a single "group domestic use" and therefore entitled to rely on one exempt well to serve development of both parcels. This plat note already exists on the Tumbling Ridge Short Plat which created both parcels (Tumbling Ridge Short Plat, Sheet 2 of 2, Note 9, Recorded January 26, 2007, Recording No. 2007012660060). The 2nd and 3rd conditions he asks for are plat notes stating that use of an exempt well on the property may be subject to curtailment to protect senior water rights from out-of-priority water use and to protect flow levels in the Cle Elum River. These are both addressed in the MDNS, III.G.