

Department of Ecology
Kittitas Development
Draft

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Background: Kittitas County is currently experiencing major re-zone and growth. According to an August 2006 memorandum by Kittitas County Community Development Services (KCCDS), summarizing the 2006 Kittitas County Comprehensive Plan Amendments, 8,346.07 acres have been proposed for map amendments or rezones. Much of the proposed development is in the Cle Elum vicinity. Ecology's main concerns are adequate long term water supply for municipal use by developments and protecting senior water rights in an adjudicated basin. The available groundwater in this vicinity is limited. A study is currently being conducted by the United States Geologic Survey (USGS) to assess ground water availability in the Yakima River Basin and its relation to surface water in the basin. This report will be available in 2008.

Many of the new developments are 10 to 14 lot subdivisions where developers/owners are part of multiple developments. Much of the development within Kittitas County appears to be from three to four developers/land owners. Most projects have proposed the use of Group B water systems on individual exempt wells, claiming the project falls under RCW 90.44.050 (groundwater exemption).

The Water Resource Program has been diligently commenting on many SEPA checklists over the past year or so on rezone projects in Kittitas County. Prior to the current situation described below, Ecology has provided SEPA comments on an individual project basis. These comments include but are not limited to:

- a concern for inadequate water supply and lack of water rights;
- the need for water availability to be addressed;
- language from the Attorney General Opinions (AGO 1997 & AGO 2005) and Campbell and Gwinn decision by the Supreme Court clarifying the groundwater exemption RCW 90.44.050;
- recommendations of metering the wells;
- reference to WAC 173-150 (protection of existing rights); and
- a recommendation to coordinate with Department of Health on Class A water systems.

In June 2006, Jay Manning, Ecology's Director, visited Kittitas County Commissioners reiterating Ecology's concerns on these issues.

Case Study (Virginia Stone, 2006): A preliminary investigation of proposed rezones and subdivisions, along with the use of groundwater exemptions and Group B water systems, was completed from 1998 to 2006 for Kittitas County. Findings of the investigation are based on an analysis of SEPA checklists, data from the Kittitas County Assessor's websites, maps, Kittitas County parcel GIS layers, and aerial photos.

The examination of SEPA records revealed that over 75 percent of the 10 to 14 lot subdivisions were from developers/owners with multiple developments. These projects proposed the use of Group B water systems on individual exempt wells. There have been

a number of subdivisions in which Ecology did not receive a checklist including Granite Creek LLC, which subdivided 12 lots into 73 parcels during early 2006.

This preliminary analysis revealed that the above mentioned rezone and subdivision proposals are not using groundwater exemptions according to the results of the Campbell and Gwinn Washington State Supreme Court Guidelines and the 1997 AGO No. 6.

Current Situation (as of 11/16/06): An active citizen group has been formed in retaliation of the multiple developments occurring in Kittitas County. Citizens are feeling discouraged and are in fear for their respective water rights (senior and/or domestic). Recently four separate SEPA checklists came through Department of Ecology requesting comments regarding the 14 lot cluster plats in the table below.

Date Received	Proponent	County	Lead Agency	Project Description
6/30/2006	Pine View Estates LLC, Jeff Potter	Kittitas	Community Development Services	14 Lot Cluster plan on approx. 24.34 acres
10/3/2006	White Tail LLC, Jeff Potter	Kittitas	Community Development Services	14 Lot Cluster plan on approx. 21 acres
10/3/2006	Watson Cutoff LLC, Jeff Potter	Kittitas	Community Development Services	14 Lot Cluster plan on approx. 24.01 acres
10/3/2006	Vaquero Valley LLC, Jeff Potter	Kittitas	Community Development Services	14 Lot Cluster plan on approx. 21.01 acres

Note: Three of the four LLCs have the same four development owners, Wendy Kelly, Kevin Kelly, Janet Buck, and Darren Buck. White Tail LLC is owned by Ann Kelly. However, all LLCs were incorporated on the same date, February 3, 2006. All properties border one another, please refer to the attached parcel map.

This information suggests that these checklists describe one large project. According to WAC 197-11-060, proposals that relate to each other shall be evaluated in the same environmental document. Ecology believes these three proposals should be evaluated as the same combined project.

Since Jay Manning's visit in June 2006, Kittitas County continues to make land use decisions contrary to Ecology's concerns and SEPA recommendations. There is a lack of consistency in the Kittitas Co. Community Development Services' response to Ecology's SEPA comments. Typically, copies of Ecology's comment letters are being included in the Determination of Non-Significance (DNS) decisions. However, all of Ecology's recommendations are not considered in the Mitigated Determination of Non-Significance (MDNS) decisions, particularly comments relating to the Campbell and Gwinn decision by the Supreme Court and Group A water systems.

What can Ecology do?: Kittitas County Commissioners consistent disregard of Ecology's commitment to meet current water needs, ensure water availability for people, fish and the natural environment diminishes Ecology's goals and objectives to work closely with communities and its citizens to provide effective water management. Most

importantly, in this particular situation, it is Ecology's obligation to protect from impairment to existing/senior water right holders. Kittitas County Commissioners continuation to not take notice of Ecology's comments and concerns will potentially lead to an appeal. In addition, Ecology should work with Department of Health to coordinate groundwater exemptions and Group A and B water systems, continue making SEPA comments regarding groundwater exemption limitations, and develop and implement an outreach plan for Kittitas County Commissioners and residents.

Currently the Yakima River Basin is going through adjudication. It is expected to be 90% complete by the end of the calendar year. The Court's determination of the extent and validity of all Kittitas County's surface water rights will be finalized with the signing of one remaining Conditional Final Order (CFO) by the end of the calendar year with one exception, the Bureau of Reclamation's water right. Once the CFO is signed and Kittitas surface water rights are final, this will greatly affect future planning and development decisions. It will be critical that Kittitas County Community Development Services (KCCDS) vigilantly make decisions that will protect existing rights.

Recommendation: Ecology will be attending the Kittitas County Planning Commission's public hearing for SEPA notice of action on November 28, 2006 at 6:30pm. Prior to the public hearing, Washington State Department of Ecology will formally appeal the following SEPA notice of actions:

- White Tail 14-lot Performance Based Cluster Plat, P-06-33;
- Watson Cutoff 14-lot Performance Based Cluster Plat, P-06-34; and
- Vaquero Valley 14-lot Performance Based Cluster Plat, P-06-37.