

KITTTITAS COUNTY COMMUNITY DEVELOPMENT SERVICES

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“Building Partnerships – Building Communities”

October 10, 2013

Mr. Phil Rigdon
Deputy Director of Natural Resources
Yakama Nation
P.O. Box 151, Fort Road
Toppenish, WA 98948

RE: Administrative Segregations – Process of Final Administrative Segregations Received in 2012

Mr. Rigdon;

This letter is in response to the memorandum from your staff dated February 26, 2013 regarding the administrative segregation whose applicants have requested finalization of their proposals. This response has been long in coming because of the short number of County planning staff, the large number of other applications needing to be processed, and the amount of work required to review each application. As stated in Kittitas County Ordinance 2012-006, such applications are not exempted from any other zoning, water, critical areas ordinance or shoreline regulations (KCC 16.04.010).

A memorandum from John Marvin to you on February 26, 2013 outlines a number of issues and assumptions that I should address before indicating how each application will be handled. On the second page of the memo, your staff assumes that the County “maintains that administrative segregations are categorically exempt from SEPA under 9 lots.” However, per WAC 197-11-800(1)(a), “The exemptions in this subsection apply to all *licenses* required to undertake the construction in question...” (emphasis mine), and a “license” is defined as:

...any form of written permission given to any person, organization, or agency to engage in any activity, as required by law or agency rule. A license includes all or part of an agency permit, certificate, approval, registration, charter, or plat approvals or rezones to facilitate a particular proposal. (WAC 197-11-760)

In this particular case, because administrative segregations are considered divisions of land which would permit a lot of record, they are considered the necessary “license” as defined by SEPA, and construction of 20 units or less are exempt from SEPA per WAC 197-11-800(1)(d). Therefore, all of the administrative segregations received per Kittitas County Ordinance 2012-006, are exempt from SEPA in regards to the number of resulting lots.

In a subsequent paragraph of the memorandum, Mr. Marvin states that “a number of the applications are excluded from the SEPA categorical exemption in WAC 197-11-800(1)(b) because they are ‘undertaken wholly or partly on lands covered by water.’” We agree. While administrative segregations are not “constructions,” they are “licenses” as defined by WAC 197-11-760 which enable construction, and if are “wholly or partly on lands covered by water,” they will require SEPA review.

Mr.Phil Rigdon, Deputy Director of Natural Resources
Yakama Nation
September 26, 2013

Therefore, those administrative segregations that are near streams or waters of significance will be required to submit a SEPA checklist.

On the next page of the memo, there is reference to the Critical Areas Ordinance and its application to the administrative segregations. The memorandum states that administrative segregations require "CAO review if critical areas are present..." Per KCC 17A.03.015 land use actions, including short plats are required to receive Critical Area review. All of the proposed segregations will receive Critical Area Analysis for the applications when and if SEPA is received when applicable. If SEPA review is required for the action, notice of the threshold determination with appeal procedure, and finding for the threshold determination will be made per KCC 15A.06 and RCW 43.21C. Upper Kittitas County groundwater rules shall apply to those segregations within those designated areas.

The administrative segregation proposals will not be subject to the Shorelines Management Program or any other ordinance not mentioned unless there is a structure or road proposed upon the property divided. The bridge example within Mr. Marvin's memorandum would require the substantial development permit and would be subject to any other regulations pertinent to the development. It is not possible to subject the administrative segregation to any shoreline requirement if there is no particular and specific construction project by which to process and evaluate the proposal. The example bridge provided in Mr. Marvin's memo may not be necessary to the site, and the access to the property may not be subject to the regulations. Therefore, we have concluded that the act of the administrative segregation is not subject to Shorelines Management. Only proposed projects upon such lands are subject to Shorelines Management.

Given this criteria, final approval of the following administrative segregations that were received by Kittitas County and mentioned within Mr. Marvin's memorandum will be processed as follows.

SG-04-10271 Eason

The proposal for only 15 separate lots and is not near or adjacent to a stream. Therefore, the applicant will not be required to provide a SEPA checklist for review. Because the segregation is located in the Upper Kittitas County area per WAC 173-539A, any proposed residential development will require determination of availability of potable water.

SG-04-11093 Poulsen

The proposed 27 lot division proposes 3 lots between Naneum and Coleman Creeks, and therefore the applicant will be required to provide a SEPA checklist for review. If the lots are removed from the proposal, no additional work would be required since the western 24-lot division is not adjacent to or near these waters. Notice of decision will be made once a threshold determination is issued and appeal period will begin. No other action will be required to complete the segregation. Any development upon the segregation will have to meet all other ordinances including the Shorelines Management Program.

SG-05-03091 Terra Design

The parcels proposed result into four lots along the Yakima River, and therefore are subject to SEPA review. Notice of decision will be made once a threshold determination is issued and appeal would begin. The applicant property is located in Upper Kittitas County area and any building activity will be

Mr.Phil Rigdon, Deputy Director of Natural Resources
Yakama Nation
September 26, 2013

subject to the Groundwater Rule in WAC 173-539A. Any proposed residential development will require determination of adequate potable water. No other action will be required to complete the segregation.

SG-06-154 – Morgan

The proposed division is not near or adjacent to a stream and is not anticipated to be on lands wholly or partially covered by water. Therefore, the applicant will not be required to provide a SEPA checklist for review. No other action will be required to complete the segregation.

SG-05-09011-Clarke

The proposed division of land into 9 lots exists within potential wetlands and Dry Creek, and therefore is subject to SEPA. A checklist will have to be completed and a notice of decision will be made once a threshold determination is issued and appeal period begins. No other action will be required to complete the segregation. Any development upon the segregation will have to meet all other ordinances including the Shorelines Management Program.

SG-07-00099/SG-07-00100/SG-07-00101 Three Bar G Ranch, Inc.

The proposed segregation is adjacent to or near waters of significance, and therefore will require a SEPA checklist for review. No other action will be required to complete the segregation. The proposed division is located in Upper Kittitas County area, and any building activity will be subject to the Groundwater Rule in WAC 173-539A and any other County regulations.

SG-07-00139 M. Charlton

The proposed division is not near or adjacent to a stream. Therefore, the applicant will not be required to provide a SEPA checklist for review. No other action will be required to complete the segregation.

SG-08-00029 M. Charlton

The proposal for division of land spans Caribou and Cooke Creeks, and could be “wholly or partly on lands covered by water.” Therefore, the proposal will require SEPA review. No other action will be required to complete the segregation. Any development upon the segregation will have to meet all other ordinances including the Shorelines Management Program.

SG-07-00126 M. Charlton

The proposed division of land abuts Caribou Creek, and therefore, will require SEPA review. No other action will be required to complete the segregation. Any development upon the segregation will have to meet all other ordinances including the Shorelines Management Program.

SG-08-00030 Western Pacific

The proposal for division of land is located at Dry Creek and various wetlands, and therefore will require SEPA review. No other action will be required to complete the segregation. Any development upon the segregation will have to meet all other ordinances including the Shorelines Management Program.

Mr.Phil Rigdon, Deputy Director of Natural Resources
Yakama Nation
September 26, 2013

SG-10-00018 Brian

The proposal for division of land is adjacent Taneum Creek, and therefore, will require SEPA review. No other action will be required to complete the segregation. Any development upon the segregation will have to meet all other ordinances including the Shorelines Management Program.

SG-11-00005 Mystic Land

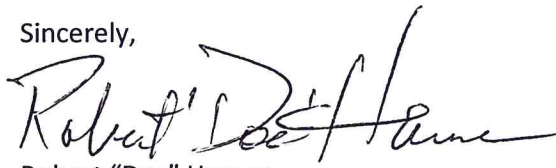
The proposal for division of land is located in Upper Kittitas County area and any building activity will be subject to the Groundwater Rule. This information will be passed to the land owner. No other action will be required to complete the segregation. Any development upon the segregation will have to meet all other ordinances including the Shorelines Management Program.

SG-12-00001 Mellergaard

The proposal for division is adjacent to the Yakima River, and may be undertaken "wholly or partly on lands covered by water." Therefore, SEPA review will be required prior to approval of the division. No other action will be required to complete the segregation. Any development upon the segregation will have to meet all other ordinances including the Shorelines Management Program.

All applicants who filed timely to the application process will be notified of requirement necessary to finish the segregation. You will be copied those letters via email. If you have any questions, please call me at (509) 962-7046.

Sincerely,



Robert "Doc" Hansen
Planning Official

Cc Neil Caulkins, Deputy Prosecuting Attorney
Jeff Watson, Planner II
Mr. Obie O'Brien, County Commissioner