NO. 271234

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

KITTITAS COUNTY, a political subdivision of the State of Washington, BUILDING INDUSTRY ASSOCIATION OF WASHINGTON (BIAW), CENTRAL WASHINGTON HOME BUILDERS (CWHBA), MITCHELL WILLIAMS, d/b/a MF WILLIAMS CONSTRUCTION CO., TEANAWAY RIDGE, LLC, KITTITAS COUNTY FARM BUREAU, and SON VIDA II,

Petitioners,

v.

KITTITAS COUNTY CONSERVATION, RIDGE, FUTUREWISE, and EASTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD,

Respondents.

DEPARTMENT OF ECOLOGY'S AMICUS CURIAE BRIEF

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I. INTRODUCTION

The State of Washington, Department of Ecology (Ecology) offers this amicus curiae brief to address the "water issue" ruling (Issue No. 4) in the Final Decision and Order issued by the Eastern Washington Growth Management Hearings Board (Board) in this case. The Board remanded the Kittitas County Development Regulations[1] because they were not compliant with the Growth Management Act (GMA) requirement to protect water resources. The Board specifically ruled that the Development Regulation's allowance for the filing of multiple, separate subdivision applications for a larger, joint development scheme, which would then rely on multiple permit-exempt groundwater wells, was contrary to the GMA because the County would be unable to evaluate whether the development's proposed water supply is legal and protects water resources.

The Board correctly applied the law on the water issue and correctly articulated the County's obligations and authority when reviewing a proposed development supplying water through permit-exempt groundwater wells. Ecology agrees that the County's Development Regulations are not compliant with the GMA because they fail to provide a process to evaluate a common development through a single land use application. Thus, under the development regulations found non compliant, the County was unable to accurately determine

[1] Kittitas County Development Update Ordinance 2007-22, hereinafter referred to as "Development Regulations."

water adequacy and availability as required under a variety of statutes governing local land use decisions, including the GMA.

Accordingly, Ecology requests the Court to affirm the Board's decision and rule in favor of the Respondents on Issue No. 4 in the Board's Final Decision and Order.

II. IDENTITY AND INTEREST OF AMICUS CURIAE

Ecology is the primary administrator of water resources in Washington. *See* RCW 43.21A; RCW 90.03; RCW 90.14; RCW 90.44; RCW 90.54. Among the duties and powers assigned to Ecology is the authority to establish watershed basin regulations that take the form of minimum instream flows, stream closures, and reservations of water. *See* RCW 90.54.020; RCW 90.54.040; RCW 90.54.050. Ecology administers Washington's water permitting system through the issuance of decisions on water right applications for surface water diversions and groundwater withdrawals. RCW 90.03.290; RCW 90.44.060. Ecology also processes and issues decisions on applications for changing and transferring existing water rights. RCW 90.03.380; RCW 90.44.100. Ecology has the authority to ensure that water resources are used lawfully, including regulating permit-exempt groundwater wells that are used inconsistent with the statutory allowance in the Water Code. *See*, *e.g.*, RCW 90.03.600; RCW 90.03.605; RCW 90.44.500.

In the water issue ruling, the Board determined that Kittitas County Code (KCC) 16.04 was in violation of the GMA because it allowed multiple subdivisions "side-by-side," in common ownership to

rely on multiple permit-exempt groundwater wells in contravention of *Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 43 P.3d 4 (2002). The purpose of a provision that requires applicants for subdivision and plat approvals to include all land within a common ownership or common scheme of development is to ensure that County staff can determine whether there is adequate water for the entirety of a proposed development, particularly when the development's water supply is proposed to come from groundwater wells that are exempt from permitting under the Groundwater Code, RCW 90.44.050. The County has appealed the Board's water ruling, asserting that it lacks authority under the GMA to include such a provision and that the provision "would do nothing to promote the GMA goal of protecting ground and surface water." Kittitas County's Reply Br. at 19.

Ecology's interest in this issue is four-fold. First, the issue has statewide ramifications related to the overlap between Ecology's water resources management authority and counties' GMA and land use regulation authority when such authority addresses local water resources. In particular, at issue in this case is whether counties can take actions under the GMA and their respective land use authorities that may affect uses of water and the exercise of water rights, or whether state law precludes such actions. Second, Ecology seeks to ensure that the County's Development Regulations include provisions that will enable the proper management of water resources in the County. Third, Ecology has an interest in ensuring that the County correctly applies the Supreme

Court's ruling in *Campbell & Gwinn*, which addresses residential permit-exempt groundwater wells under RCW 90.44.050. Fourth, Ecology is concerned that the parties' briefs have not informed the Court of all the authorities that are relevant to this issue.[2]

III. SPECIFIC ISSUE ADDRESSED BY AMICUS CURIAE

Did the Eastern Washington Growth Management Hearings Board correctly rule that Kittitas County's Development Regulations were not in compliance with the GMA because they do not ensure that the County can protect water resources when acting on land division applications that rely on permit-exempt groundwater wells?

IV. ARGUMENT

A. Background Related To The "Water Issue"

On July 19, 2007, Kittitas County passed an ordinance that approved the Development Regulations. On September 24, 2007, Respondents Kittitas County Conservation, RIDGE, and Futurewise filed an appeal with the Board challenging several of the Development Regulations.

In the administrative appeal, the Board considered eight issues. One of the issues, Issue No. 4 (the "water issue") stated: "Does Kittitas County's failure to require that all land within a common ownership or scheme of development be included within one application for a division

[2] Ecology's interests in participating as amicus curiae are further explained in Department of Ecology's Motion for Leave to File Amicus Curiae Brief.

of land (KCC 16.04) violate RCW 36.70A.020 (6, 8, 10, 12), 36.70A.040, 36.70A.060, 36.70A.070, 36.70A.130, and 36.70A.177?"

The Board addressed this issue by considering whether the County violated provisions of the GMA by not including a requirement for subdivision applicants to include an entire development in one application. A single land division application would enable County staff to determine whether there is an appropriate and adequate water supply for a proposed development if the development is to be served by groundwater wells exempt from permitting under RCW 90.44.050.

On March 21, 2008, the Board issued its Final Decision and Order, ruling in favor of the Respondents on the water issue. The Board determined it had jurisdiction over the water issue "based on RCW 36.70A.020(10) and .070(5)(c)(iv), which direct the County to protect the environment and enhance the state's high quality of life, including water quality and quantity, whether found as a surface or ground water resource." Board's Final Decision and Order at 29. The Board's decision states:

> The Board agrees with the Petitioners that the County's subdivision regulations allow multiple subdivisions side-by-side, in common ownership, which then can use multiple exempt wells[.] This is contrary to the GMA's requirements to protect water quality and quantity. . . .
>
> The DOE has authority over exempt wells, but the County has authority over land use decisions and planning, which serves to support and supplement DOE's regulations. Although DOE is the ultimate authority on just how a permit for an exempt well is obtained, the County still

> controls its own ground/surface water and the GMA requires protection of these resources.

Id. at 30.[3]

Much of the Board's discussion on the water issue relates to the Washington Supreme Court's decision in *Campbell & Gwinn*. *See* Board's Final Decision and Order at 26-31. *Campbell & Gwinn* involved 20 lots on which the real estate developer proposed to use a separate exempt groundwater well for each of the lots. The Supreme Court held that the development constituted a "group," and was limited to a maximum use of 5,000 gallons per day (gpd) under the groundwater permit exemption for all 20 combined lots under RCW 90.44.050. *Campbell & Gwinn*, 146 Wn.2d at 12-14.

Thus, if a residential development requires more than 5,000 gpd of groundwater to support it, the development must secure water rights through the usual water right permitting process,[4] a process that involves review by Ecology of water availability, potential impacts to other water right holders, etc. *See* RCW 90.44.050 (requirement that no groundwater can be appropriated without a permit, unless an exemption applies, such as a residential development not exceeding 5,000 gpd); RCW 90.44.060 (groundwater permit requirements). *Campbell & Gwinn* stands for the proposition that the exemption from permitting for group domestic uses

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[3] Although Ecology agrees that it has authority to regulate permit-exempt groundwater wells to ensure that such withdrawals meet the criteria for such exemptions and all other aspects of the Water Code (*e.g.*, instream flow rules and closures), unless a permit-exempt user applies for a permit at his/her option (as allowed per RCW 90.44.050), there is no mandate that such uses go through the permitting process.

[4] There is no equivalent "permit exemption" for surface water appropriations.

does not authorize the "daisy chaining" of multiple 5,000 gpd permit-exempt groundwater wells by dividing one common development into multiple components, each of which would require 5,000 gpd or less of water, but would collectively require more than 5,000 gpd of water supply.

Recognizing that the local government must be able to determine whether reliance on permit-exempt groundwater use is consistent with RCW 90.44.050 and *Campbell & Gwinn*, the Board found that the County's allowance for presentation of multiple applications that addressed a single development in common ownership was not compliant with the GMA. Allowance of a "multiple application" process would not enable the County to determine whether applications for short subdivisions and short plats, and long subdivisions and long plats, would contravene *Campbell & Gwinn* through the "daisy chaining" of multiple permit-exempt wells that would each serve separate components of one larger common development requiring in excess of 5,000 gpd of water. *See* Board's Final Decision and Order at 29-31.

The County and the Intervenors sought judicial review of the Board's decision in Kittitas County Superior Court. Subsequently, the Respondents moved for direct review. On August 8, 2008, this Court granted direct review.

B. The Board Has Jurisdiction To Rule On The Adequacy Of The County's Development Regulations In The Context Of Water Protection Under The GMA

Some parties assert that the Board lacked jurisdiction to render a ruling on the "water issue." *See, e.g.,* Opening Br. of BIAW (Amended). Ecology disagrees. The Board has authority to hear petitions alleging that a city or county's development regulations are not compliant with the GMA. *See* RCW 36.70A.280(1)(a). Further, upon appeal, the Board has jurisdiction to remand a city or county's development regulations and require that they be amended in order to ensure that they are compliant with the GMA. *Id.*

The GMA includes several provisions requiring a county to address water resources in its comprehensive land use planning and development regulations. The GMA includes a planning goal that local jurisdictions are to protect the environment and enhance the state's high quality of life, including the quantity and quality of surface and groundwater resources. *See* RCW 36.70A.020(10). A mandatory element of a local jurisdiction's GMA comprehensive plan requires that the land use elements "shall provide for protection of the quality and quantity of groundwater used for public water supplies." RCW 36.70A.070(1). RCW 36.70A.070(5)(c)(iv) requires the protection of "critical areas, as provided in RCW 36.70A.060, and surface water and groundwater resources." The GMA defines local government "development regulations" as providing controls on development activities, including divisions of land. RCW 36.70A.030(7). Development regulations must be consistent with and

implement the comprehensive plan, RCW 36.70A.040, .130(1)(d), including those mandatory elements of a comprehensive plan that protect surface and groundwater resources.

In determining whether the Board had jurisdiction to remand KCC 16.04 to the County for failure to comply with the GMA's requirement to protect water resources, it is necessary to determine the Board's purpose in issuing such a ruling. Because the purpose of the Board's ruling was to ensure that the provisions of the GMA requiring protection of the County's water supply are satisfied and the County's land division regulations are adequate to support the GMA's requirements, the Board has jurisdiction. Sufficient information must be included in land division applications to ensure that the County is able to determine whether a proposed common development actually has an appropriate and adequate water supply, which includes a determination that use of such water supply is legal, as contemplated by the GMA and other land use planning laws. *See* § IV.C, below.

C. The County Must Require A Single Application For All Land Division Within A Common Ownership Or Scheme Of Development To Ensure Water Resource Protection Under The GMA

The County essentially makes two arguments on the water issue: (1) it lacks authority to regulate anything related to water uses, whether permitted or permit-exempt; and (2) permit-exempt groundwater uses are exempt from all types of regulation, regardless of whether such regulations are state or local. Opening Br. of Kittitas County at 30, 33.

Both of these arguments fail. As explained below, the County is authorized through the GMA, as well as through other land use related statutes, to ensure that a water supply can legally and practically support a land use proposal. Furthermore, permit-exempt groundwater appropriations, although exempt from the permitting requirements of the Water Code, are not exempt from any other requirements of the Water Code, nor other applicable state or local laws and regulations, such as the GMA and the County's Development Regulations. Finally, the Board's ruling creates an appropriate interface between the GMA and the Groundwater Code, RCW 90.44.050, as interpreted by the Supreme Court in *Campbell & Gwinn*.

1. Local governments' obligation to protect water resources under the GMA and ensure legal water supplies for development is not preempted by Ecology's complementary authority related to water resources administration.

To understand the respective roles of the County and Ecology with regard to this area of law, an overview of relevant authorities is useful. Local governments have jurisdiction to make land use decisions, including decisions related to the subdivision of land and permitting of construction and development on land. *See* RCW 58.17; RCW 19.27. These local land use decisions require the application of GMA planning documents, such as comprehensive plans, development regulations, and/or critical area ordinances. *See, e.g.*, RCW 36.70A.030(7); RCW 36.70B.030, .040. The purpose of these planning documents is to implement the GMA's

requirements and policies. *Id.* These local land use decisions are also subject to review under the State Environmental Policy Act (SEPA), RCW 43.21C. *See also* WAC 197-11.

The GMA has a specific planning goal related to the availability of water. RCW 36.70A.020(10). The GMA also has a comprehensive plan mandate to protect surface and groundwater resources. RCW 36.70A.070(5)(c)(iv). Both of these provisions apply to Kittitas County. *See* RCW 36.70A.040. In addition, specific land use decisions also trigger water assessments by local governments, such as subdivision and building permit decisions. *See* RCW 58.17.110 (requiring that local governments determine whether subdivision applicants have made "appropriate provisions" for "potable water supply"); RCW 19.27.097 (requiring local governments to determine if an applicant provides "evidence of an adequate water supply for the intended use").

Based on these authorities, local governments have the responsibility to make their best effort and exercise their best judgment to determine if appropriate and adequate water is physically and legally available to support the uses proposed under land use applications. To do so, local governments must consider water resources laws and facts as administered by Ecology, such as reviewing what water right statements of claims, permits, and certificates are held by the applicant and what water use is authorized under those rights to determine if there is adequate water for the proposal. Further, if applicants communicate that they will rely on permit-exempt groundwater rights, the local government must consider if

water is legally available through the groundwater permit exemption under RCW 90.44.050. In making such evaluations, local governments often turn to Ecology for assistance in determining whether the water supply is adequate to support the land use proposal. For example, if a single residence proposed to rely on the legal authority of the permit exemption to support a 10,000 gpd use of water, Ecology would advise the local government to find that water is not legally available, because such use would not be authorized under RCW 90.44.050.

In contrast, Ecology is the agency authorized to regulate and administer the Washington water resources laws.[5] RCW 43.21A.064; RCW 90.03.010; RCW 90.44.020. In the context of making conclusions regarding specific water rights, Ecology makes tentative determinations of the extent and validity of water rights, *see Okanogan Wilderness League, Inc. v. Town of Twisp*, 133 Wn.2d 769, 779, 947 P.2d 732 (1997), whereas superior courts make conclusive determinations in the context of a general adjudication, *see Public Util. Dist. 1 of Pend Oreille Cy. v. Dep't of Ecology*, 146 Wn.2d 778, 794, 51 P.3d 744 (2002), including groundwater rights that are exempt from permitting.

Therefore, local governments are obligated under the GMA and various land use laws to ensure protection of surface and groundwater sources and conduct water assessments for land use applications. Ecology

[5] Ecology is charged with "[t]he supervision of public waters within the state and their appropriation, diversion, and use . . ." and the director "shall regulate and control the diversion of water in accordance with the rights thereto." RCW 43.21A.064(1), (3).

is obligated to administer the state's water rights permitting and regulatory system. Neither of these activities precludes the other. These respective roles are not in conflict and can operate harmoniously. As aptly stated by the Board: "The DOE [Ecology] has authority over exempt wells, but the County has authority over land use decisions and planning, which serves to support and supplement DOE's regulations." Board Final Decision and Order at 30.

2. Permit-exempt groundwater appropriations are water rights subject to all aspects of the Water Code's regulatory scheme except permitting. Such water rights are also subject to other statutes including those implemented by local governments.

The County's argument is based on its erroneous notion that permit-exempt groundwater use through "exempt wells" is exempt from *all* regulation, whether by the state or local governments, including the County's Development Regulations. The County's strained explanation is as follows:

> In short, rights to appropriation of water are governed by chapters 90.03 and 90.44 RCW "<u>and not otherwise</u>." RCW 90.44.040. If an application is made, the Department of Ecology makes an investigation under RCW 90.03.290. If the exemption under RCW 90.44.050 applies, then no such investigation occurs and the Department of Ecology's authority is limited to being able to require the appropriator to furnish information about the means and quantity of the withdrawal. RCW 90.44.050. Under no circumstances does a county have any role or authority in regulating either a permitted or an exempt [water] appropriation . . . and no such county authority or role is present.

Opening Br. of Kittitas County at 29-30 (emphasis in original). The County goes on to state that the provision of information on common ownership:

> [W]ould have no ultimate limitation upon the use of exempt wells because anyone can put in an exempt well whenever they want to and neither a county nor the DOE can regulate that because such appropriations are regulated "under the terms of [Ch. 90.44 RCW] and not otherwise." RCW 90.44.040.

Id. at 33.

The County miscomprehends RCW 90.44.050 and the permit-exempt statute's role within the context of the broader Groundwater Code, RCW 90.44. The groundwater permit exemption statute provides in part:

> After June 6, 1945, no withdrawal of public groundwaters of the state shall be begun, nor shall any well or other works for such withdrawal be constructed, unless an application to appropriate such waters has been made to the department and a permit has been granted by it as herein provided: EXCEPT, HOWEVER, That any withdrawal of public groundwaters...for single or group domestic uses in an amount not exceeding five thousand gallons a day, or as provided in RCW 90.44.052...is and *shall be exempt from the provisions of this section*, but, to the extent that it is regularly used beneficially, *shall be entitled to a right equal to that established by a permit issued under the provisions of this chapter*. . . .

RCW 90.44.050 (emphasis added). RCW 90.44.050 provides that there shall be no withdrawal of groundwater in the state unless an application is filed with Ecology and a permit is issued. The statutory provision for exempt uses is stated as an *exception* to that "permitting" rule. The

statute, however, exempts permit-exempt withdrawals only from "the provisions of *this section*," i.e., the permitting requirement. RCW 90.44.050 (emphasis added). Thus, permit-exempt withdrawals are only exempt from the requirement of obtaining a permit, but they are not exempt from other laws governing water rights. *See* AGO 2009 No. 6 at 13; *see also* AGO 2005 No. 17 at 1-2, 4-5.

Further, the right to a permit-exempt withdrawal of groundwater is "equal to that established by a permit issued under the provisions of this chapter." RCW 90.44.050; AGO 2009 No. 6 at 13. Contrary to the County's argument, permit-exempt uses under RCW 90.44.050 are only exempt from water right permitting requirements, but they are not exempt from the water rights priority system[6] and all other laws and regulations that affect water rights and water use in general, such as watershed basin rules requiring minimum instream flows and/or stream closures.

The County's reliance on RCW 90.44.040 to support its position that permit-exempt groundwater uses are exempt from *all* regulation is misplaced. RCW 90.44.040 provides that "[s]ubject to existing rights, all natural ground waters of the state . . . are hereby declared to be public groundwaters and to belong to the public and to be subject to appropriation for beneficial use under the terms of this chapter and not

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[6] *Campbell & Gwinn*, 146 Wn. 2d at 9 ("While the exemption in RCW 90.44.050 allows appropriation of groundwater and acquisition of a groundwater right without going through the permit or certification procedures of chapter 90.44 RCW, once the appropriator perfects the right by actual application of the water to beneficial use, the right is otherwise treated in the same way as other perfected water rights. RCW 90.44.050. Thus, it is subject to the basic principle of water rights acquired by prior appropriation that first in time is the first in right.")

otherwise." The County misconstrues "under the terms of this chapter and not otherwise" to somehow mean that permit-exempt groundwater uses are subject to no other laws and regulations. The County also appears to rely on this overbroad reading of the exemption from water rights permitting to support its contention that this state statute preempts local governments from taking any actions that affect water use. However, RCW 90.44.050 itself makes clear that the exempt withdrawals are only exempt from water permitting requirements, and are subject to the laws that govern permitted water rights. Ecology submits that such rights are also subject to the County's Development Regulations.

3. Filing of a single land division application for a common development will ensure the County complies with RCW 58.17.110, as interpreted in *Campbell & Gwinn.*

The County must require subdivision applicants to include an entire development in one application and provide information about common land ownership and joint development schemes. A single application enables the County to determine whether applications for land divisions are protective of water resources and would not contravene RCW 90.44.050, as interpreted in *Campbell & Gwinn*, through the use of multiple permit-exempt groundwater wells in excess of 5,000 gpd. This provision avoids the problem of a developer seeking to slice up a larger development into multiple smaller subdivision applications in order to circumvent the water permitting requirements. Inclusion of this provision in the Development Regulations follows the permit-exempt groundwater

statute, ensures appropriate and adequate water supplies for development, and is consistent with the GMA requirement to protect the water resource.

The County misses the mark in arguing that such a provision would "do nothing to promote the GMA goal of protecting ground and surface water anyway." Reply Br. of Kittitas County at 19. To the contrary, requiring proponents for one land division project to include the request for approval of the entire project in one application, rather than in multiple applications, will ensure that the County is able to determine whether there is a proposal for one common development that qualifies for no more than one 5,000 gpd groundwater permit exemption. The County is wrong in arguing that common land ownership information is already available through the recording statutes. The record in this case demonstrates that land records have not been sufficient to enable the County to meet its responsibilities to comply with RCW 58.17.110 and *Campbell & Gwinn*. *See* Br. of Respondents Kittitas County Conservation, RIDGE, and Futurewise at 32-33. The County is also wrong in arguing that the law cannot prevent lot owners from drilling permit-exempt wells even if the County receives information showing an effort to skirt *Campbell & Gwinn*. *See id.* at 19-20. As explained above, it is simply not true that the County lacks authority to include information in land division applications to prevent the violation of *Campbell & Gwinn*. The GMA and land use laws, including RCW 58.17.110, not only allow, but require, the County to do so.

Ecology does not dispute that the State Subdivision Law, RCW 58.17, allows a developer to file separate subdivision applications for a larger development. However, when faced with determining whether two or more subdivisions are each entitled to use more than one 5,000 gpd groundwater permit exemption, it is necessary to ask whether the subdivisions are part of a common "group." This is necessary because if the overall development is a common group, it "is entitled to only one 5,000 gpd exemption for the project." *Campbell & Gwinn*, 146 Wn.2d at 12; *see also* AGO 1997 No. 6 at 4-5. The Board's decision will ensure that the County is able to comply with both *Campbell & Gwinn* and the State Subdivision Law, RCW 58.17.

Campbell & Gwinn squarely addressed the issue of whether multiple exemptions can be used in a single development. Thus, contrary to the County's position, the 5,000 gpd group domestic use limit in RCW 90.44.050 requires the County to consider adjacent, contemporaneous subdivisions under common ownership to be one subdivision. Otherwise, a developer could simply circumvent the group domestic limit by dividing a development into smaller subdivisions, short plats, or other units. For example, if eligibility for a group use can be magnified simply by segmenting a development, the *Campbell & Gwinn* developer could have avoided the group exemption limit simply by breaking the twenty lot project into smaller units, e.g., two homes apiece, and giving each "group" a separate name.

Allowing multiple group domestic uses in these circumstances is contrary to RCW 90.44.050 because the statute "does not contemplate use of the exemption as a device to circumvent statutory review of permit applications generally." *Campbell & Gwinn*, 146 Wn.2d at 16. The Court found that dividing a development into one lot "units" does not create separate exempt uses because "[t]he developer of a subdivision is, necessarily, planning for adequate water for group uses, rather than a single use, and accordingly is entitled to only one 5,000 gpd exemption for the project." *Id.* at 12. Thus, it is irrelevant whether the project is broken into one lot units or any size units.

Finally, a provision in the Development Regulations requiring a single application be filed for a common development will also ensure the County meets the requirements of RCW 58.17.110, as informed by *Campbell & Gwinn*. RCW 58.17.110(2) reads in relevant part:

> A proposed subdivision and dedication shall not be approved unless . . . (a) Appropriate provisions are made for public health, safety, and general welfare and for such . . . potable water supplies . . . and (b) the public use and interest will be served by the platting of such subdivision and dedication.

Requiring information on land division applications that will enable the County to determine if smaller subdivisions are really a part of a larger development, in order to determine if reliance on the groundwater permit exemption under RCW 90.44.050 and *Campbell & Gwinn* are legitimate, will ensure that there are "appropriate provisions" for "potable water

supplies," and that "the public use and interest will be served by the platting of such subdivision."

V. CONCLUSION

Ecology respectfully requests the Court to affirm the Board's decision on Issue No. 4 in the Board's Final Decision and Order that the County's Development Regulations are not in compliance with the GMA's mandate to protect water resources.

RESPECTFULLY SUBMITTED this 15th day of January, 2010.

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