

Mentor Law Group

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FAX TRANSMISSION SHEET

To:	JUDY GREEAR	Fax No:	360.438.7699
To:	AGO - ECOLOGY DIVISION	Fax No:	360.586.6760
To:	ECOLOGY HQ- WATER QUALITY PROGRAM	Fax No:	360.407.6426
From:	NATALIE STEPHENSON		
Date:	FEBRUARY 15, 2007	Pages:	10 (INCL. COVER)
Re:	NOTICE OF APPEAL		

DEPARTMENT OF ECOLOGY
 FEB 15 2007
 WATER QUALITY PROGRAM

Notes:

ATTACHED PLEASE FIND SAMMAMISH PLATEAU WATER AND SEWER DISTRICT'S NOTICE OF APPEAL OF THE PHASE II MUNICIPAL STORMWATER GENERAL PERMIT. THE ORIGINAL WITH ATTACHMENT IS BEING SENT TO THE BOARD VIA FED EX OVERNIGHT DELIVERY, AND TO THE PARTIES VIA U.S. MAIL. THANK YOU.

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February 15, 2007

DEPARTMENT OF ECOLOGY
FEB 15 2007
WATER QUALITY PROGRAM

Via Facsimile and FedEx Overnight Delivery

Judy Greear
Environmental Hearings Office
4224 Sixth Avenue S E , Bldg. 2
P.O. Box 40903
Lacey, WA 98504-0903

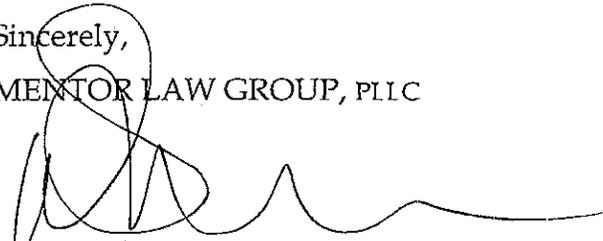
RE: Enclosed Notice of Appeal of Phase II Municipal Stormwater
General Permit for Western Washington

Dear Ms. Greear:

Please find enclosed Sammamish Plateau Water and Sewer District's
Notice of Appeal of the Phase II MSGP, with attachment, for filing with the
Pollution Control Hearings Board. The Notice of Appeal, without attachments,
was faxed to you this morning

Thank you for your assistance

Sincerely,
MENTOR LAW GROUP, PLLC



NATALIE STEPHENSON
LEGAL ASSISTANT/PARALEGAL

Enclosures

cc: Office of the Attorney General, Ecology Division
Department of Ecology, Lacey Headquarters
City of Issaquah, Clerk's Office

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**BEFORE THE POLLUTION CONTROL HEARINGS BOARD
IN AND FOR THE STATE OF WASHINGTON**

SAMMAMISH PLATEAU WATER AND
SEWER DISTRICT,

Appellant,

No. 07-

v.

NOTICE OF APPEAL

STATE OF WASHINGTON, DEPARTMENT
OF ECOLOGY, and CITY OF ISSAQUAH,

Respondents.

Sammamish Plateau Water and Sewer District hereby appeals the grant of coverage under the Western Washington Phase II Municipal Stormwater General NPDES Permit issued on January 17, 2007, to the City of Issaquah and the adequacy of the permit conditions as applied to the City of Issaquah.

1. Appealing Party

1.1 Appealing Party

Ron Little, General Manager
Sammamish Plateau Water and Sewer District
1510 228th Avenue S.E.
Sammamish, WA 98075
Telephone: 425-392-6256 Fax: 425-391-5389

1 1.2 Representation.

2 James A. Tupper, Jr.
3 Mentor Law Group, PLLC
4 2025 First Avenue, Suite 1100
5 Seattle, WA 98121
6 Telephone: 206-493-2300 Fax: 206-493-2310

7 **II. Identification of Parties**

8 2.1 Sammamish Plateau Water and Sewer District, Appellant.

9 2.2 State of Washington, Department of Ecology, Respondent.

10 2.3 City of Issaquah, Respondent.

11 **III. Copy of Permit**

12
13 3.1 See attached copy of the Phase II Municipal Stormwater NPDES Permit, issued
14 on January 17, 2007, without appendices or fact sheet

15 **IV. Grounds for Appeal**

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17 4.1 The Phase II Municipal Stormwater General Permit ("Phase II Permit" or
18 "Permit") authorizes and regulates the discharge of stormwater from a real estate development
19 within the City of Issaquah known as Issaquah Highlands. The discharges authorized by the
20 Permit have a significant potential to adversely impact public water supplies drawn by wells
21 owned and operated by the Sammamish Plateau Water and Sewer District ("District").
22 Additionally, the Permit does not adequately protect against these potential impacts and does
23 not include conditions that adequately protect applicable water quality standards, including
ground water standards and drinking water standards

24 4.2 A substantial portion of the Issaquah Highlands stormwater discharges to the
25 Lower Reid Infiltration Gallery ("LRIG"), which is approximately 600 feet upgradient from
26

1 the District's Well No. 9. The District owns and operates two additional drinking water wells,
2 Wells No. 7 and 8, which are also downgradient and within ¼ mile of the LRIG. The
3 discharge of stormwater to ground water as authorized by the Permit may adversely impact
4 ground water quality and, consequently, an important regional source of municipal water.

5 V. Statement of Facts

6
7 5.1 Issaquah Highlands ("Issaquah Highlands" or the "Project") is a mixed-use
8 urban-planned community of 640 acres. The Project is located on a plateau north of Interstate
9 Highway 90, near the City of Issaquah. On January 17, 2007, the Washington State
10 Department of Ecology ("Ecology") issued the Phase II Permit. The Permit authorizes the
11 discharge of stormwater from Issaquah Highlands at two discharge points, one to surface
12 water and one to ground water. The LRIG, which is the discharge point to ground water, is
13 located on a steep slope on the western edge of the development.

14 5.2 Port Blakely Communities, the developer of the Project ("Developer"),
15 abandoned previous plans to infiltrate stormwater on the Project's uplands several hundred
16 feet higher and over one-quarter mile east of the LRIG. The stormwater management system
17 as originally proposed for the Project provided for deep stormwater infiltration to valley
18 aquifers and recharge to the alluvium to help sustain flows in the East Fork of Issaquah Creek.
19 However, the original proposal could not be implemented after the Developer removed
20 vegetation and topsoil and mined thirty to fifty feet of sand and gravel from the surface.
21 Stormwater infiltration through the remaining soils was not feasible and the Project needed an
22 alternative stormwater disposal system. The Phase II Permit reaffirms a previous decision to
23 direct substantial volumes of stormwater to the LRIG on the west side of the development,
24 away from the East Fork of Issaquah Creek and directly into the Lower Issaquah Valley
25 Aquifer.

26 5.3 The District, located east of Lake Sammamish and immediately north of the
City of Issaquah, is the primary purveyor of potable water for portions of the City of

1 Sammamish and the City of Issaquah, as well as areas of unincorporated King County. The
2 District currently provides high quality ground water to more than 50,000 people.

3 5.4 The District owns and operates three drinking water wells near the LRIG. Well
4 No. 9 is approximately 600 feet from the primary stormwater discharge point to ground water.
5 Wells No. 7 and 8 are located to the west and within ¼ mile of the stormwater discharge
6 point. All three wells are downgradient from the discharges to the LRIG authorized under the
7 Permit.

8 5.6 The aquifers in which Wells No. 7, 8 and 9 are located are in hydraulic
9 continuity with the LRIG. The aquifers constitute underground sources of drinking water
10 (USDW) within the meaning of WAC 173-218-030(16).

11 5.7 The Permit was unlawfully issued because Ecology failed to consider all
12 applicable water quality standards including, without limitation, ground water quality
13 standards, Chapter 173-200 WAC, and federal drinking water standards.

14 5.8 The Permit was unlawfully issued because Ecology failed to consider the anti-
15 degradation standard for ground waters of the State under WAC 173-200-030.

16 5.9 The Permit was unlawfully issued because Ecology failed to include effluent
17 limitations that will ensure that the authorized discharges do not cause or contribute to either
18 (a) violations of water quality standards or (b) injuries to existing beneficial uses.

19 5.10 The Permit was unlawfully issued because Ecology failed to require
20 monitoring sufficient to determine compliance with permit effluent limitations and applicable
21 water quality standards. In particular, the Permit does not require adequate monitoring or
22 make provision for any mitigation or adaptive management in the event that discharges at the
23 LRIG adversely impact ground water quality or existing beneficial uses.
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1 5.11 The Permit was unlawfully issued because it does not include specific
2 requirements for developing a stormwater management program that will ensure compliance
3 with applicable water quality standards

4 5.12 The Permit was unlawfully issued to the extent that it excludes discharges from
5 the LRIG from coverage under the Permit while still covering stormwater management and
6 discharges within Issaquah Highlands.

7 5.13 The Permit was unlawfully issued because Ecology failed to conduct
8 environmental review under the State Environmental Policy Act, Ch. 43 21C RCW,
9 (“SEPA”).

10 **VI. Relief Sought**

11
12 Wherefore, Sammamish Plateau Water and Sewer District respectfully requests that
13 the Board grant and issue the following relief:

14 1 An order revoking coverage under permit for that portion of the City of
15 Issaquah encompassed by Issaquah Highlands together within any other area within the city
16 that discharges to the LRIG.

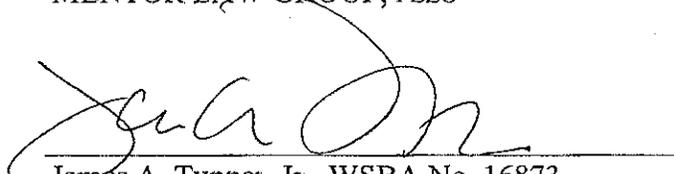
17 2 In the alternative, an order directing the Department of Ecology to modify the
18 Phase II Permit to address the permit deficiencies set forth above including, but not limited to,
19 adequate monitoring, mitigation plans and adaptive management requirements to protect
20 ground water resources or require adequate storage and release of stormwater directly to the
21 North Fork of Issaquah Creek.

22 3. An order finding that the Permit was improperly issued, together with a remand
23 to the Department of Ecology directing that the Permit be modified in a manner consistent
24 with the ruling of the Board herein, including appropriate SEPA review.

1 4. Such further relief as the Board deems appropriate under the circumstances of
2 this case.

3 Respectfully submitted this 15th day of February, 2007
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5 MENTOR LAW GROUP, PLLC

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8 James A. Tupper, Jr., WSBA No 16873
9 2025 First Avenue, Suite 1100
10 Seattle, Washington 98121
11 Tel: (206) 493-2300 Fax: (206) 493-2310

12 Attorneys for Appellant
13 Sammamish Plateau Water and Sewer District
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SAMMAMISH PLATEAU WATER AND
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Appellant,

v.

STATE OF WASHINGTON, DEPARTMENT
OF ECOLOGY, and CITY OF ISSAQUAH,

Respondents.

PCHB NO. 07-

CERTIFICATE OF SERVICE

I certify that on February 15, 2007, I caused Sammamish Plateau Water and Sewer District's Notice of Appeal and this Certificate of Service to be served on the following persons via the method indicated:

State of Washington
Department of Ecology
Water Quality Program
P.O. Box 47600
Olympia, WA 98504-7600

- Overnight Delivery via Fed Ex
- First Class Mail via USPS
- Hand-Delivered via ABC Legal Messenger
- Facsimile to 360.407.6426

State of Washington
Office of the Attorney General
Ecology Division
P.O. Box 40117
Olympia, WA 98504-0117

- Overnight Delivery via Fed Ex
- First Class Mail via USPS
- Hand-Delivered via ABC Legal Messenger
- Facsimile to 360.586.6760

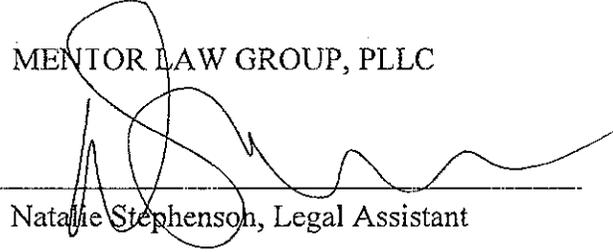
1 City of Issaquah
2 City Clerk's Office
3 City Hall
4 130 E. Sunset Way, 2nd Floor
5 Issaquah, WA 98027

- Overnight Delivery via Fed Ex
- First Class Mail via USPS
- Hand-Delivered via ABC Legal Messenger

6 I declare under penalty of perjury under the laws of the state of Washington that the
7 foregoing is true and correct.

8 Executed on this 15th day of February, 2007, in Seattle, Washington.

9 MENTOR LAW GROUP, PLLC

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 11 _____
 12 Natalie Stephenson, Legal Assistant

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