

**FILED**

**MAR 01 2006**

Terri A. Lorenzon, Director  
Environmental Quality Council

BEFORE THE  
ENVIRONMENTAL QUALITY COUNCIL  
STATE OF WYOMING

IN THE MATTER OF THE APPEAL )  
OF THE COPPERLEAF CHAPTER 23 ) Docket No. 05-3805  
SUBDIVISION APPLICATION, #05-S-052 )

DEQ'S RESPONSE TO NORTHFORK GROUP'S PETITION

Respondent, Wyoming Department of Environmental Quality (DEQ), Water Quality Division (WQD), pursuant to the Wyoming Environmental Quality Council's (Council) January 10, 2006 and February 7, 2006 Orders, responds as follows to Petitioners' (the Northfork Group or Petitioners) Petition for Review / Request for Hearing (Petition) filed on November 9, 2005 in the above-captioned matter before the Council:

1. The Petition, ¶1 lists the names and addresses of Petitioners and Petitioners' Attorney, and generally characterizes the composition of the Northfork Group membership. ¶1 further alleges that Mr. David Jamison is both a Northfork Group member and an individual landowner that adjoins the location for the proposed Copperleaf Subdivision, and is in a unique position to be adversely impacted by the "decision" for which review is requested.

Respondent DEQ does not dispute that the Petitioners and Petitioners' Attorney are as listed in the Petition. The DEQ does not have independent knowledge of the composition of the Northfork Group membership. What the Petition characterizes as a "decision" is no more than a letter conveying DEQ's non-binding "no 'adverse' recommendations" to the Park County Board of County Commissioners pursuant to WYO. STAT. ANN. §§ 18-5-306(c)(iii) & 308. The Petition does not explain how Mr. David Jamison would be uniquely impacted by the "decision for which review is requested," so the DEQ cannot respond to that particular allegation without clarification from the Petitioner.

2. The Petition, ¶2 (pp.1-2) describes the “Action Upon Which Hearing is Requested” as:

the final decision by the Administrator of the Water Quality Division of the Wyoming Department of Environmental Quality (“DEQ”) to Copperleaf’s Chapter 23 Subdivision Application. A copy of the decision letter is marked as “Exhibit A.”

The referenced DEQ letter is actually marked as Petition “**Exhibit B**,” and will be referred to as “Exhibit [B]” in this Response.

Petition “Exhibit [B],” the two page letter from the Water Quality Division Administrator to the Chairman of the Park County Board of County Commissioners dated October 28, 2005, regarding the Copperleaf Subdivision Application is a non-binding “recommendation,” not a “final decision” by the Administrator as the Petition (¶2, p.1) alleges.

3. The Petition, ¶3 (pp.2-5) is designated “Statement of Facts” and contains a number of separate allegations, to which DEQ responds as follows:

a. WYO. STAT. ANN. § 18-5-306 requires various information to be submitted with each application for a subdivision permit, including certain information pertaining to the adequacy and safety of the proposed subdivision (a)(iv) sewage system and (a)(vi) water supply system.

b. WYO. STAT. ANN. § 35-11-302(a)(xi) calls for the DEQ Water Quality Division Administrator to recommend to the DEQ Director standards for subdivision applications submitted to the department under W.S. 18-5-306.

c. DEQ Water Quality Rules and Regulations (WQ Rules), Chapter 23 (“Minimum Standards for Subdivision Applications”), Section 5(a) requires that all plans, specifications, reports and other documentation submitted under Chapter 23 must meet or exceed

the standards in these regulations to be deemed complete.

d. Northfork Group's Petition, ¶3.d. alleges that "Northfork Communities, Inc." is the developer of the proposed Copperleaf Subdivision. The Park County Board of County Commissioners' Resolution # 2005-40 (attached to the North Fork Group's Petition as "Exhibit [A]")<sup>1</sup>, approving a special use permit for the Copperleaf Subdivision, refers to the applicant as Northfork Communities, Inc. The DEQ was served with a copy of "MOTION TO INTERVENE BY WORTHINGTON GROUP OF WYOMING, LLC AS DEVELOPER OF THE COPPERLEAF SUBDIVISION" in the above-captioned matter, dated February 8, 2006, which (¶4) represents that the Worthington Group of Wyoming, LLC is developer of the Copperleaf Subdivision.

e. Northfork Group's Petition, ¶3.e. characterizes the Developer's Copperleaf Subdivision Sketch Plan and Special Use Permit as "the equivalent documents of a subdivision application" in Park County. Park County Board Resolution #2005-40, "Approval of Special Use Permit, Northfork Communities, Inc., Copperleaf Subdivision" ("Exhibit [A]" to the Petition), in the first paragraph on page 1, states that "application for a special use permit [is] a *step in the process* of obtaining a subdivision permit" (italics added), so it is not self-evident that those documents in themselves are the equivalent of a full subdivision application.

f. DEQ has not confirmed that the Northfork Group has "responded to all pleadings filed by the Developer" or has participated in all Park County Board hearings relevant to review and approval of the Developer's filings. The Northfork Group has commented to the DEQ on the Developer's submittals and has attended related DEQ public meetings. The DEQ

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<sup>1</sup> Although the Petition ( ¶¶3.h. & 3.i.) refers to Park County Board Resolution #2005-40 as "Exhibit B," that attachment to the Petition is actually marked "Exhibit A," and is referred to in this Response as "Exhibit [A]."

has reviewed and made limited “comments” and “recommendations,” but has not “approved,” certain portions of submittals from the Developer pertaining to Developer’s application to the Park County Board of County Commissioners for a special use permit.

g. DEQ has not confirmed that the named individuals are a “experts.”

h. The Park County Board of County Commissioners’ Resolution #2005-40, dated 21 June 2005, “hereby approves the special use permit” for the proposed Copperleaf subdivision. “Exhibit [A]”, p. 6. The Northfork Group’s Petition, ¶3.h. alleges that the Board conditioned approval of “the permit” (apparently referring to the special use permit) upon the DEQ’s “review and approval” of the proposed sewage and water supply systems (apparently referring to DEQ review and recommendations regarding those portions of the subdivision application under W.S. 18-5-306). In deciding to approve “the special use permit,” the Board considered, *among several other things*, DEQ “recommendations” based on review of certain portions of the subdivision application. “Exhibit [A]”, pp. 1-6. However, the Board’s Resolution did expressly condition its ultimate approval of the “final plat and subdivision permit” upon the proposed subdivision central water supply and “enhanced sewage systems” *first* being “permitted and approved by DEQ.” “Exhibit [A]”, pp. 3-4. Since then, the applicant has submitted a revised plan that proposes a Sheaffer design central wastewater treatment system instead of septic systems. Board approval of a special use permit (which is only “a step in the process of obtaining a subdivision permit”) is not equivalent to ultimate Board approval of a subdivision permit (“Exhibit [A]”, pp. 1, 3-4, 6), and DEQ “recommendations” to the Board under W.S. 18-5-306(c)(iii) are not equivalent to actual DEQ issuance of permits for subdivision water supply and sewage systems required under WYO. STAT. ANN. § 35-11-301(a)(v)&(iii). “Exhibit [A]”, pp. 3-4.

i. “Condition” #15 (p.3) in Board Resolution #2005-40, which is attached to the Petition as “Exhibit [A],” states that “No multi-family dwellings shall be allowed as part of this proposed development.”

j. DEQ review of subdivision permit applications under WYO. STAT. ANN. § 18-5-306(a) & (c) is limited to those portions of the application containing information for evaluation of the adequacy and safety of the proposed subdivision sewage system ((a)(iv)) and water supply system ((a)(vi)). Whether or not an application also contains other information pertaining to “town homes rejected by the Board” is not within the scope of DEQ review. If the County Board rejected certain units, then the Board, as the agency that ultimately approves or disapproves a subdivision permit under WYO. STAT. ANN. §§ 18-5-304 & 308, not DEQ, can address that issue.

k. Petitioners provided a package of materials and comments to the DEQ in October, 2005. The Petition, ¶3.k. states: “Specifically, the Northfork Group provided the following evidence that Developer has failed to meet the requirements of Chapter 23 review:”, but the Petition does not provide, list or identify such “following evidence.” DEQ does not agree that the application failed to meet the requirements of Chapter 23.

l. DEQ does not agree with Petitioners’ specific allegations of “violations of state law and Chapter 23 in the subdivision application.”

(A) The subdivision package was submitted by Sage Engineering of Cody, under the seal and signature of a Wyoming PE, Jeremiah Easum.

(B) The revised application proposes lining of the central wastewater treatment system lagoons to prevent the threat of discharge to the groundwater.

(C) Chapter 23 requires only a demonstration that a proposed

wastewater treatment system is capable of meeting Chapter 11 requirements, not submittal of the final design and finished plans, as would be required with an application for an actual DEQ Chapter 3 wastewater treatment system permit.

(D) The Petition, ¶3.1.(D) does not cite or otherwise identify what provisions of Chapter 23 it is alluding to.

(E) DEQ does not agree with the allegation in ¶3.1.(E) of the Petition. See 30 September 2005 letter from the State Engineer's Office to the DEQ/WQD, attached hereto as "ATTACHMENT #1."

(F) DEQ has reviewed the referenced comments and either does not agree or finds they are not applicable to the revised application, which proposes lining the central wastewater treatment system lagoons to prevent the threat of discharge to the groundwater.

(G) DEQ does not agree with the allegation in ¶3.1.(G) of the Petition.

(H) DEQ has reviewed the referenced letter and does not agree with its conclusions. The central wastewater treatment system technology proposed in the revised application is not specifically covered by WQ Rules, Chapter 11. The proposed Sheaffer central wastewater treatment system is innovative and is therefore reviewed on a case-by-case basis under Chapter 11, Section 5, which allows for the applicant to demonstrate the acceptability of the design with data obtained from full scale, comparable installations. This was done in the revised Copperleaf subdivision application.

m. By its own terms, the DEQ letter (Petition Exhibit [B], p.1) "constitutes [DEQ's] conclusions regarding the *feasibility* of the proposed water and sewage systems pursuant to W.S. 18-5-306(c)" (*italics added*), but notes that "these recommendations" expressly

do not commit the DEQ to issuance of permits for those systems required under W.S. 35-11-301(a)(v)&(iii) (Petition Exhibit [B], p.2). In their entirety, both of the DEQ statements partially quoted in the Petition, ¶3.m. are prefaced by the words “It appears that,” which reflect the distinction between such DEQ recommendations and final DEQ decisions approving DEQ permits for sewage treatment or water supply systems.

n. The Petition, ¶3.n. alleges that the DEQ letter (Petition Exhibit [B]) “is an *approval* of a water and sewage treatment system” (italics added) for town homes that have been rejected by the Board. Neither WYO. STAT. ANN. § 18-5-306 nor WQ Rules Chapter 23 provides for DEQ “approval” of subdivision applications or portions thereof. WYO. STAT. ANN. § 18-5-306(c)(iii) and Chapter 23, Section 4(b)(i)(B) only call for the DEQ to file written “comments and recommendations” on specified portions of the application. In this case, the DEQ did not “approve” a water and sewage treatment system for either the proposed subdivision in general or the referenced town homes in particular. The DEQ letter (Exhibit [B]), page 2, specifically states that nothing in these “recommendations” commits the DEQ to issuance of required permits for construction, operation, or modification of water supply and/or wastewater systems. The DEQ’s recommendations relate only to the “feasibility” of the proposed sewage and water supply systems, and do not constitute review or “approval” of those systems or of any proposed subdivision dwelling units, which are outside the scope of DEQ review under WYO. STAT. ANN. § 18-5-306(c) or Chapter 23.

o. DEQ does not agree with the conclusory allegations in ¶3.o. of the Northfork Group’s Petition.

4. The Petition, ¶4 requests a hearing before the Council and requests the Council to “reverse the October 28, 2005 *decision* of the Administrator of the Water Quality Division of the

DEQ to the Park County Board of Commissioners regarding the Copperleaf Subdivision Application.” (Italics added.) The DEQ’s “recommendations” to the Park County Board of County Commissioners regarding the proposed Copperleaf Subdivision pursuant to WYO. STAT. ANN. § 18-5-306(c) do not constitute a final “decision” of the Administrator subject to hearing and reversal by the Council.

DATED this 1st day of March, 2006.



Mike Barrash  
Attorney General’s Office  
123 State Capitol Building  
Cheyenne, Wyoming 82002  
307-777-6946

CERTIFICATE OF SERVICE

True and correct copies of the foregoing DEQ’S RESPONSE TO NORTHFORK GROUP’S PETITION, were served by United States mail, first class postage prepaid, this 1st day of March, 2006, addressed as follows:

Debra J. Wendtland  
Wendtland & Wendtland  
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Bryan A. Skoric  
Park County Attorney  
Park County Courthouse  
1002 Sheridan Ave.  
Cody, Wyoming 82414

Laurence W. Stinson  
Bonner Stinson, P.C.  
128 East Second  
P.O. Box 799  
Powell, Wyoming 82435







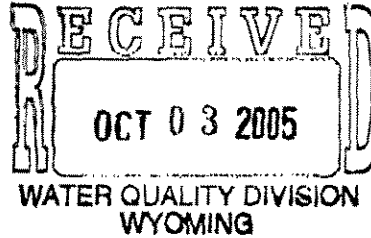
# State Engineer's Office

HERSCHLER BUILDING, 4-E CHEYENNE, WYOMING 82002  
(307) 777-7354 FAX (307) 777-5451  
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DAVE FREUDENTHAL  
GOVERNOR

PATRICK T. TYRRELL  
STATE ENGINEER

30 September 2005



✓ Jeff Hermansky, P.E.  
DEQ/WQD/Northwest District Supervisor  
510 Meadow View Drive  
Lander, WY 82520

Re: Copperleaf 2<sup>nd</sup> Submittal (2005-99-44)  
Park County (11), Division 3, District 9

Dear Mr. Hermansky:

As was the case with the first submittal for this subdivision proposal, **existing water rights** as outlined under Wyoming Statute 18-5-306 (a) (xi) have yet to be addressed. A tabulation of potentially subject rights was provided with the first State Engineer review comments. With the exception of the newly filed permit to recognize the proposed domestic supply use, and the yet to be filed reservoir permit to recognize the newly proposed recycling of treated wastewater for irrigation; the originally identified subject water rights remain identical to those identified under the first submittal.

Additionally, it is my understanding that the subdivider continues to pursue plans to purchase stored water in Buffalo Bill Reservoir, has applied for permits to drill several miscellaneous use wells, and is investigating changing all or part of the existing senior irrigation water rights (either temporarily or permanently) to domestic use within the subdivision. Therefore, with respect to the subdivision's **proposed water supply**, we offer the following:

- Based upon a review of the information submitted to this agency, it appears that the subdivider has provided appropriate documentation, adequate evaluation and the necessary certifications in addressing his obligations associated with the physical adequacy of the proposed subdivision water supply
- Be advised that the proposed subdivision water supply (including the newly proposed intent to recycle wastewater for irrigation purposes) appears able to be permitted, however revised construction standards may apply and be noted as conditions and limitations, if significant permit revisions become necessary.

In conclusion, it is my understanding that Mr. John Barnes, Administrator of the State Engineer's Surface Water Division, is working with Mr. Jeremy Easum of Sage Civil Engineering in Cody on the newly proposed water right filings. If we may be of further assistance, please don't hesitate to contact us.

Best Regards,

A handwritten signature in black ink that reads "Mike Ebsen".

Mike Ebsen

Cooperative Programs Coordinator

cc: file/Field/BOC/SW/GW/IDEQ#05-S-52  
Sage Civil Engineering, 2824 Big Horn Avenue, Cody, WY 82414  
Bruce Bowman, Planner, 1002 South Sheridan Avenue, Cody, WY 82414

MRE:me