

**BEFORE THE WATER RESOURCES DEPARTMENT
OF THE
STATE OF OREGON**

| | | |
|---------------------------------------|---|-------------------------------|
| In the Matter of Ground Water |) | PRELIMINARY DETERMINATION |
| Registration Modification Application |) | PROPOSING TO APPROVE |
| T-10375, Marion County |) | RECOGNITION OF A MODIFICATION |
| |) | IN PLACE OF USE AND CHARACTER |
| |) | OF USE AND CANCELLATION OF A |
| |) | WATER RIGHT |

Authority

ORS 537.610, 537.705 and 540.505 to 540.580 establish the process in which the holder of a certificate of registration may submit a request for recognition of modifications to the place of use, character of use or point of appropriation under a ground water certificate of registration.

OAR Chapter 690, Divisions 382 and 380 implement the statutes and provide the Department's procedures and criteria for evaluating ground water registration modification applications.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

Applicant

SUSTAINABLE INVESTMENTS, LLC
ATTN: DON MYERS, AGENT
PO BOX 2071
SALEM, OR 97308

Findings of Fact

Background

1. On April 30, 2007, Don Myers of Sustainable Development, Inc. filed a ground water registration modification application to modify the place of use and character of use under Registration Application GR-2087 (Certificate of Registration GR-2005). The Department assigned the application number T-10375.
2. Additional application fees, lot development information and a map were submitted on June 28, 2007 and August 29, 2007. Upon review of the information, however, the Department determined the application map did not yet meet the minimum standards for completeness.
3. On July 19, 2007, Registration Application GR-2087 (Certificate of Registration GR-2005) was assigned from Oregon Fairview Home to Sustainable Investments, LLC, of which Sustainable Development, Inc. is an affiliate.

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| Pursuant to OAR 690-380-4030, any person may file a protest or standing statement within 30 days after the last date of publication of notice of this preliminary determination. |
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4. A revised map and proposed place of use listing were submitted to the Department on November 1, 2007, thus completing the ground water registration modification application.
5. On February 4, 2008, the applicant indicated that because Sustainable Development, Inc. is a subsidiary of Sustainable Investments, LLC, Application T-10375 should be amended to reflect Sustainable Investments, LLC as being the applicant.
6. The ground water registration to be modified is as follows:

Registration: Application GR-2087 (Certificate of Registration GR-2005), in the name of Oregon Fairview Home (*assigned to Sustainable Investments, LLC, affiliated with Sustainable Development, Inc.*)

Use: IRRIGATION of 60.0 ACRES and DOMESTIC

Tentative Priority Date: 1922

Quantity: 280.0 GALLONS PER MINUTE (GPM)

Source: PUMP WELL #1, in the Pringle Creek Basin.

Original Point of Appropriation:

| Twp | Rng | Mer | Sec | ¼ ¼ | Survey Coordinates |
|---|-----|-----|-----|--------|---|
| 8 S | 3 W | WM | 2 | NE SE* | 600 feet North and 2200 feet West from the SE corner of Section 2 |
| <i>*This is a scrivener's error. See explanation in Finding #7 below.</i> | | | | | |

Original Place of Use:

| IRRIGATION AND DOMESTIC | | | | | |
|-------------------------|-----|-----|-----|------------------------------|-------------|
| Twp | Rng | Mer | Sec | ¼ ¼ | Acres |
| 8 S | 3 W | WM | 2 | SW SE | 40.0 |
| 8 S | 3 W | WM | 2 | SE SE (West diagonal 1/2) | 20.0 |
| TOTAL: | | | | | 60.0 |

7. There is a scrivener's error in the description of the quarter-quarter section in which the well (described in Finding #6 above) is located. Based upon the map for Registration Application GR-2087 (Certificate of Registration GR-2005) and the location coordinates provided, the well is actually located in the SW ¼ SE ¼ of Section 2, Township 8 South, Range 3 West, W.M., rather than the NE ¼ SE ¼.
8. Application T-10375 proposes to modify the character of use and the place of use under the ground water registration to:

| LOW-TEMPERATURE GEOTHERMAL HEATING | | | | | |
|---------------------------------------|-----|-----|-----|-------|--|
| Twp | Rng | Mer | Sec | ¼ ¼ | |
| 8 S | 3 W | WM | 2 | SE SW | |
| 8 S | 3 W | WM | 2 | SW SE | |

| IRRIGATION | | | | | |
|---------------|-----|-----|-----|-------|--------------|
| Twp | Rng | Mer | Sec | ¼ ¼ | Acres |
| 8 S | 3 W | WM | 2 | SE SW | 1.14 |
| 8 S | 3 W | WM | 2 | NW SE | 2.54 |
| 8 S | 3 W | WM | 2 | SW SE | 7.10 |
| TOTAL: | | | | | 10.78 |

9. The proposed use of water for low-temperature geothermal heating is non-consumptive. Water is taken from the existing production well under the ground water registration and piped through a supply line to ground source heat pumps. As the water flows through a coil in the heat pump, the energy is converted to heat. All of the water is then routed back to the mainline pipe and pumped back into the aquifer from which it originated using injection wells. Additionally, the applicant intends to meter both the amount of water pumped out of the production well and the amount of water injected back into the aquifer at the injection wells.
10. Because of the proposed utilization of injection wells as part of the low-temperature geothermal heating system, the Department determined that the applicant's compliance with OAR Chapter 690, Division 230 rules is required before the injection wells may be used.
11. On January 25, 2007, the Department approved the applicant's request for approval of the low-temperature geothermal injection wells, consistent with OAR Chapter 690, Division 230. Once the injection wells are constructed, the applicant will need to submit pump testing data for the injection wells and an injection plan that meet the Division 230 rule requirements. The issuance of a final order approving recognition of this ground water registration modification application does not relieve the applicant from complying with the requirements of Division 230, as described above.
12. Notice of the application for ground water registration modification was published on May 8, 2007, pursuant to OAR 690-382-0600. No comments were filed in response to the notice.
13. On January 15, 2008, the Department mailed a copy of the draft Preliminary Determination proposing to approve Ground Water Registration Modification Application T-10375 to the applicant. The draft Preliminary Determination set forth a deadline of February 14, 2008, for the applicant to respond. On February 4, 2008, the applicant requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.

Review Criteria for Ground Water Registration Modification Applications [OAR 690-382-0700(2)]

14. Because the amount of irrigation is being reduced from 60.0 acres to 10.78 acres and because the use of water for low-temperature geothermal heating is non-consumptive, the proposed modifications would not result in enlargement of the ground water registration.
15. The proposed modifications would not result in a state Scenic Waterway not receiving previously available water during periods in which streamflows are less than the quantities determined by the Department to be necessary to meet the requirements of ORS 390.835.
16. The proposed modifications would not result in injury to other water rights.

Cancellation of a Water Right

17. An affidavit certifying that a water right has been abandoned and requesting cancellation of the right was received on January 11, 2008, from Don Myers, President of Sustainable Development, Inc. The right to be cancelled is as follows:

- Certificate:** 36227 in the name of OREGON FAIRVIEW HOME (perfected under Permit R-4544)
- Use:** STORAGE FOR RECREATION (FISHING and BOATING)
- Priority Date:** APRIL 6, 1965
- Volume:** 2.22 ACRE FEET (AF)
- Source:** PRINGLE CREEK, a tributary of Willamette River

Authorized Place of Use (Reservoir) to be Cancelled:

| STORAGE FOR RECREATION (FISHING & BOATING) | | | | | |
|---|-----|-----|-----|-------|-----|
| Twp | Rng | Mer | Sec | Q-Q | DLC |
| 8 S | 3 W | WM | 2 | SE SW | 41 |

Determination and Proposed Action

The modifications in place of use and character of use proposed in Application T-10375 appear to be consistent with the requirements of ORS 537.610, 537.705, 540.505 to 540.580 and OAR 690-382-1000 and the abandoned right should be cancelled. If protests are not filed pursuant to OAR 690-382-0900, the modifications will be recognized and the abandoned right will be cancelled.

If Ground Water Registration Modification Application T-10375 is recognized, the final order will include the following:

- 1. The modifications to Registration Application GR-2087 (Certificate of Registration GR-2005) proposed in Application T-10375 are recognized. Recognition of the modifications shall not be construed as a final determination of the right to appropriate ground water under the certificate of registration or modification. Such a determination will occur in an adjudication proceeding under ORS 537.670 to 537.695.*
- 2. The water right that has been abandoned, being Certificate 36227, is cancelled.*
- 3. The use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Registration Application GR-2087 (Certificate of Registration GR-2005) and any related decree.*
- 4. Water shall no longer be appropriated for the former character of use as part of this ground water certificate of registration.*
- 5. The former place of use of the modified ground water registration shall no longer receive water as part of the ground water certificate of registration*

6. *Prior to diverting water, the water user shall install and maintain an in-line flow meter or other suitable device for measuring and recording the quantity of water appropriated at the production well and an in-line flow meter or other suitable device for measuring and recording the quantity of water injected back into the aquifer at the injection wells. The type and plans of the measuring devices must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.*
7. *The issuance of a final order approving recognition of this ground water registration modification shall **not** relieve the applicant from complying with the requirements to obtain approval from the Water Resources Department for the utilization of any injection well(s) and submit a pump test and an injection plan, as may be required by OAR Chapter 690, Division 230.*
8. *The system shall comply with OAR Chapter 690, Division 230 (Standards and Procedures for Low-Temperature Geothermal Production and Injection Wells and Effluent Disposal Systems).*
9. *A completely closed plumbing system shall convey water from the production well to the injection wells.*
10. *The injection wells shall be constructed to return water to the same hydrogeologic unit which supplies the production well.*
11. *Injection at the injection wells shall be concurrent with pumping of the production well, and the volume and rate at the injection wells shall be equal to the total rate and volume at the production well.*

Dated at Salem, Oregon this 21ST day of February 2008.



PC Phillip C. Ward, Director

This draft Preliminary Determination was prepared by Lisa Jaramillo. If you have any questions about the information in this draft preliminary determination, you may reach me at (503) 986-0880 or Lisa.J.Jaramillo@wrd.state.or.us.

Protests should be addressed to the attention of Field Services Division, Water Resources Department, 725 Summer Street NE, Suite A, Salem, OR 97301-1266.