

KITTTITAS COUNTY COMMUNITY DEVELOPMENT SERVICES

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"Building Partnerships – Building Communities"

November 25, 2008

Kittitas County Eastern Washington Growth Hearings Board Order Compliance (Case No. 08-1-0010)

On August 26, 2008, the Eastern Washington Growth Hearings Board (EWGHB) issued its Final Decision and Order (Case No. 08-1-0010) finding that Kittitas County's Comprehensive Plan as amended and updated through Ordinance 2007-38 do not comply with the Washington State Growth Management Act (GMA). The following addresses the issues raised in the EWGHB Order.

Background:

On June 19, 2007 Kittitas County Community Development Services received an application from Bruce Terrell, authorized agent for Ellensburg Cement Products, applicant and Frank Gregerich of Three Bar G Ranch Inc., landowner for a map amendment to designate approximately 80 acres from Rural to Mineral Lands of Long Term Commercial Significance, Assessor's map number 19-16-25030-0001.

The following Kittitas County Countywide Planning Policies should be considered:

Glossary of Terms Kittitas County County-Wide Planning Policies

- Resource Lands: Resource lands means those lands designated by the county which are to be protected from urban growth encroachments and incompatible land-uses. Resource lands include all lands designated as Commercial Forest Lands, Forest and Range, Agricultural Lands of Long-Term Commercial Significance and Mineral Resource Lands.
- Rural Lands: Rural lands are considered those lands outside of cities, urban growth areas, urban growth nodes, and designated resource lands of long-term commercial significance.

The following Goals, Policies, and Objectives (GPOs) from the Kittitas County Comprehensive Plan should be considered:

Commercial Mineral Resource Lands

The State Growth Management Act (Section 17) states that "...each county...shall designate where appropriate... mineral resource lands that are not already characterized by urban growth and that have long-term significance for extraction of minerals." The Act defines minerals as sand, gravel and

valuable metallic substances. Section 6 of the Act states that each county shall adopt development regulations to assure the conservation of mineral resource lands.

Kittitas County approved Resolution No.95-37 in April 1995, a declaration regarding GMA interim classification and designation for natural resource mineral lands of long-term commercial significance. The resolution meets the requirements of the Growth Management Act. The resolution declares that Kittitas County recognizes mineral resources as a property right and the utilization of new and finished mineral products as an important factor in the social and economic stability of the County. In addition, the County recognizes that mineral resource lands provide economic and social foundations, historical, present and future for the growth and development of the County.

The resolution defines minerals to include "metallic and non-metallic minerals of commercial value such as sand, gravel, coal, oil, natural gas, gold, silver gem stones, clay, building stone, etc." Based on a public hearing process, the County has outlined nine designation criteria for the classification of Mineral Resource Lands of long-term commercial significance. These include the following:

1. Physical properties of the resource, including a quality and type;
2. Depth of resource;
3. Depth of overburden;
4. Accessibility and proximity to the point of use or market;
5. Physical and topographical characteristics of the mineral resource site;
6. Life of resource;
7. Availability of public roads;
8. General land use patterns in the area; and
9. Surrounding parcel sizes and surrounding uses.

Areas meeting the criteria for Mineral Lands of Long-Term Commercial Significance and classified as such, including future discoveries, are designated on the final Comprehensive Plan map and included in the final Comprehensive Plan. The map shows the location of Mineral Lands of Long-Term Significance and will be updated and amended as new mining sites, meeting the designation criteria, are approved.

GPO 2.143 When the County reviews proposed new land uses that have the potential to conflict with commercial mining activities, such as residential subdivisions, consideration of both surface and mineral rights ownership should be included in the review.

GPO 2.144 New conflicting uses, such as residential and commercial uses, may be required by the County to locate, site, and/or be screened away from designated commercial mining activities.

Planning Commission

Kittitas County Community Development Services issued a notice of public hearing pursuant to KCC 15A and KCC 15B on August 16, 2007. This notice was published in the official county newspaper of record and was mailed to jurisdictional government agencies, adjacent property owners, and other interested parties. Further, legal notices were published in the Daily Record on August 18 and 24, 2007 and the Northern Kittitas County Tribune on August 23 and 30, 2007. Public hearings were held on September 25 and 26, 2007 to review and receive testimony on the 2007 Docketed items.

The Planning Commission submitted the following Findings of Fact;

DOCKET- 07-01	Ellensburg Cement Products	Map Amendment: Rural to Mineral Lands of Long Term Commercial Significance for approximately 80 acres	19-16-25020-0009, and a portion of 19-16
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Bruce Terrell,
Authorized Agent

Ellensburg Cement
Products, Applicant

Three Bar G Ranch
Inc. c/o Frank J.
Gregerich,
landowner

1. The Planning Commission finds that Bruce Terrell, authorized agent for Ellensburg Cement Products, applicant and Frank Gregerich of Three Bar G Ranch Inc., landowner, applied for a map amendment to designate approximately 80 acres from Rural to Mineral Lands of Long Term Commercial Significance. Location: off of I-90 Exit #93 south of I-90 and Thorp Prairie Road and southeast of Elk Heights Road in a portion of Section 25, T19N, R16E, WM in Kittitas County. Map number 19-16-25020-0009 and a portion of map number 19-16-25030-0001.
2. The Planning Commission finds that Kittitas County Community Development Services issued a notice of public hearing pursuant to KCC 15A and KCC 15B on August 16, 2007. This notice was published in the official county newspaper of record and was mailed to jurisdictional government agencies, adjacent property owners, and other interested parties. Further, legal notices were published in the Daily Record on August 18 and 24, 2007 and the Northern Kittitas County Tribune on August 23 and 30, 2007.
3. Public hearings were held on September 25 and 26, 2007 to review and receive testimony on the 2007 Docketed items.
4. Testimony **was** given by the proponent.
5. Adverse testimony **was** given on this proposal.
6. The final deadline to submit written comments for Planning Commission consideration was on October 3, 2007 at noon. All timely comments were included in the record.
7. The Planning Commission held a continued hearing with the record closed on October 23, 2007 for decision and deliberation.
8. The Planning Commission finds that burden of proof has not been met by the applicant and the applicant has not met the 9 criteria as provided in the Kittitas County Comprehensive Plan. The information and studies are insufficient to determine if the site meets the criteria of the designation of Mineral Lands of Long Term Commercial Significance.
9. Testimony raised concerns regarding the general land use patterns in the area, impact to surrounding uses that include residential and commercial use, adequacy of access, and impact to water supplies and wildlife.
10. On October 23, 2007 the Planning Commission **recommended denial** of the proposal to the Board of County Commissioners the application based on the information submitted with a vote of 5-0 (two members absent).

Board of County Commissioners

The Board of County Commissioners held a public hearing on December 18, 2007 and approved the request with a 3-0 vote finding that:

- I. Testimony for and against this proposal was received.
- II. Kittitas County is required by the Growth Management Act to protect natural resource use by designating mineral lands of long term significance
- III. The subject parcel met the requirements of mineral lands of long term commercial significance as

- IV. The current land use is rural.
- V. The current zoning is Forest and Range.
- VI. Mining is an outright permitted use in the Forest and Range Zone.
- VII. The location of the subject parcel in regards to the county as a whole, plus the close proximity to the major transportation benefits Kittitas County

Enabling Documents

On December 31, 2007 Ordinance 2007-38 was signed with the following Findings of Fact Related to Docket 07-01;

07-01

Ellensburg Cement Products, Applicant, Three Bar G Ranch Inc., landowners

Map Amendment: Map Overlay to Designate Mineral Lands of Long Term Commercial Significance

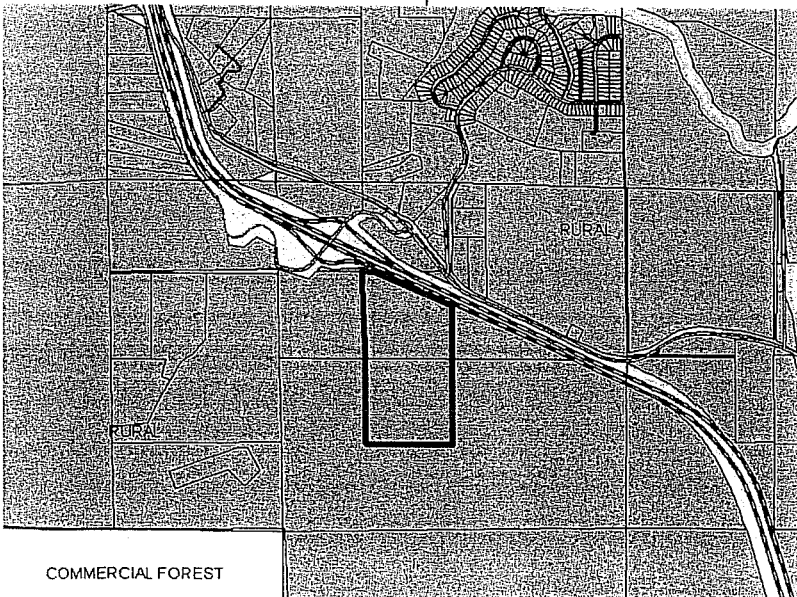
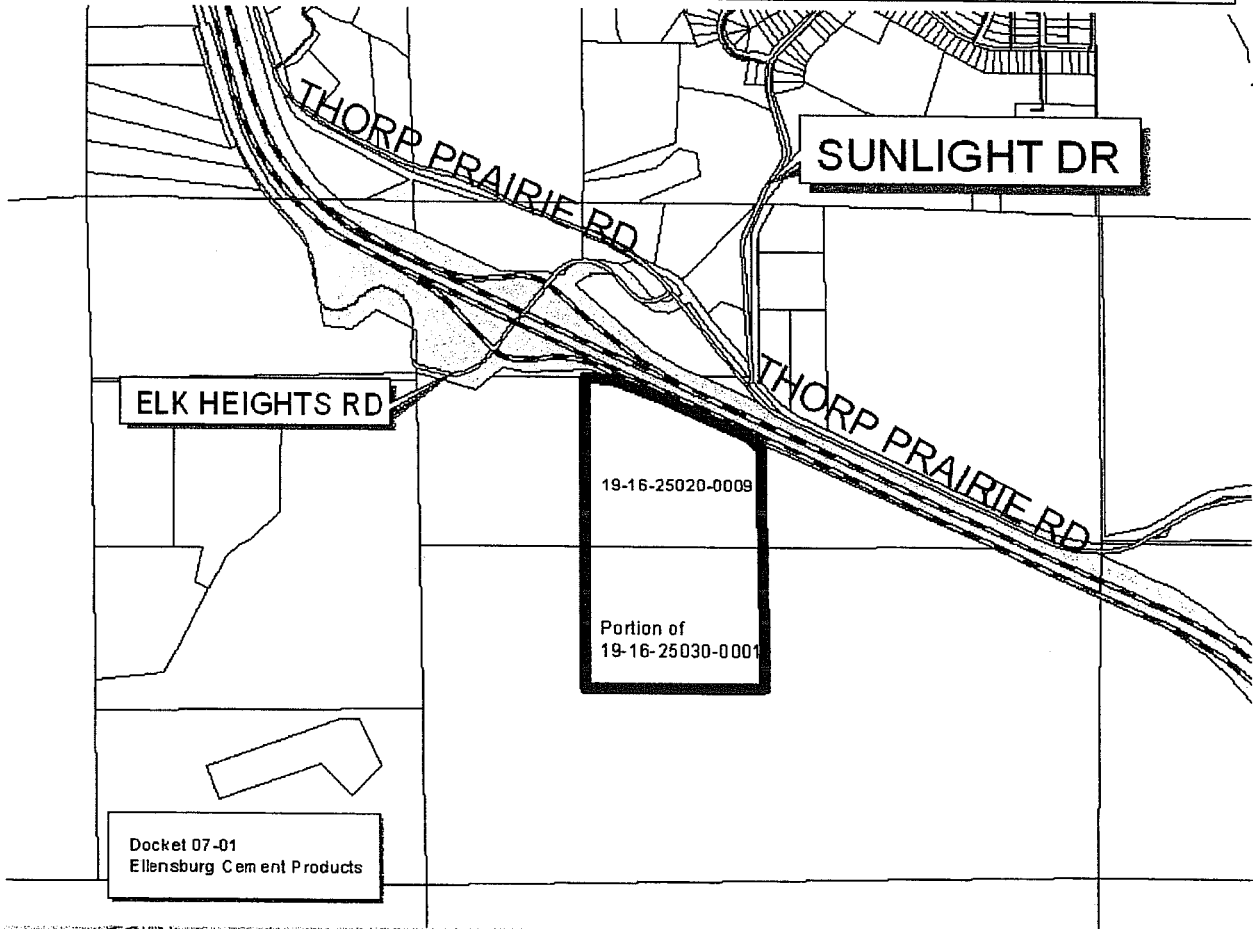
On June 19, 2007 Kittitas County Community Development Services received an application from Bruce Terrell, authorized agent for Ellensburg Cement Products, applicant and Frank Gregerich of Three Bar G Ranch Inc., landowner for a map amendment to designate approximately 80 acres from Rural to Mineral Lands of Long Term Commercial Significance, Assessor's map number 19-16-25030-0001. The Board of County Commissioners held a public hearing on December 18, 2007 and approved the request with a 3-0 vote finding that:

- I. Testimony for and against this proposal was received.
- II. Kittitas County is required by the Growth Management Act to protect natural resource use by designating mineral lands of long term significance
- III. The subject parcel met the requirements of mineral lands of long term commercial significance as identified in RCW 36A-170-131.
- IV. The current land use is rural.
- V. The current zoning is Forest and Range.
- VI. Mining is an outright permitted use in the Forest and Range Zone.
- VII. The location of the subject parcel in regards to the county as a whole, plus the close proximity to the major transportation benefits Kittitas County

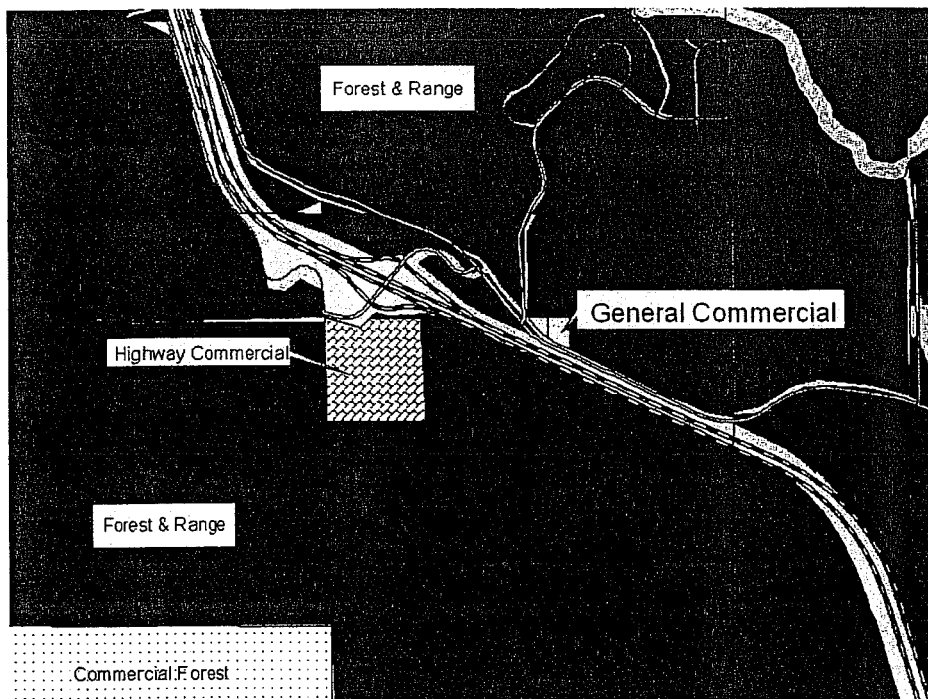
Powerpoint Presentation to Planning Commission

The following slides were presented to the Planning Commission.

DOCKET-07-01	Ellensburg Cement Products	Map Amendment: Rural to Mineral Lands of Long Term Commercial Significance for approximately 80 acres	19-16-25020-0009, and a portion of 19-16-25030-0001
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Land Use



Zoning

Quick information summary

Docket Number	07-01
Date filed	June 19 2007
Notice of Public Hearing	Published August 18 & 24, 2007
Planning Commission Hearing	September 25 & 26, 2007
Board of County Commissioners	December 18, 2007
Enabling Documents	December 31, 2007

Subject Property Information

Map Numbers	19-16-25020-0009, and a portion of 19-16-25030-0001
Size of subject property	80 Acres
Land Use	Rural
Zoning	Forest & Range

Growth Management Hearings Board for Eastern Washington:

On February 28, 2008, Jason & Laurie Moe, and Bruce Moe, by and through their representative, Allan Bakalian, filed a Petition for Review.

On August 26, 2008 the Growth Management Hearings Board for Eastern Washington issued their Final Decision and Order. That document is included as Exhibit "A".

Issues and Discussion

Issue No. 1:

Should the Board invalidate the Ordinance because it does not comply with the Growth Management Act when

Issue #2

Should the Board remand the Ordinance to Kittitas County to take whatever actions are necessary to ensure that the Ordinance complies with the Growth Management Act?

