BOARD OF COUNTY COMMISSIONERS
COUNTY OF KITTITAS
STATE OF WASHINGTON

ZONING CONDITIONAL USE PERMIT

CROWE ZONING CONDITIONAL USE PERMIT (CU-15-00001)

RESOLUTION

NO. 2015- 134

WHEREAS, according to Kittitas County Code Title 15A, relating to Hearings and Title 17.60A Conditional Uses, an open record hearing was held by the Kittitas County Hearing Examiner on July 23, 2015 for the purpose of considering a zoning conditional use permit Crowe CU-15-00001 and described as follows:

> *Marley Crowe submitted an application packet requesting a zoning conditional use permit for a rock quarry located to the East of the City of Kittitas at 5002 Parke Creek Road in a portion of Section 08, T17N, R20E, WM, in Kittitas County, Assessor's map number 17-20-08053-0001. The subject parcel is zoned Agriculture 20.*

WHEREAS, public testimony was heard, in favor of, and against the proposal; and,

WHEREAS, due notice of the hearing was given as required by law, and the necessary inquiry was made into the public interest to be served by such use; and,

WHEREAS, the Hearing Examiner recommended approval of said proposed zoning conditional use permit; and,

WHEREAS, a closed record public hearing was held by the Board of County Commissioners on September 1, 2015 & September 15, 2015 to consider the Hearing Examiner's recommendation on this matter; and,

WHEREAS, the Kittitas County Board of Commissioners made the following FINDINGS OF FACT and CONCLUSIONS AT LAW concerning said proposed zoning conditional use permit:

1. Marly A Crowe, landowner has submitted a conditional use application for shale mining. The operation is located on a 20 acre parcel which is zoned Agriculture 20 and has a Land Use Designation of Rural Working.

2. The proposal is located to the East of the City of Kittitas at 5002 Parke Creek Road in a portion of Section 08, T17N, R20E, WM, in Kittitas County, Assessor's map number 17-20-08053-0001.

3. The Comprehensive Plan designation is "Rural Working."

4. The subject property is zoned "agriculture 20," which is a 20 acre minimum zoning.

5. A conditional use permit application was submitted to Kittitas County Community Development Services department on February 13, 2015. This application was deemed complete on March 30, 2015. The Notice of Application for the conditional use permit was issued on May 8, 2015. This notice was published in the official county paper of record and was mailed to jurisdictional government agencies, adjacent property owners and other interested parties. The last day to submit written comments was on May 26, 2015.

6. The following agencies provided comments during the comment period: Kittitas County Department of Public Works, Kittitas County Fire Marshal, Kittitas Valley Fire and Rescue, WA Department of Transportation, and WA Department of Ecology. Late comments were provided by Kittitas County Environmental Health Department. These comments have been included in the index file record and were considered when preparing the recommended conditions for this proposal. All comments received are included in the Index file.

17. The Hearing Examiner hearing was held on July 23, 2015 at 6:00 p.m. One member of the public testified. On July 24, 2015 the Kittitas County Hearing Examiner **recommended approval** of the Crowe Zoning Conditional Use Permit (CU-15-00001).

18. The Board of County Commissioners conducted a closed record public hearing on September 1, 2015 & September 15, 2015 for the purpose of considering the Crowe Zoning Conditional Use Permit (CU-15-00001). A motion was made and seconded that the zoning conditional use permit be approved per the Hearing Examiner's recommendation. The motion carried with a vote of 3 to 0.

19. The Board of County Commissioners finds that the following additional condition **is** necessary to protect the public:

    a. A grade and fill permit must be obtained from Kittitas County Public Works per staffs concerns with the slope and stability of the project related to lateral support and stresses to soil on adjoining or contiguous properties per KCC 14.05.060 (5). Staff does not believe that the Sand and Gravel permit required by DOE adequately addresses these issues because it is merely a Clean Water Act permit.

NOW THEREFORE, BE IT HEREBY RESOLVED that the Kittitas County Board of Commissioners hereby grants approval of the **Crowe Zoning Conditional Use Permit (CU-15-00001)** and adopts the Kittitas County Land Use Hearing Examiner's Recommended Findings of Fact, Conclusions of Law, Decision and Conditions of Approval (Exhibit A) and the same hereby is approved with the proposed development configuration (See Exhibit B).

DATED this 6th day of October, 2015 at Ellensburg, Washington.

BOARD OF COUNTY COMMISSIONERS
KITTITAS COUNTY, WASHINGTON

Gary Berndt, Chairman

Obie O'Brien, Vice Chairman

ABSENT

Paul Jewell, Commissioner

COUNTY COMMISSIONERS SEAL KITTITAS COUNTY WASHINGTON

ATTEST:
CLERK OF THE BOARD

Julie A Kjorsvik

APPROVED AS TO FORM:

Greg Zempel WSBA #19125

Exhibit "A"

SEE PDF version for insert of Hearing Examiner Recommendation

KOTTKAMP & YEDINAK
435 Orondo Ave. | Wenatchee, WA 98801
PO Box 1667 | Wenatchee, WA 98807

Attorneys
Andrew L. Kottkamp
Nicholas A. Yedinak
Sean R. Esworthy

July 24, 2015

Kittitas County Comm. Develop Services
Attn: Jeff Watson
411 N. Ruby, Suite 2
Ellensburg. WA 98926

Re: CU-15-00001

Dear Jeff:

Enclosed please find the Hearing Examiner's Decision regarding the above-referenced matter.

Should you have any questions, please do not hesitate to contact this office.

Sincerely,

KELLY SERVIAN

RECEIVED
JUL 27 2015
KITTITAS COUNTY
CDS

KITTITAS COUNTY
LAND USE HEARING EXAMINER

IN THE MATTER OF	)	**RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND CONDITIONS OF APPROVAL**
CU-15-00001 Crowe	)	

RECEIVED
JUL 27 2015
KITTITAS COUNTY
CDS

THIS MATTER having come on for hearing in front of the Kittitas County Hearing Examiner on July 23, 2015, the Hearing Examiner having taken evidence hereby submits the following Recommended Findings of Fact, Conclusions of Law, Decision and Conditions of Approval as follows:

I. RECOMMENDED FINDINGS OF FACT

1. Marly A. Crowe, landowner, has submitted a conditional use application for shale mining. The operation is located on a 20 acre parcel which is zoned Agriculture 20 and has a Land Use Designation of Rural Working.

2. The proposal is located to the East of the City of Kittitas at 5002 Parke Creek Road in a portion of Section 08, T17N, R20E, WM, in Kittitas County, Assessor's map number 17-20-08053-0001.

3. Site Information:

Total Property Size:	20 acres, project on 1 parcel
Number of Lots:	1; no new lots are being proposed
Domestic Water:	None
Sewage Disposal:	None
Power/Electricity:	none proposed
Fire Protection:	Fire District 2– Kittitas Valley
Irrigation District:	Kittitas Reclamation District (KRD)

4. Site Characteristics:

North: Private Properties, Parke Creek Road
South: I-90
East: Private Properties
West: Private Properties, Parke Creek Road

5. The Comprehensive Plan designation is "Rural Working."

6. The subject property is zoned "Agriculture 20," which is a 20 acre minimum zoning.

7. A conditional use permit application was submitted to Kittitas County Community Development Services department on February 13, 2015. This application was deemed complete on March 30, 2015. The Notice of Application for the conditional use permit was issued on May 8, 2015. This notice was published in the official county paper of record and

was mailed to jurisdictional government agencies, adjacent property owners and other interested parties. The last day to submit written comments was on May 26, 2015.

8. As conditioned, the proposal is consistent with the goals and policies of the Kittitas County Comprehensive Plan.

9. As conditioned, this proposal is consistent with the provisions of KCC Title 12, Roads and Bridges as conditioned.

10. As conditioned, this proposal is consistent with the provisions of KCC Title 14, Buildings and Construction as conditioned.

11. As conditioned, this proposal is consistent with the provisions of KCC Title 17.29, agriculture 20.

12. As conditioned, this proposal is consistent with KCC 17.60A Conditional Uses.

13. Staff conducted an administrative critical area review in accordance with KCC 17A and found two critical areas on-site. There is a DNR stream type 2 – Fish on the northwestern portion of the subject parcel. This stream is also known as Parke Creek. There are also hazardous slopes on the subject parcel on the western portion of the lot. The proposed activities will take place on the south side of the parcel and will not be adjacent to Parke Creek.

14. The following agencies provided comments during the comment period: Kittitas County Department of Public Works, Kittitas County Fire Marshal, Kittitas Valley Fire and Rescue, WA Department of Transportation, and WA Department of Ecology. Late comments were provided by Kittitas County Environmental Health Department. These comments have been included in the index file record and were considered when preparing the recommended conditions for this proposal. All comments received are included as hearing exhibits.

15. A public comment was submitted for this proposal at the time of staff review and was considered by the Hearing Examiner. This comment was made a hearing exhibit.

16. An open record public hearing after due legal notice was held on July 23, 2015.

17. The entire Planning Staff file was admitted into the record at the public hearing:
    - 17.1 Exhibit 1. KC application fees receipt – 2/13/2015
    - 17.2 Exhibit 2. CUP application submittal packet – 2/13/2015
    - 17.3 Exhibit 3. SEPA application submittal packet – 2/13/2015
    - 17.4 Exhibit 4. Geologic Report – 2/13/2015
    - 17.5 Exhibit 5. Site Plans – 2/13/2015
    - 17.6 Exhibit 6. Application Supporting Documents – 2/13/2015
    - 17.7 Exhibit 7. Withdrawal of CU-06-05 – 3/2/2015
    - 17.8 Exhibit 8. Revised SEPA - 3/2/2015
    - 17.9 Exhibit 9. Deem Complete – 3/30/2015
    - 17.10 Exhibit 10.Affidavit of Posting – 4/13/2015
    - 17.11 Exhibit 11. Staff Review Documents – 5/6/2015
    - 17.12 Exhibit 12. Comment Public Works – 6/28/2015
    - 17.13 Exhibit 13. Revised CUP Application – 5/6/2015

17.14 Exhibit 14. Notice of Application Legal – 5/6/2015
17.15 Exhibit 15. Notice of Application – 5/8/2015
17.16 Exhibit 16. Notice of Application Affidavit of Mailing – 5/8/2015
17.17 Exhibit 17. Notice of Application Email – 5/8/2015
17.18 Exhibit 18. SEPA Checklist with Staff Comments – 5/6/2015
17.19 Exhibit 19. Comment DOE – 5/26/2015
17.20 Exhibit 20. Comment Shane Johnson – 5/26/2015
17.21 Exhibit 21. Comment Fire Marshal – 5/11/2015
17.22 Exhibit 22.Comment Kittitas Valley Fire and Rescue – 6/8/2015
17.23 Exhibit 23. Comment Kittitas County Building – 6/8/2015
17.24 Exhibit 24. Transmittal of Comments – 6/9/2015
17.25 Exhibit 25. Inquiry DOE – 5/15/2015
17.26 Exhibit 26. Inquiry WA State Parks – 5/11/2015
17.27 Exhibit 27. Inquiry WA State Parks – 5/11/2015
17.28 Exhibit 28. Inquiry DOT – 5/8/2015
17.29 Exhibit 29. Correspondence PW and ECP – 6/24/2015
17.30 Exhibit 30. Notice of SEPA Action and Public Hearing Legal – 6/25/2015
17.31 Exhibit 31. Notice of SEPA Action and Public Hearing – 6/29/2015
17.32 Exhibit 32. Hearing's Examiner Staff Report – 7/16/2015
17.33 Exhibit 33. SEPA MDNS – 6/29/2015
17.34 Exhibit 34. Notice of SEPA Action and Public Hearing Email – 6/29/2015
17.35 Exhibit 35. Notice of SEPA Action and Public Hearing Email Receipts – 6/29/2015
17.36 Exhibit 36. Inquiry DOH – 6/29/2015
17.37 Exhibit 37. Inquiry WA State Parks – 6/29/2015
17.38 Exhibit 38. Notice of SEPA Action and Public Hearing Affidavit of Mailing – 6/29/2015
17.39 Exhibit 39. Staff Power Point Presentation

18. Staff recommended approval of the requested permit, subject to the recommended conditions of approval.

19. Appearing and testifying on behalf of the applicant was Robert Crowe. Mr. Crowe testified that he is the husband of Marly Crowe and was an agent authorized to appear and speak on her behalf. Mr. Crowe confirmed that there would be no access through the driveway as identified in Exhibit 20, the comment from Shane Johnson. Mr. Crowe confirmed that the only access would be off of the John Wayne Trail onto Prater Road. Mr. Crowe indicated that they had no objection to a Recommended Condition of Approval confirming this limitation on access. Mr. Crowe further testified that they had no objection to any of the Recommended Conditions of Approval. He testified that they would obtain any and all necessary permits prior to beginning operations.

20. Testifying from the public was Shane Johnson. Mr. Johnson just wanted to confirm that the John Wayne Trail access would be the sole access for the Shale mining activities. Mr. Johnson had no further comments.

21. The proposal is appropriate in design, character and appearance with the goals and policies for the land use designation in which the proposed use is located.

22. The proposed use will not cause significant adverse impacts on the human or natural environments that cannot be mitigated by conditions of approval.

23. The cumulative impact of additional requests for like actions (the total of the conditional uses over time or space) will not produce significant adverse effects to the environment that cannot be mitigated by conditions of approval.

24. The proposal will be served by adequate facilities including access, fire protection, water, storm water control, and sewage disposal facilities.

25. The pedestrian and vehicular traffic associated with the conditional use will not be hazardous to existing and anticipated traffic in the neighborhood.

26. The proposed conditional use will comply with all required performance standards specified in the Kittitas County Code.

27. Land uses, activities, and structures that are allowed by this conditional use permit will comply with the required performance standards specified in the Kittitas County Code.

28. The proposal conforms to the standards specified in Kittitas County Code.

29. Any Conclusion of Law that is more correctly a Finding of Fact is hereby incorporated as such by this reference.

II. RECOMMENDED CONCLUSIONS OF LAW

1. The Hearing Examiner has been granted authority to render this decision.

2. As conditioned, the development meets the goals, policies and implementation recommendations as set forth in the Kittitas County Comprehensive Plan.

3. As conditioned, this proposal is consistent with applicable federal and state laws and regulations.

4. Public use and interest will be served by approval of this proposal.

5. As conditioned, the proposal is consistent with Kittitas County Code Title 17 Zoning, Title 17A Critical Areas, Title 14.04 Building Code, and Title 12 Roads and Bridges.

6. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.

III. RECOMMENDED DECISION

Based on the above Recommended Findings of Fact and Conclusions of Law, Conditional Use Permit Application CU-15-00001, Crowe is recommended to be **APPROVED** subject to the following Recommended Conditions of Approval.

IV. CONDITIONS OF APPROVAL

All Conditions of Approval shall apply to the applicant, and the applicant's heirs, successors in interest and assigns.

1. All conditions imposed herein shall be binding on the "Applicant," which terms shall include the owner or owners of the property, heirs, assigns and successors.
2. The project shall proceed in substantial conformance with the plans and application materials on file dated February 13, 2015 except as amended by the conditions herein.
3. The applicant is responsible for compliance with all applicable local, state and federal rules and regulations, and must obtain all appropriate permits and approvals.
4. All current and future landowners must comply with the International Fire Code.
5. All development, design and construction shall comply with all Kittitas County Codes and the International Fire and Building Codes.
6. Based on comments received during the public comment period and other information submitted with this project permit application, A SEPA Mitigation Determination of Non-Significance (MDNS) was issued by Community Development Services on June 29, 2015. The following are the mitigation contained within the MDNS and shall be conditions of approval:

   II. **Water/ Air**

   A. Chapter 173-150 WAC provides for the protection of existing rights against impairment, i.e. interruption or interference in the availability of water. If water eventually becomes available on site and the supply in the area becomes limited, use could be curtailed by those with senior water rights.

   B. All water proposed to be used must be obtained from a water budget neutral source.

   C. The applicant shall follow WAC 173-400-040 enforced by Washington State Department of Ecology.

   II. **Septic & Storm Water**

   A. Adequate septic and waste water facility must be provided on site and approved by Kittitas County Health Department.

   B. Activities such as road widening, stump pulling and clearing, grading and fill work and utility placements may require a NPDES Construction Stormwater Permit issued by the Department of Ecology prior to start of construction. This permit requires the preparation of a Stormwater Pollution Prevention Plan. It is the applicant's responsibility to contact the Department of Ecology regarding the requirement of such action.

C. Withdrawals of groundwater on the subject property are subject to the rules and regulations adopted and administrated by the Washington State Department of Ecology; this includes the use of water for irrigation. Legally obtained water must be used on-site.

III. **Fire & Life Safety**

A. A turn-around shall be provided for fire department access as determined by Kittitas County Fire Marshal.

B. If a gate is to be installed, it must be a minimum of 16' in width. The gate shall be provided with a Knox Box with Kittitas Valley Fire and Rescue approval. A permit is required from the Fire Marshal's office to install any gate.

C. Any structures at the quarry site in the future that require a building permit may be subject to an annual fire and life safety inspection.

D. All structures must comply with the international Fire Code and are subject to annual fire and life safety inspections.

IV. **Light and Aesthetics**

A. All outdoor lighting shall be shielded and directed downward to minimize the effect to nearby residential properties.

V. **Noise**

A. The hours of operation shall be limited to 7:00am to 5:00pm, Monday thru Friday. It shall be the applicant's responsibility to insure that the project does not pose any threat to public safety and shall take measures to reduce conflict with scheduled school bus stops, mail delivery, etc.

VI. **Building/ Grading**

A. All new construction must meet the International Building Code requirements existing at the date of building permit submittal.

B. A grading permit it required per KCC 14.05.

C. A sand and gravel permit from the Department of Ecology must be obtained prior to the final of the conditional use permit.

D. All new construction must meet the International Building Code requirements existing at the date of building permit submittal.

VII. **Roads and Transportation**

A. The driveway must be constructed to commercial standards, as shown in the WSDOT Design Manual Exhibit 1340-2. A Kittitas County Access permit is required prior to driveway construction.

B. An Approved Access permit shall be obtained from Washington State Parks for the use of the John Wayne Trail prior to issuance of the Kittitas County Access Permit and Final Approval of the Conditional use Permit.

VII **Historic and Cultural Preservation**

A. Should ground disturbing or other activities related to the proposed conditional use permit result in the inadvertent discovery of cultural or archaeological materials, work shall be stopped in the immediate area and contact be made with the Washington State Department of Archaeology and Historic Preservation (DAHP). Work shall remain suspended until the find is assessed and appropriate consultation is conducted. Should human remains be inadvertently discovered, as dictated by Washington State RCW 27.44.055, work shall be immediately halted in the area and contact made with the coroner and local law enforcement in the most expeditious manner possible.

7. The sole access to this project shall be off of the John Wayne Trail onto Prater Road. There shall be no access, either ingress or egress via the driveway identified in Exhibit 20.

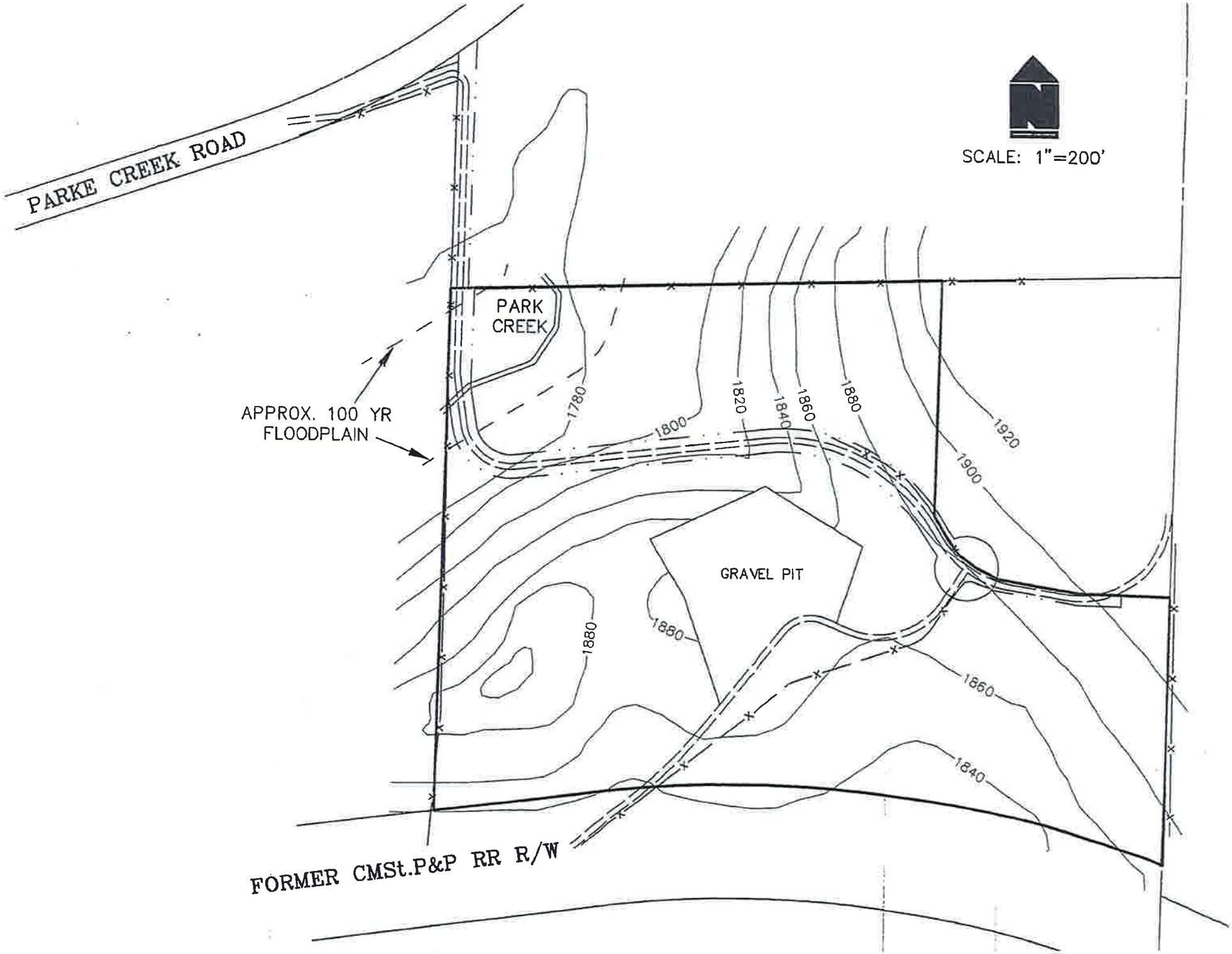
Dated this 24th day of July, 2015.

KITTITAS COUNTY HEARING EXAMINER

Andrew L. Kottkamp

Exhibit "B"

See PDF version for insert of Site Plan


PARKE CREEK ROAD
SCALE: 1"=200'
PARK CREEK
APPROX. 100 YR FLOODPLAIN
1780
1800
1820
1840
1860
1880
1900
1920
GRAVEL PIT
1880
1880
1660
1640
FORMER CMSt.P&P RR R/W