

# KITTITAS COUNTY LAND USE HEARING EXAMINER

IN THE MATTER OF	)	RECOMMENDED FINDINGS OF
	)	FACT, CONCLUSIONS OF
P-07-38	)	LAW, DECISION AND
Ranch Road Performance Based	)	CONDITIONS OF APPROVAL
Cluster Plat	)	

THIS MATTER having come on for hearing in front of the Kittitas County Hearing Examiner on February 10, 2011, 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. Terra Design Group, authorized agent for Cle Elum Pines West LLC and James K. Schuler, landowner, have applied for a 20-lot, , six of which will be zero lot line duplex Performance Based Cluster Plat pursuant to Kittitas County Code 16.09 on approximately 30.46 acres of land that is zoned Agriculture-3.. The applicant is proposing 15.04 acres of open space, a Group A water system community septic system, active recreation in the form of a tennis/sport court or an outdoor riding arena and/or trails and passive recreation in the form of picnic area. (Application materials and staff report)
2. The proponent is Terra Design Group, authorized agent for Cle Elum Pines West LLC and James K. Schuler, PO Box 808, Cle Elum, WA 98922. (Application materials)
3. The proposed lot sizes range from 1.97 acres to 4.14 acres. (Application materials and staff report)

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4. The project is located south of SR-970 and west of SR-97 and Burke Road, east of Fir Tree Drive at Ranch Road, Cle Elum, WA 98922 located within a portion of the NE 1/4 of Section 28, T20N., R17E., M., in Kittitas County. Map numbers 20-17-28052-0001, -0002, -0003, -0004, 20-17-28053-0003 & 0004. (Application materials and staff report)
5. Site Information:

Total Project Size:	30.46 acres
Number of Lots:	20
Domestic Water:	Group 'A' water system
Sewage Disposal:	Community on-site septic system
Power/Electricity:	Kittitas County PUD
Fire Protection:	Fire District #7
Irrigation District:	Not applicable

(Application materials and staff report)
6. Site Characteristics: The area is generally flat and has been in use as agricultural land. (Application materials and staff report)
7. Surrounding Properties:
  - a. North: Vacant
  - b. South: Residential
  - c. East: Residential
  - d. West: Residential(Application materials and staff report)
8. The Comprehensive Plan designation is "Rural." (Application materials and staff report)
9. The subject property is zoned Agriculture 3, which allows for one residential unit per 3 acres. (Application materials and staff report)
10. A long plat application was submitted to Community Development Services on June 15, 2007. The Notice of Application for the preliminary plat application was issued on August 24, 2007. 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 September 13, 2007. (Application materials and staff report)
11. Based on review of the submitted application materials, correspondence received during the comment period Kittitas County issued a Mitigated Determination of Nonsignificance (MDNS) on January 6, 2011 in accordance with WAC 197-11-355

(Optional DNS process). The appeal period ended on January 21, 2011. No appeals were filed. (Staff report)

12. The proposal is consistent with the goals and policies of the Kittitas County Comprehensive Plan. The proposed subdivision will be adequately served by rural levels of service. The lots will be served by a Group 'A' water system and community onsite septic systems. (Application materials and staff report)
13. Staff has conducted an administrative critical area review in accordance with KCC 17A and found no critical areas on the subject properties. (Staff report)
14. As conditioned, this proposal is consistent with the Kittitas County Subdivision Code Chapter 16.09 for Performance Based Cluster Plats. (Application materials and staff report)
15. The Department of Public Works has reviewed this proposal for consistency with KCC Title 12 Roads and Bridges. Several conditions have been applied to the construction of onsite private roads, as outlined in the September 10, 2007 memorandum issued by the Department of Public Works, which will be required prior to issuance of a building permit. As conditioned, the proposal is consistent with the provisions of KCC Title 12. (Application materials and staff report)
16. The following agencies provided comments during the comment period: Washington State Department of Ecology, Department of Transportation, Department of Archaeology & Historic Preservation, Kittitas County Department of Public Works and Kittitas County Public Health Department. Where appropriate, these comments have been included as conditions of approval. (Staff report)
17. Written comments were received from the public submitted by several members of the public. (Staff report)
18. Public and agency comments that were received were considered by the Hearing Examiner in rendering this Decision and forming Conditions of Approval. (Hearing Examiner finding based on the record)
19. The entire Planning Staff file was admitted into the record at the public hearing. (Public hearing record)
20. Admitted into the record were Exhibits 1 through 19, identified as follows:
  - 20.1 Exhibit 1: Long Plat Application, Environmental Checklist & Attachments A-M

- 20.2 Exhibit 2: Notice of Application
- 20.3 Exhibit 3: Affidavit of Publications
- 20.4 Exhibit 4: Applicants letters requesting project to be placed on hold 11/5/07 & 6/10/08
- 20.5 Exhibit 5: Comment letter from Dept. of Ecology 9/13/07
- 20.6 Exhibit 6: Comment letter from WSDOT 7/30/07
- 20.7 Exhibit 7: Comment letter from Dept of Archaeology & Historic Preservation 9/5/07
- 20.8 Exhibit 8: Memorandum – Kittitas Co. Public Works 9/10/07
- 20.9 Exhibit 9: Comment letter from Kittitas Co. Public Health 6/15/07
- 20.10 Exhibit 10: Comment letter from Ken Hartman 9/7/07
- 20.11 Exhibit 11: Comment letter from David Stambaugh, etal 9/4/07
- 20.12 Exhibit 12: Comment letter from James & Juliann Boyle 8/29/07
- 20.13 Exhibit 13: Comment letter from Dolores Chapman 9/10/07
- 20.14 Exhibit 14: SEPA MDNS
- 20.15 Exhibit 15: Notice of Decision SEPA Action & Public Hearing
- 20.16 Exhibit 16: Letter from Applicant's agent requesting re-schedule hearing date 1/18/11
- 20.17 Exhibit 17: Hearing Examiner Order of Continuance 1/25/11
- 20.18 Exhibit 18: Hearing Examiner Staff Report
- 20.19 Exhibit 19: January 5, 2011, letter from Washington State Department of Health to Mark Nelson, Hidden Valley Guest Ranch  
(Public hearing record)
- 21. The Kittitas County Community Development Services recommended approval of this permit, subject to the recommended conditions of approval. (Public hearing record)
- 22. An open record public hearing after due legal notice was held on February 10, 2011. (Open record public hearing)
- 23. Appearing and testifying on behalf of the applicant was Lindsey Ozbolt. Ms. Ozbolt testified that she was an agent authorized to appear and speak on behalf of the applicant. She testified that the applicant concurred with all representations stated within the staff report and all proposed conditions of approval were acceptable to the applicant. (Open record public hearing testimony)
- 24. Also testifying on behalf of the applicant was Chad Bala. Mr. Bala provided testimony regarding the proposed stormwater system. He stated that all stormwater would be retained on site pursuant to the Department of Ecology requirements. Any detention facilities would be in the open space. The homeowners association will be required to maintain the stormwater facilities. He stated that their stormwater system

- would protect the existing irrigation ditches. He stated that water use would be metered. He concurred that all proposed conditions of approval were acceptable to the applicant. (Open record public hearing testimony)
25. No member of the public testified in favor of the project. (Open record public hearing testimony)
26. Testifying in opposition to the project were the following individuals:
- 26.1 David Stambaugh: Mr. Stambaugh testified consistent with his September 4, 2004, submitted public comment (Exhibit 11). Mr. Stambaugh testified that there was not adequate, legal notice of the open record public hearing. He testified that the subject property is not included within Fire District No. 7. He testified about concerns related to elk migration and flooding on the subject property. He was opposed to the project because he believed that this was a suburban development in a rural area. He also testified that there were private CCR's applying to this property that were being violated by this project.
- 26.2 John Thomas: Mr. Thomas testified in opposition to the project. He testified that originally lots were designed for this area in 2.5 to 3-acre lots. He testified that original covenants applying to the property stated that lots would be 5 acres minimum. He testified about waters traveling across SR 970 onto the subject property. He believed that the property included wetlands.
- 26.3 Ken Hartman: Mr. Hartman testified in opposition to the project. Mr. Hartman testified that he had farmed land, including the subject property, for over 40 years. He testified that the water coming off of the hill will go onto his property and cause sludge to go onto neighbors' property. Mr. Hartman testified about historic flooding down Swauk Creek in the 1930's and 1940's. The bulk of his testimony related to water flow problems and flooding issues on the subject property.
- 26.4 John Thomas presented additional testimony regarding runoff from the Hartman property onto Swauk Road down SR 970.
- 26.5 Mr. Hartman additionally testified that the water in Swauk Creek used to be good drinking water.
- 26.6 Mr. Thomas provided further testimony that a septic system will not work because of high water tables.

- 26.7 Chad Bala: Mr. Bala provided rebuttal testimony. He testified that in 2004 or 2005 that the subject property was annexed into Fire District No. 7. He testified that the septic system must be approved by the Department of Health and without an approved septic system, there can be no development. He testified as to the purpose of this particular cluster was to keep more property in open space. Finally, regarding the stormwater plan, Mr. Bela testified that they must address all stormwater issues. Part of their stormwater plan is to “replenish” the floodplain.
- 26.8 Mr. Stambaugh was allowed to provide further testimony that Fire District No. 7 did not annex in this particular property.
- 26.9 Mr. Bala further testified that the applicant would have no objection to a condition of approval to require the subject property to annex into Fire District No. 7.  
(Public hearing testimony)
27. 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. (Hearing Examiner finding based on the record)
28. The proposed use will not cause significant adverse impacts on the human or natural environments that cannot be mitigated by conditions of approval. (Hearing Examiner finding based on the record)
29. The proposal will be served by adequate facilities including access, fire protection, water, storm water control, and sewage disposal facilities. (Hearing Examiner finding based on the record)
30. This project has demonstrated 125 bonus points with the Public Benefit Rating System. They are 50 points for total open space, 50 points for a Group A water system, 10 points for a community septic system, 5 points for passive recreation and 10 points for active recreation. Based upon the bonus points, the total bonus density percentage is 100%.
31. Any Conclusion of Law that is more correctly a Finding of Fact is hereby incorporated as such by this reference. (Hearing Examiner finding based on the record)

## II. RECOMMENDED CONCLUSIONS OF LAW

1. The Hearing Examiner has been granted authority to render this recommended 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 16 Subdivision, Title 17 Zoning, Title 17A Critical Areas, Title 15 Environmental, and Title 12 Roads and Bridges.
6. As conditioned, the proposed use is consistent with the intent, purposes and regulations of the Kittitas County Code and Comprehensive Plan.
7. As conditioned, the proposal does conform to the standards specified in Kittitas County Code.
8. As conditioned, the use will comply with all required performance standards as specified in Kittitas County Code.
9. As conditioned, the proposed use will not be contrary to the intent or purposes and regulations of the Kittitas County Code or the Comprehensive Plan.
10. As conditioned, this proposal does comply with Comprehensive Plan, the Shoreline Master Program, the zoning code and other land use regulations, and SEPA.
11. 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 Recommended Conclusions of Law, the Hearing Examiner hereby recommends that Application P-07-38, Ranch Road Performance Based Cluster Plat, be **APPROVED** subject to the following Recommended Conditions of Approval.

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#### **IV. RECOMMENDED 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 June 15, 2007 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. It is the responsibility of the applicant to contact the Kittitas County Assessor's and Treasurer's offices to confirm all taxes are current prior to final plat approval.
5. All current and future landowners must comply with the International Fire Code.

#### **Platting Standards and Zoning Code:**

6. Certificate of Title: A certificate of title of the property proposed to be platted shall be submitted with the final plat.
7. Lot Closures: It is the responsibility of the Professional Licensed Surveyor (PLS) to ensure the lot closures are correct and accurate.
8. Performance Based Cluster Plat Open Space Requirement: According to KCC 16.06.030, a minimum of 40% of the area within the project boundary must be set aside in open space prior to application of the Public Benefit Rating System. Prior to final plat approval, the applicant must clearly show and quantify how open space requirements have been met, as set forth in Performance Based Cluster Platting KCC 16.06.030 and KCC 16.09.100.
9. Right to Farm Notification Requirement: According to KCC 16.09.040, all Performance Based Cluster Platting conveyance instruments shall contain the following notice: The subject property is within or near existing agricultural or other natural resource areas on which a variety of activities may occur that are not compatible with residential development for certain periods of varying duration. Agricultural or other natural resource activities performed in accordance with county, state and federal laws are not subject to legal action as public nuisances. Kittitas



County has adopted right to farm provisions contained in Section 17.74 of the Kittitas County Zoning Code.

10. A plat note discussing the spread of noxious weeds shall be shown on the plat and shall read: "Per RCW 17.10.140 Landowners are responsible for controlling and preventing the spread of noxious weeds, accordingly, the Kittitas County Noxious Weed Board recommends immediate reseeding of areas disturbed by development to preclude the proliferation of noxious weeds."
11. Final mylars shall be submitted in accordance to KCC 16.20: Final Plats. All applicable survey data and dedications shall be reflected pursuant to KCC 16.24: Survey Data-Dedications.
12. Both sheets shall reflect the Plat number: P-07-38.

**Transportation and Infrastructure:**

13. Access to Lot 11: Access to multi-unit dwellings and duplexes are not specifically addressed in the current Kittitas County Road Standards; however, our department has determined that a driveway in excess of 150' in length, serving the (4) duplex dwelling units should meet or exceed the minimum International Fire Code requirements for a fire apparatus access road which would be consistent with current Kittitas County Road Standards requirements for a High-Density Private Road serving 3 to 14 tax parcels. The requirements for this access are listed below under Access Road Improvements.
14. Cul-de-Sac for Access Road Serving Lot 11: International Fire Code requirements for a fire apparatus access road in excess of 150' in length requires an approved turn around area. The applicant shall contact our department to discuss the specific requirements for an approved turn around area. The type of turn around and location shall be approved by the Kittitas County Fire Marshall.
15. Access to Lots 1 & 2 - Recreational Access Easement: Recreational access easements are not specifically addressed in the current Kittitas County Road Standards; however, our department has determined that a driveway in excess of 600' in length, serving the recreation area should meet or exceed the minimum International Fire Code requirements for a fire apparatus access road which would be consistent with current Kittitas County Road Standards requirements for a High-Density Private Road serving 3 to 14 tax parcels. The requirements for this access are listed below under Access Road Improvements:

16. Access Road Improvements: Access shall be constructed to meet or exceed the requirements of a High-Density Private Road and serve no more than 14 tax parcels. See Kittitas County Road Standards, 9/6/05 edition.
- a. Access easements shall be a minimum of 40' wide. The roadway shall have a minimum width of 20', with 1' shoulders, for a total width of 22'.
  - b. Minimum centerline radius will be 60'.
  - c. Surface requirement is for a minimum gravel surface depth of 6".
  - d. Maximum grade 8% flat, 12% rolling or mountainous.
  - e. Stopping site distance, reference AASHTO.
  - f. Entering site distance, reference AASHTO.
  - g. Maintenance of driveway approaches shall be the responsibility of the owner whose property they serve. The County will not maintain accesses.
  - h. Any further subdivision or lots to be served by proposed access may result in further access requirements.
  - i. All roads located within this development or roads that provide access to this development shall be constructed to current county road standards unless any other maintenance agreements, forest service road easements or state easements require higher road standards. The higher of the road standards shall apply.
  - j. All easements shall provide for AASHTO radius at the intersection with a county road.
  - k. A paved apron shall be constructed at the intersection of the proposed private intersection and the county road.
17. Cul-de-Sac for Recreational Access Road: The recreational access road shall have a turn-around area designated for emergency vehicles. If a cul-de-sac is proposed, the cul-de-sac shall have an outside easement diameter of at least 110' (55' radius) at the closed end. The applicant shall contact our department to discuss the specific requirements for an approved turn around area. The type of turn around and location shall be approved by the Kittitas County Fire Marshall. See Kittitas County Road Standards, 9/6/05 edition.

- a. Cul-de-sac design, reference 2006 International Fire Code.
  - b. Contact the Fire Marshall regarding any additional requirements.
18. Private Road Certification: The recreational access road shall be inspected and certified by a licensed professional engineer for conformance with current Kittitas County Road Standards, 9/6/05 edition. Kittitas County Public Works shall require this road certification to be completed prior to the issuance of a building permit for any of the structures within the proposed plat.
19. Private Road Maintenance Agreement: The applicant shall meet all applicable conditions of any pre-established or required Private Road Maintenance Agreements.
20. Access to Lots 3 thru 10 - Joint-Use Driveway: Joint-use accesses shall be required for access to lots 3 thru 10, as depicted on the face of the plat. The joint-use driveways serve no more than two tax parcels each. Per Kittitas County Road Standards, 9/6/05 edition.
- a. Access easements shall be a minimum of 20' wide. The roadway width shall have a minimum width of 12'.
  - b. The surface requirement is for a minimum gravel surface depth of 6".
  - c. Maintenance of driveway approaches shall be the responsibility of the owner whose property they serve. The County will not maintain accesses.
  - d. Any further subdivision or lots to be served by proposed access may result in further access requirements.
21. Access Permit: An approved access permit shall be required from the Department of Public Works prior to creating any new driveway access or performing work within the county road right of way.
22. Lot Closure: As of the date of this correspondence no lot closure information has been received by our department. The lot closure information shall be required prior to final plat approval. It is the responsibility of the Professional Licensed Surveyor (PLS) to ensure the lot closures are correct and accurate.
23. Addressing: Contact the Kittitas County Rural Addressing Coordinator at (509) 962-7523 to obtain addresses prior to obtaining a building permit. A parcel cannot receive a building permit or utilities until such parcel is identified with a 911 address.

24. Fire Protection: Contact the Kittitas County Fire Marshall regarding any additional access requirements for emergency response.
25. Mailbox Placement: Mailboxes must be approved by U.S. Postal Service. Mailbox locations are site specific. Contact your local Post Office for location and design standards before beginning construction.
26. Mailbox Placement: The U.S. Postal Service requires that private roads with 6 or more residences install USPS approved Cluster Box Units (CBUs) at a safe location at the mouth of the private road. Contact your local Post Office for location and additional design requirements before beginning construction.
27. Private roads shall meet the following conditions:
  1. Private roads shall meet the minimum access requirements of the International Fire Code as adopted by the County, and
  2. Shall be designed and constructed in conformance with AASHTO Guidelines for Geometric Design of Very Low-Volume Local Roads (ADT< 400) 2001, as now exists or hereafter amended, and
  3. Shall be inspected and certified by a licensed professional engineer for conformance with the above referenced standards. In the alternative, an applicant may request the private roadway to be inspected and subject to the approval of the Public Works Director. If certification by the Public Works Director/County Engineer is desired, submission of road plans and necessary testing documentation that confirms compliance with Kittitas County Road Standards is required, and services will be performed on a reimbursable basis, and
  4. Permanently established by an easement recorded with the Kittitas County Auditor or Right-of-way, providing legal access to each affected lot, dwelling unit, or business, and
  5. Will not result in land locking of existing or proposed parcels, and
  6. Maintained by the developer or legally responsible owner or homeowners' association or other legal entity made up of all benefited property owners, under the provisions of an acceptable and recorded "Private Road Maintenance Agreement", and

7. Clearly described on the face of the plat, short plat, or other development authorization and clearly signed at street location as a private street or road, for the maintenance of which Kittitas County is not responsible and a disclosure statement of the same is filed with the County Auditor, and
8. The following note shall be placed on the face of the plat, short plat, or other development authorization:  
*“Kittitas County will not accept private roads for maintenance as public streets or roads until such streets or roads are brought into conformance with current County Road Standards. This requirement will include the hard surface paving of any street or road surfaced originally with gravel.”*

**Onsite Sewage and Wastewater Treatment:**

28. Soil Log or Site Evaluation: A soil log or site evaluation must be performed prior to the Public Health Department recommending final approval. WAC 246-272A governs on-site sewage systems in the State of Washington. Table 10, is the minimum land area requirement needed for on-site sewage systems, the minimum land area is determined by the soil type on site, and the type of water supply (individual wells or a public water system). It is strongly recommended that the applicant conduct soil logs as soon as possible to anticipate any difficulties citing the community drain fields.

**Water and Stormwater:**

29. Plat Notes: According to the Public Health Department, the following notes shall be placed on the final plat:  
  
“Kittitas County relies on its record that a supply of potable water exist. The approval of this division of land includes no guarantee or assurances that there is a legal right to withdraw groundwater from the land division.”
30. NPDES Permit Requirement: An NPDES Construction Stormwater General Permit from the Washington State Department of Ecology is required if there is a potential for stormwater discharge from a construction site with more than one acre of disturbed ground. This permit requires that the SEPA checklist fully disclose anticipated activities including building, road construction and utility placements. Obtaining a permit is a minimum of a 38 day process and may take up to 60 days if the original SEPA does not disclose all proposed activities.

### **Air Quality**

31. A burn permit must be obtained from Ecology if the proponent plans to burn trees or debris from the property. Only natural, unprocessed vegetation may be burned in an outdoor fire.
32. Washington Administrative Code (WAC) 173-400-040 requires that reasonable precautions be taken to prevent dust from leaving the site. Also, dust is prohibited from interfering unreasonably with the use and enjoyment of property, causing health impacts, or damaging property or business.

### **SEPA Mitigation**

33. On-site stormwater management that conforms to the specifications of the most current version of the Stormwater Management Manual for Eastern Washington is required of this development. Stormwater systems shall be designed to store stormwater generated by a 24-hour, 25-year storm event. Stormwater system designs shall be prepared and stamped by a civil engineer licensed in the State of Washington. The stormwater system design shall be presented to Public Works and approved by the County Engineer prior to final approval. The stormwater system construction shall be included with the road certification and is required prior to the issuance of a building permit.
34. There will be no direct access from SR 970. Access to the state highway shall be from the US 97/Burke Road intersection. A note on the face of the plat shall read: *"No direct access to SR 970 will be allowed for any lot within this plat."*
35. If any items of possible cultural or historic significance are encountered during construction activities, work shall be immediately halted within the area and a large enough perimeter established in order to maintain the integrity of the site. Kittitas County Community Development Services, the State Historic Preservation Office and the Yakama Nation, as relevant, shall be immediately consulted.
36. Prior to final plat approval, the applicant shall demonstrate that the subject property has been annexed into Fire District No. 7.

Dated this 23<sup>rd</sup> day of February, 2011.

KITTITAS COUNTY HEARING EXAMINER

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Andrew L. Kottkamp

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