

**BOARD OF COUNTY COMMISSIONERS
COUNTY OF KITTITAS
STATE OF WASHINGTON**

**PRELIMINARY PLAT APPROVAL
TAKE FIVE PLAT (LP-00032))**

RESOLUTION

NO. 2009-_____

WHEREAS, according to Kittitas County Code Chapter 16, relating to the Subdivision of Land, adopted pursuant to RCW 58.17, an open record hearing was held by the Kittitas County Hearing Examiner on October 8, 2009 for the purpose of considering a preliminary plat known as the Take Five Plat and described as follows:

The division of 37.38 acres into 7 lots, located in the east ½ of the east ½ of Sections 21 & 22, T15N, R19E, W M in Kittitas County. Assessor map numbers 15-19-22000-0027 & 0029, 15-19-21000-0016 & 0019. Proponent: Otto Sieber, landowner.

WHEREAS, public testimony was heard from those persons present; and,

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

WHEREAS, the Hearing Examiner recommended approval of said proposed subdivision; and,

WHEREAS, a closed record public meeting was held by the Board of County Commissioners on November 17, 2009 to consider the Hearing Examiner's recommendation on this matter; and,

WHEREAS, the Kittitas County Board of Commissioners make the following FINDINGS OF FACT and CONCLUSIONS AT LAW concerning said proposed preliminary plat:

1. Otto Sieber, landowner, has applied for a 7-lot preliminary plat on approximately 37.38 acres of land that is zoned Agriculture-5. The project is proposed to be served by individual well and individual septic systems.
2. The subject property is located off of Rosa View Drive, Ellensburg, WA 98926, located in the east ½ of the east ½ of Sections 21 & 22, T15N, R19E, W M in Kittitas County. Assessor map numbers 15-19-22000-0027 & 0029, 15-19-21000-0016 & 0019.
3. The Notice of Application for the preliminary plat application was issued on January 21, 2009. his 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 February 11, 2009.

4. Community Development Services issued a Determination of Non-Significance (DNS) on September 24, 2009. No appeals were filed.
5. The Hearing Examiner conducted an open record hearing on October 8, 2009 to consider this matter where testimony was heard. On October 15, 2009 the Hearing Examiner issued a recommendation of preliminary plat approval for the Take Five Preliminary Plat (LP-08-00032).
6. The Board of County Commissioners conducted a closed record meeting on November 17, 2009 for the purpose of considering the preliminary plat known as the Take Five Preliminary Plat (LP-08-00032). A motion was made and seconded that the preliminary plat be approved subject to adding an additional condition. The motion carried with a vote of 3-0.
7. The Board of County Commissioners finds that additional conditions **are** necessary to protect the public's interest.
8. Additional condition: Should ground disturbing or other activities related to the proposed short plat 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 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.

NOW, THEREFORE BE IT RESOLVED: That the Kittitas County Board of Commissioners hereby grants preliminary plat approval to the Take Five Preliminary Plat (LP-08-00032) and adopts the Kittitas County Land Use Hearing Examiner's Recommended Finds of Fact, Conclusions of Law, Decision and Conditions of Approval (See Exhibit A) and the same hereby is, approved with the proposed development configuration (See Exhibit B).

DATED this _____ day of _____, 2009 at Ellensburg, Washington.

BOARD OF COUNTY COMMISSIONERS
KITITAS COUNTY, WASHINGTON

Alan A. Crankovich, Chairman

Paul Jewell, Vice Chairman

Mark McClain, Commissioner

ATTEST:
CLERK OF THE BOARD

APPROVED AS TO FORM:

Julie A Kjorsvik

Greg Zempel WSBA #19125

Exhibit “A”

KITTITAS COUNTY LAND USE HEARING EXAMINER

IN THE MATTER OF)	RECOMMENDED FINDINGS OF
)	FACT, CONCLUSIONS OF
LP-08-32)	LAW, DECISION AND
Take Five Preliminary Plat)	CONDITIONS OF APPROVAL

THIS MATTER having come on for hearing in front of the Kittitas County Hearing Examiner on October 8, 2009, 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. Otto Sieber, landowner, has applied for a 7-lot preliminary plat on approximately 37.38 acres of land that is zoned Agriculture-5. (Staff Report)
2. The applicant is Otto Sieber, 470 Roza View Dr, Yakima, WA 98901. (Application materials)
3. The subject property is located off of Rosa View Drive, Ellensburg, WA 98926, located in the east ½ of the east ½ of Sections 21 & 22, T15N, R19E, WM in Kittitas County. Assessor map numbers 15-19-22000-0027 & 0029, 15-19-21000-0016 & 0019. (Staff Report)
4. The proposed lots range in size from 5.00 to 5.87 acres in size. The project is proposed to be served by individual well and individual septic systems. (Staff Report)
5. Site Information:

Total Project Size:	37.38 acres
Number of Lots:	7
Zoning district	Agriculture-5
Domestic Water:	Individual wells
Sewage Disposal:	Individual on-site septic system
Power/Electricity:	Puget Sound Energy
Fire Protection:	Kittitas Valley Fire & Rescue
Irrigation District:	None

(Staff Report)
6. Site Characteristics: The area is flat and has been in part of a gravel mining operation. (Staff report)

7. Surrounding Property:
North: Air strip
South: Residential
East: Gravel pit
West: Residential
(Staff Report)
8. The Comprehensive Plan designation is Rural. (Staff Report)
9. The subject property is zoned Agriculture-5, which allows for one residential unit per 5 acres.
(Staff Report)
10. A complete long plat application was submitted to Community Development Services on November 19, 2008. The Notice of Application for the preliminary plat application was issued on January 21, 2009. 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 February 11, 2009. (Staff Report)
11. In accordance with Kittitas County Code 15A.030.110, this project was accurately posted with the “Land Use Action” sign as provided by Community Development Services. The Affidavit of Posting was signed by the applicant and returned to the planner and is included as part of the record. (Staff Report)
12. Based upon review of the submitted application materials including an environmental checklist, correspondence received during this 15 day comment period and other information on file with Community Development Services, a Determination of Non-Significance (DNS) was issued on September 10, 2009. The appeal period ended on September 24, 2009 at 5:00 p.m. No appeals were filed. (Staff Report)
13. 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 individual wells and on-site septic systems. Staff has conducted an administrative critical area review in accordance with KCC 17A and found no critical areas on site. (Staff Report)
14. This proposal is consistent with the Kittitas County Subdivision Code Chapter 16.12 for Preliminary Plats. (Staff Report)
15. All roads are required to meet all Kittitas County Road Standards as outlined in the May 4, 2009 memorandum issued by the Department of Public Works. As conditioned, the proposal is consistent with the provisions of KCC Title 12. (Staff Report)
16. The following agencies provided comments during the comment period: Department of Ecology, Department of Archaeology & Historic Preservation, Kittitas County Department of Public Works, and Environmental Health. These comments have been included as conditions of approval to address these agency concerns. (Staff Report)

17. 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)
18. This Application was found to be Technically Complete as required by law. (Staff report))
19. The entire Planning Staff file was admitted into the record at the public hearing. Also admitted into the record was the Amended Staff Report on this matter. (Public hearing record)
20. The Kittitas County Community Development Services recommended approval of this permit, subject to the recommended conditions of approval. (Public hearing record)
21. Public hearing after due legal notice was held on October 8, 2009. Appearing and testifying on behalf of the applicant was Wade Nelson of Encompass Engineering. Mr. Nelson testified that he was an agent authorized to appear and speak on behalf of the applicant. Mr. Nelson testified that the applicant had no objection to any of the proposed conditions of approval. He stated that the property does have continuous ownership due to a strip of property to the north. (Open record public hearing testimony)
22. No member of the public testified in favor of the project. Testifying against the project was Tim Bransford. Mr. Bransford testified that he was testifying on behalf of the Take Five Home Owners Association. This is a Home Owners Association developed from a previous plat. His concern was that Lot C of the proposed subdivision was superimposed over Lot 11 of the Take Five plat. He testified that their restrictive covenants indicate that no lot can be further subdivided. (Open record public hearing testimony)
23. Also testifying on behalf of the applicant was Attorney Jim Denison. Due to Hearing Examiner questions about where Lot C originated, Mr. Denison stated that it was created from a boundary line adjustment which included a portion of Lot 11. (Open record public hearing testimony)
24. Also testifying on behalf of the applicant was Otto Sieber. His testimony was that part of Lot C was used in the boundary line adjustment. (Open record public hearing testimony)
25. Due to this confusion as to what lot was adjusted to create Lot C of the proposed development, the Hearing Examiner kept the record open until Monday, October 12, 2009, at 5:00 p.m. for additional evidence on this issue. (Open record public hearing)
26. On October 12, 2009, the applicant's representative submitted a letter dated that same date, addressed to the Hearing Examiner. That letter stated the following which are accepted as findings of fact:
 - 26.1 Lot 11 is shown on the survey recorded May 11, 2006, in Book 32 of Surveys, Page 184, at 5.58 acres.
 - 26.2 Lot 11 is then shown as 16.74 acres in survey recorded January 2007, in Book 33 of Surveys, Page 186.

- 26.3 Lot 11 was boundary line adjusted with Lot D of the Sieber Short Plat in September 2008 to make the boundary configuration shown on the Take Five Plat making Lot 11 16.07 acres.
- 26.4 On the Take Five Plat, Lot 11 is divided into Lots A, B and C adding up to the acreage of boundary line adjusted Lot 11 of 16.07. Lot C of the Take Five Plat is a portion of Lot 11. (Hearing Examiner finding based on the record)
27. Based upon Finding No. 26.4, as stated by the applicant's representative, may be a violation of the restrictive covenants of the underlying Take Five Home Owners Association. However, Kittitas County does not enforce private restrictive covenants. This would be up the Take Five Home Owners Association to address with the court of jurisdiction. (Hearing Examiner finding based on the record)
28. 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)
29. 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)
30. 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)
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 LP, Take Five Preliminary Plat, be **APPROVED** subject to the following Recommended Conditions of Approval.

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 November 19, 2008 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. 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.
6. Soil logs need to be scheduled and dug at a mutually convenient time. The developer/owner shall provide soil logs as per Chapter 246-272 WAC or as amended. The information obtained will be recorded and placed in the plat file for future reference. The information obtained from these soil logs is for plat approval purposes only and does not constitute a site evaluation in conjunction with the issuance of a permit for any specific lot.
7. Proof of potable water must be shown prior to final plat approval.
8. For final approval of an individual well, the submittal of well logs or a hydrogeological report with documentation/evidence to support the claim regarding adequate availability of groundwater for the proposed number of potable water wells is required. This report shall be submitted by a

Professional Engineer who practices in the field of hydrology or by a licensed Hydrogeologist.

9. All applicants for subdivision utilizing wells shall have a note placed on the face of the final mylars that states:
 - a. *“The approval of this division of land included no guarantee that there is a legal right to withdraw groundwater within the land division. The approval of this division of land provides no guarantee that use of water under the ground water exemption (RCW 90.44.050) for this plat or any portion thereof will not be subject to curtailment by the Department of Ecology or a court of law.”*
 - b. *“Metering will be required on all new residential well connections and metering results shall be recorded in a manner consistent with Kittitas County and Washington State Department of Ecology requirements.”*
10. The Final Plat shall meet all requirements as listed in Chapter 16.20 of the Subdivision Code; including content, format, etc. The following items will be required on the Final Plat Submittal:
 - a. Adjacent Property Owners: The adjacent property owners and surrounding properties shall be on the face of the final short plat. (K.C.C.16.20.040, 10, Plat drawing, Adjacent Owners).
 - b. Surrounding Area: All surrounding property shall be shown in dotted lines and letters with names of plats, roads, adjoining lots, canals, and etc., and if un-platted shall be so indicated. (K.C.C.16.20.040, 11, Plat drawing, Surrounding Area).
11. This application is subject to the latest revision of the Kittitas County Road Standards, dated 9/6/05. The following conditions apply and must be completed prior to the issuance of a building permit for any of the residence within this plat. A Performance Bond or acceptable financial guarantee may be used, in lieu of the required improvements, per the conditions outlined in the current Kittitas County Road Standards.
12. Private roads serving any of the lots within this development 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.
13. All notes stating “to be created by separate document” shall be removed from the final plat.
14. All access shall be constructed to meet or exceed the requirements of a Low-Density Private Road. See Kittitas County Road Standards, 9/6/05 edition.
 - a. Access easements shall be a minimum of 60’ 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. The surface requirement is for a minimum gravel surface depth of 6”.

- d. Maximum grade is 12%.
 - 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 of county road.
 - k. A paved apron shall be constructed at the intersection of the proposed private intersection and the county road right of way.
15. The applicant shall meet all applicable conditions of any pre-established or required Private Road Maintenance Agreements.
16. It is the responsibility of the Professional Licensed Surveyor (PLS) to ensure the lot closures are correct and accurate.
17. 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.
18. 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.
19. 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.
20. Private roads shall meet the following conditions:
- a) Private roads shall meet the minimum access requirements of the International Fire Code as adopted by the County, and
 - b) 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

- c) 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
 - d) 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
 - e) Will not result in land locking of existing or proposed parcels, and
 - f) 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
 - g) 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
 - h) 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."
21. 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."
22. 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.
23. Both sheets shall reflect the Plat number: LP-08-00032.

Dated this 16th day of October, 2009.

KITTITAS COUNTY HEARING EXAMINER

Andrew L. Kottkamp

Exhibit "B"

