

**KITTITAS COUNTY  
LAND USE HEARING EXAMINER**

<b>IN THE MATTER OF</b>	)	<b>RECOMMENDED FINDINGS OF</b>
	)	<b>FACT, CONCLUSIONS OF</b>
CU-11-00003	)	<b>LAW DECISION</b>
Cascade Field & Stream	)	<b>CONDITIONS OF APPROVAL</b>

THIS MATTER having come on for hearing in front of the Kittitas County Hearing Examiner on July 11, 2013, 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. Chris Cruse, authorized agent for Cascade Field and Stream, property owner, submitted a conditional use permit application for the placement of a shooting range in the Agriculture-20 zone.
2. The project is located on Hayward Road, approximately 1.33 miles south from its junction with Bettas Road, Cle Elum, WA, located in a portion of the East ½ of Section 21, T19N, R17E, W.M. in Kittitas County. Map number: 19-17-21000-0001.
3. Site Information:
  - Total Property Size: 182.38 acres
  - Number of Lots: 1; no new lots are being proposed
  - Domestic Water: None planned at this time
  - Sewage Disposal: None planned at this time
  - Power/Electricity: Kittitas PUD
  - Fire Protection: Fire District 1
  - Irrigation District: A portion of the property lies within the Kittitas Reclamation District Boundary
4. Site Characteristics:
  - North: Vacant, Public lands, Windfarm
  - South: Vacant, Windfarm, Residential
  - East: Vacant, Public lands, Windfarm
  - West: Vacant, KRD Canal, Residential
5. Site Characteristics: The area is primarily covered in sage brush and bare land. There are some hazardous slopes of 25-50% slope in the southern area of the property. There is one PUSCH wetland located in the northern area of the property. The KRD canal runs along the south western edge of the property.

6. The Comprehensive Plan designation is “Rural.”
7. The subject property is zoned “Agriculture-20,” which allows for shooting ranges as a conditional use.
8. A complete conditional use permit application was submitted to Community Development Services on October 17, 2011. The Notice of Application for the conditional use permit was issued on December 16, 2011. 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 January 3, 2012.
9. 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 Mitigated Determination of Non-Significance (MDNS) was issued on February 8, 2013. The appeal period ended on February 22, 2013 at 5:00 p.m. An appeal was filed on February 22, 2013.
10. As conditioned, the proposal is consistent with the goals and policies of the Kittitas County Comprehensive Plan.
11. Staff has conducted an administrative critical area review in accordance with KCC 17A and found critical areas which include hazardous slopes between 25-50% in the southern area of the property and a wetland type PUSCH in the northern area of the property.
12. This proposal is consistent with the Kittitas County Zoning Code 17.29. Specifically this proposal is compatible with KCC 17.29.030(26) shooting ranges as it is a conditional use for this zone.
13. This proposal is consistent with the Kittitas County Zoning Code for Conditional Uses. The proposed conditional use will be adequately served by rural levels of service. As conditioned, the proposal is 1) desirable to public convenience, 2) will not be detrimental to public health, safety or welfare, 3) is not economically detrimental to the public, and 4) is adequately serviced by public facilities.
14. All roads are required to meet all Kittitas County Road Standards as outlined in the December 27, 2011 memorandum issued by the Department of Public Works. As conditioned, the proposal is consistent with the provisions of KCC Title 12.
15. The following agencies provided comments during the comment period: Washington State Department of Fish and Wildlife, Kittitas County Sheriff’s Office, Cle Elum-Roslyn-South Cle Elum Police Department, Ellensburg Police Department, Kittitas County Public Works, Kittitas Reclamation District, and Kittitas County Fire District #1. These comments have been included as conditions of approval to address these agency concerns.
15. Numerous public comments were submitted for this proposal at the time of staff review and were considered by the Hearing Examiner in reconsidering this decision.

16. Public and agency comments that were received were considered by the Hearing Examiner in rendering this Decision and forming Conditions of Approval.
17. The entire Planning Staff file was admitted into the record at the public hearing.
18. The Kittitas County Community Development Services recommended approval of this permit, subject to the recommended conditions of approval.
19. An open record public hearing after due legal notice was held on July 11, 2013.
20. The following Exhibits were admitted into the open record public hearing record:
  - 20.1 Conditional Use Permit & SEPA fee receipt – 10/17/11;
  - 20.2 CUP & SEPA application packet from Applicant – 10/17/11;
  - 20.3 Staff Analysis;
  - 20.4 Letter of Complete Application – 11/14/11;
  - 20.5 Affidavit of Posting – 8/30/11;
  - 20.6 Notice of Application – 12/16/11;
  - 20.7 Affidavit of Mailing & Publication – 12/14/11;
  - 20.8 Comment letter – Don Knoke – No Current Submittal Date;
  - 20.9 Comment letter – WDFW – 7/28/11;
  - 20.10 Comment letter – Kittitas County Sheriff’s Office – 7/28/11;
  - 20.11 Comment letter – Cle Elum-Roslyn-S. Cle Elum Police Department – 7/28/11;
  - 20.12 Comment letter – Ellensburg Police – 8/6/11;
  - 20.13 Memo from KC DPW to KC CDS – 12/27/11;
  - 20.14 Comment email – D. Holmquist – 1/3/12;
  - 20.15 Comment email – K. Fyall – 1/3/12;
  - 20.16 Comment email – B. Drexler – 1/6/12;
  - 20.17 Comment email – B. Daugherty – 1/6/12;
  - 20.18 Comment letter – S. Rogers – 1/7/12;
  - 20.19 Comment email – R. McCrackin – 1/9/12;
  - 20.20 Comment email – J. Rotter – 1/9/12;
  - 20.21 Comment email – C. Shearer – 1/9/12;
  - 20.22 Comment email – G. Gilligan – 1/9/12;
  - 20.23 Comment email – K. Green – 1/9/12;
  - 20.24 Comment email – E. Panattoni – 1/9/12;
  - 20.25 Comment email – A. Robins – 1/9/12;
  - 20.26 Comment email – D. Chapman – 1/9/12;
  - 20.27 Comment letter – S. Jeffries – 1/10/12;
  - 20.28 Comment letter – K. Fyall – No Date;
  - 20.29 Comment email – D. Allen – 1/10/12;
  - 20.30 Comment email – B. Drexler – 1/10/12;
  - 20.31 Comment email – B. Nelson – 1/10/12;
  - 20.32 Comment email – W. Hamlin – 1/11/12;

- 20.33 Comment email – D. Kuhn – 1/12/12;
- 20.34 Comment email – B. Mallon – 1/12/12;
- 20.35 Comment email – J. Thorpe – 1/12/12;
- 20.36 Comment email – K. Fyall – 1/12/12;
- 20.37 Comment letter – D. Tonseth – 1/13/12;
- 20.38 Comment letter – Swauk Valley Ranch – 1/13/12;
- 20.39 Comment letter – Kittitas Reclamation District – 1/13/12;
- 20.40 Comment letter – KC Fire District #1 – 1/13/12;
- 20.41 Comment email – R. Belsaas – 1/13/12;
- 20.42 Comment email – D. Fluent – 1/13/12;
- 20.43 Comment email – J. Schweitzer – 1/13/12;
- 20.44 Comment email – R. Schweitzer – 1/13/12;
- 20.45 Comment email – D. Duncan – 1/13/12;
- 20.46 Comment email – K. Allen – 1/13/12;
- 20.47 Comment email – Hemmingson Family – 1/13/12;
- 20.48 Comment letter & exhibits – Velikanje Halverson Attorneys at Law – James Carmody – 1/17/12;
- 20.49 Comment letter – M. Bogachus – 1/17/12;
- 20.50 Comment letters – D. Holmquist – 1/17/12;
- 20.51 Comment email – S. Nicholson – 1/22/12;
- 20.52 Comment email – M. Rucker – 2/23/12;
- 20.53 Comment email – J. Rucker – 2/28/12;
- 20.54 Comment email – B. Ballard – 3/21/12;
- 20.55 Comment response letter from Applicant Attorney – J. Slothower – 11/7/12;
- 20.56 Noise Study – Acoustical Engineer – 10/15/12;
- 20.57 Email between Applicant and CDS – 1/22/13;
- 20.58 Email between Applicant and CDS – 2/6/13;
- 20.59 SEPA MDNS – 2/8/13;
- 20.60 Notice of Decision SEPA Action & Public Hearing – 2/8/13;
- 20.61 Affidavit of Mailing & Publication – 2/8/13;
- 20.62 Returned Mail – Notice of Decision SEPA Action and Public Hearing – B. Drexler – 2/19/13;
- 20.63 HE Staff Report for 2/28/13 hearing from KC CDS;
- 20.64 Daily Record invoice for publication of Notice of Action – 2/6/13;
- 20.65 Notice of SEPA Appeal letter and attachments – Halverson Northwest – James Carmody – 2/22/13;
- 20.66 Hearing Examiner Agenda – 2/28/13;
- 20.67 Cancelled Hearing Examiner Hearing email & posting – 2/25/13;
- 20.68 Letter from BOCC clerk of board to James Carmody re: receipt of SEPA appeal – 2/28/13;
- 20.69 Letter RE: SEPA Appeal to the Cascade Field and Stream CUP – from CDS – 3/18/13;
- 20.70 Affidavit of Mailing – SEPA Appeal briefing and mailing labels – 3/18/13;

- 20.71 Applicant's response brief to the SEPA appeal – 5/8/13 (first page only – entire packet available at CDS – all parties received a complete copy);
  - 20.72 Stipulation and Order on SEPA Appeal – signed – 5/21/13;
  - 20.73 July 11<sup>th</sup>, 2013 Power point presentation;
  - 20.74 Affidavit of Mailing;
  - 20.75 Written comments from Sean Jeffries;
  - 20.76 Aerial photograph;
  - 20.77 Steve Roger's letter to Hearing Examiner;
  - 20.78 July 11<sup>th</sup>, 2013 email from Chris Cruse to Kittitas County;
  - 20.79 Overlay showing Kittitas Valley Wind Power project and location of the subject property;
  - 20.80 Diagram of area entitled "adjacent properties for notification".
  - 20.81 Aerial photograph showing structures in the area as pink dots.
  - 20.82 July 11<sup>th</sup>, 2013 letter from Patricia Binder to the Hearing Examiner;
  - 20.83 July 11<sup>th</sup>, 2013 letter from Chuck Dougherty to the Hearing Examiner;
21. Appearing and testifying on behalf of the applicant was Jeff Slothower. Mr. Slothower testified that he was the attorney for the applicant and was authorized to appear and speak on their behalf. Mr. Slothower reiterated arguments made in his Memorandum of Authorities dated May 8<sup>th</sup>, 2013. Mr. Slothower indicated that the applicant had no objection to any of the proposed conditions of approval.
22. Also speaking on behalf of the applicant was Steve Rogers. Mr. Rogers is Vice President of the Cascade Field and Stream club. Mr. Rogers testified that the applicant will open the range for public use one to two days a week. He further testified that the applicant will comply with all rules and regulations imposed by the County or any agency with jurisdiction.
23. Also testifying on behalf of the applicant was Chris Cruse. Mr. Cruse was a land surveyor and he is responsible for submitting Exhibits 78 through 81 into the record.
24. The following members of the public testified in favor of the project:
- 24.1 Deborah Essman;
  - 24.2 Gary Brown;
  - 24.3 Patricia Binder;
  - 24.4 Duane Fluent;
  - 24.5 Larry Fuller;
  - 24.6 Wes Jones;
  - 24.7 Charles Dougherty;
  - 24.8 Joe Feldmeth;
  - 24.9 George Wolf;
25. The following individuals testified in opposition to this project.
- 25.1 Dean Tonseth;
  - 25.2 Margaret Towle;
  - 25.3 Kent Fyall;
  - 25.4 James Carmody;

26. The project is desirous to the public convenience and is not detrimental or injurious to the public health, peace or safety. This is because there is demonstrated need for a shooting range within Kittitas County. While it will not end the problem of persons target shooting on public lands, it will provide target shooters with a controlled environment in which to practice their shooting skills. The shooting range will also allow law enforcement individuals to more effectively train their shooting skills. The project would not be detrimental or injurious to the public health, peace or safety, as it is conditioned.
27. In addition, the project is not detrimental or injurious to the character of the surrounding neighborhood. This is because the project area is generally within the Horizon Wind Energy Facility which consists of approximately 52 wind turbines. There are residences within the project area. Any detrimental impacts to these residences are mitigated by the conditions of approval. The applicant will be required to comply with noise regulations as set forth in the Washington Administrative Code as well as all noise mitigation measures in the MDNS. The applicant will be required to follow the best management practices regarding the construction of the various prospects of the shooting range and management of lead within the range.
28. The shooting range shall be accessed from Hayward Road via Bettas Road. Access to the property shall not be from Hayward Road via SR 10.
29. In the event the average daily usage of Hayward Road by vehicles to the project exceed minimum levels that trigger the requirement for a traffic impact study and road improvement requirements as required by the Kittitas County Code, the applicant shall obtain a traffic impact study from a licensed engineer and shall construct, at its sole expense, all necessary and recommended road improvements.
30. If the applicant is proposing a year round use of the shooting range, the applicant shall be required to improve Hayward Road to those standards determined necessary by Kittitas County Department of Public Works for a year round road.
31. All parking for the use of the shooting range shall occur on site.
32. Prior to opening any phase of the shooting range, the applicant shall submit to the Kittitas County Department of Community Development a narrative report detailing how each condition of approval is being met for existing phases and will be met for the new phase.
33. 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)
34. 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)
35. 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)

36. 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, this proposal is consistent with Kittitas County Code Title 17 Zoning, Title 17A Critical Areas, Title 15 Environmental, 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 Recommended Conclusions of Law, the Hearing Examiner hereby recommends that Application 11-00003, Cascade Field and Stream 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 October 17, 2011 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. Fire Protection: Contact the Kittitas County Fire Marshal regarding any additional access requirements for Emergency Response.
  - 5.1 Kittitas County Fire District #1 will need to be supplied with a gate key or a Knox Box shall be installed for immediate access through any gates to the subject property.
  - 5.2 Water storage is a mute point for this proposal at this time since no buildings will be built immediately; if buildings are proposed and built in the future, this issue will have to be addressed at that time.
6. 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.
7. Washington Administrative Code (WAC) 173-400-040 requires that reasonable precaution be taken to prevent dust from leaving the site. Also, dust is prohibited from interfering unreasonable with the use and enjoyment of property, causing health impacts, or damaging property or business.
8. 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.
9. This NPDES Construction Stormwater General Permit requires that a Stormwater Pollution Prevention Plan (Erosion Sediment Control Plan) is prepared and implemented for all permitted construction sites. These control measures must be able to prevent soil from being carried into surface water (this includes storm drains) by stormwater runoff. Permit coverage and erosion control measures must be in place prior to any clearing, grading, or construction.
10. All development, design and construction shall comply with all Kittitas County Codes Zoning and the International Fire and Building Codes.
11. 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 February 8, 2013. The following are the mitigation contained within the MDNS and shall be conditions of approval:
  - Transportation**
    - 11.1 The site is accessed from Hayward Road which is a primitive road and receives minimal maintenance. Improvements to Hayward Road will not be required because the Average Daily Traffic is expected to remain below 100. If future traffic to the club raises the ADT above 100, mitigation to offset the impacts of the increased traffic may be required.



11.2 Access to Hayward Road shall be from Bettas Road. The club shall implement procedures to prevent users from accessing Hayward Road from SR 10.

**Land & Air**

11.3 The U.S. Environmental Protection Agency's Best Management Practices for Lead at Outdoor Shooting Ranges manual shall be strictly adhered to.

11.4 If the applicant plans to burn trees or debris from the property, the applicant shall obtain a burn permit from the Department of Ecology. Only natural unprocessed vegetation may be burned in an outdoor fire. It is the applicant's responsibility to contact the Department of Ecology regarding this permit.

**Water & Sewer**

11.5 Any future development requiring water or septic will be required to meet the newest requirements of Kittitas County Public Health Department, Washington State Department of Health and/or Washington State Department of Ecology effective at the time of development.

11.6 Activities such as road widening, stump pulling and clearing grading and fill work and utility placements may require an 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.

**Fire & Life Safety**

11.7 Fire danger restrictions will be in place and adhered to at the same level as those for the adjacent Department of Natural Resources (DNR) land.

**Cultural Resources**

11.8 The applicant shall immediately contact the Washington State Department of Archaeology & Historic Preservation, and the Yakama Nation if any items of possible cultural or historic significance are encountered during construction activities. Work shall be immediately halted with the area and a large enough perimeter established in order to maintain the integrity of the site.

**Light & Glare**

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

## Noise

- 11.10 Development and construction practices during building of this project shall only occur between the hours of 7:00 am to 7:00 pm to minimize the effect of construction noise on nearby residential properties Berms and other noise deflecting construction, as described in the Noise Study prepared by Acoustical Engineer dated 10-15-12, shall be implemented to deflect the noise from surrounding residences.

## 12. Hearing Examiner Recommended Conditions

- 12.1 The applicant shall, at all times and in all respects, comply with WAC 173.60 Maximum Environmental Noise Level.
- 12.2 The hearing Examiner recognizes the exception created by WAC 173.60.050(1)(b). However, the Hearing Examiner also recognizes WAC 173.60.050(6) and it is under this authority that the Hearing Examiner is recommending the noise abatement measures as indicated in the MDNS.
- 12.3 The applicant shall demonstrate, to the satisfaction, of Kittitas County Department of Community Development Staff, that the noise abatement measures are actually effective in mitigating noise, prior to final authorization to operate each additional phase of this project (shotgun range, long distance range, pistol range, etc).
- 12.4 The applicant shall be responsible to ensure that its guests and members do not access the site from Hayward Road via SR10.
- 12.5 The applicant shall have member-manager on site at all times the facility is open for public use. This member-manager shall be responsible to ensure compliance with all conditions of approval.
- 12.6 In the event the average daily usage for Hayward Road exceeds that number which triggers the need for a traffic study and the possibility for road improvements, Kittitas County Department of Community Development Staff are authorized to require the applicant to conduct a traffic impact study and to require the applicant to comply with all recommendations contained therein or as recommended by Kittitas County Public Works.
- 12.7 All parking for the shooting range shall occur on site.
- 12.8 Prior to opening any phase of the shooting range, the applicant shall submit to the Kittitas County Department of Community Development a narrative report detailing how each condition of approval is being met for existing phases and will be met for the new phase.

- 12.9 The shooting range shall be accessed from Hayward Road via Bettas Road. Access to the property shall not be from Hayward Road via SR 10.
- 12.10 If the applicant is proposing a year round use of the shooting range, the applicant shall be required to improve Hayward Road to those standards determined necessary by Kittitas County Department of Public Works for a year round road.

Dated this 25<sup>th</sup> day of July, 2013.

KITTITAS COUNTY HEARING EXAMINER

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Andrew L. Kottkamp