

**KITTITAS COUNTY  
LAND USE HEARING EXAMINER**

<b>IN THE MATTER OF</b>	)	<b>FINDINGS OF FACT,</b>
	)	<b>CONCLUSIONS OF LAW,</b>
<b>CU-21-00004</b>	)	<b>CONDITIONS OF APPROVAL</b>
<b>Kittitas County PUD - Bettas Rd.</b>	)	<b>AND DECISION</b>

THIS MATTER having come on for hearing in front of the Kittitas County Hearing Examiner on September 20, 2021, the Hearing Examiner having taken evidence hereby submits the following Findings of Fact, Conclusions of Law and Decision:

**I. FINDINGS OF FACT**

1. The proposed project would expand an existing electrical substation by approximately 25,000 square feet including the total site area of the project being 3.58 acres with 3.22 acres of disturbance. The expanded electrical substation would also include a 335 square foot control building.
2. Location: Parcel 961877 located approximately 12 miles northwest of the City of Ellensburg, near Hayward and Bettas Road, in the SW 1/4 of Section 15, Township 19, Range 17, Kittitas County bearing Kittitas County Assessor's map number 19-17-15000-0015.
3. Site Information:

Total Property Size:	3 Acres
Number of Lots:	1
Domestic Water:	None (proposal does not include any use of water)
Sewage Disposal:	None (proposal does not include any new sewage disposal)
Power/Electricity:	Kittitas PUD
4. Site Characteristics:

North:	Shrubs/Barren Ground
South:	Shrubs/Barren Ground/Power Transmission Lines
East:	Mostly Shrubs/Barren Ground
West:	Shrubs/Barren Ground/ Windmills
5. Access: The site is accessed off a private driveway from Hayward Rd, approximately 12 miles northwest of the City of Ellensburg.
6. The parcel involved in this proposal is in a land use designation of *Rural Working* and zoning designation of *Agriculture 20*. The proposed project is classified as a "Utilities." Utilities are

an allowed use within an Agricultural 20 Zone under KCC 17.15.060.1 with footnote #10 of this section. The footnote outlines that this use is not allowed in the agricultural overlay zone and that utilities are handled by Chapter 17.61 of Kittitas County Code. Kittitas County Code 17.61.020(6) lists that special facilities (of which electrical substations are as defined in KCC 17.61.010) require a conditional use permit in all zoning districts. The conditional use permit criteria are examined in Section VIII "Project Analysis" of this decision.

7. Deem Complete: A conditional use permit application for Kittitas County PUD Bettas Rd. Expansion (CU-21-00004) was submitted to Kittitas County Community Development Services department on June 21, 2021. The application was deemed complete on July 2, 2021. The site was posted in accordance with KCC 15A.03.110 on July 6, 2021.
8. Notice of Application: A notice of application for the Kittitas County PUD Bettas Rd. Conditional Use Permit (CU-21-00004) was mailed and/or emailed to adjacent landowners located within 500 feet of any portion of the boundary of the proposal's tax parcels & applicable agencies. Notice was given to and published in the official newspaper of record for Kittitas County, and notice was posted to the Kittitas County Website on July 15, 2021, all in conformance with the Kittitas County Project Permit Application Process (Title 15A). The comment period concluded on July 30, 2021.
9. Kittitas County Comprehensive Plan. Utilities are an allowed use within an Agricultural 20 Zone under KCC 17.15.060.1 with footnote #10 of this section. The footnote outlines that this use is not allowed in the agricultural overlay zone and that utilities are handled by Chapter 17.61 of Kittitas County Code. Kittitas County Code 17.61.020(6) lists that special facilities (of which electrical substations are as defined in KCC 17.61.010) require a conditional use permit in all zoning districts:
  - 9.1 CF-P29: Essential public facilities sited outside of urban growth areas must be self-supporting and not require the extension, construction, or maintenance of urban services and facilities.
    - 9.1.1 The proposed project will be self-supporting and no new utilities will need to be extended or constructed to the site.
  - 9.2 CF-P34: Electrical and natural gas transmission and distribution facilities may be sited within and through areas of Kittitas County both inside and outside of municipal boundaries, UGAs, Master Planned Resorts, LAMIRDs, and Fully Contained Communities, including to and through rural areas of the county.
    - 9.2.1 The proposed project is consistent with siting the substation outside of Cities and Urban Growth areas and through rural areas to support the electrical grid throughout the county.
  - 9.3 U-P3: Expansion of improvement of utility systems should be recognized primarily as the responsibility of the utility providing the correspondence service.
    - 9.3.1 The proposed project has Kittitas County PUD as the agency that is providing the expanded service and does not require Kittitas County responsibility and financial assistance with the project.
  - 9.4 U-P4: Additions to and improvements of utilities facilities will be allowed to occur at a time and in manner sufficient to serve growth.

- 9.4.1 Kittitas County has seen increased growth in the area over the last decade. Staff believes that the proposed expansion is at a time and manner sufficient to serve future growth and improve reliability in the county.
  - 9.5 U-P6: Community input should be solicited prior to county approval of utility facilities, which may significantly impact the surrounding community
    - 9.5.1 Since the proposed project requires a conditional use, a notice of application was sent to all owners within 500 feet of the proposed project site that would be the most impacted as well as being posted in both the legal newspaper of record (Northern Kittitas County Tribune) and the Daily Record which is widely distributed throughout Kittitas and provided an opportunity for the public to give feedback.
  - 9.6 RR-P27: Electric and natural gas transmission and distribution facilities may be sited in any areas of Kittitas County including “Rural” designated areas, municipalities, UGAs, Master Planned Resorts, and LAMIRDs.
    - 9.6.1 The proposed project is sited in a “Rural Working” Land Use and can be sited in Rural Areas to serve the power needs of the county.
  - 9.7 This application is consistent with the goals, policies, and objectives of the Kittitas County Comprehensive Plan as outlined above.
10. A SEPA Checklist was submitted with the conditional use application and processed concurrently using the Optional DNS process under WAC 197-11-355. Following the concurrent comment period, CDS issued a Determination of Non-Significance (DNS) on September 2, 2021. The appeal period for the SEPA DNS concluded on September 17, 2021. No appeals have been filed. In addition, CDS performed a critical area review of the properties. Kittitas County did not find any critical areas on the property.
  11. Applicable agencies, adjacent property owners, and interested parties have been given the opportunity to review this proposal. All comments are on file and available for public review. The following parties provided substantive comments during the comment period. Yakama Nation submitted comments on August 5, 2021 after the comment period had ended.
  12. Agency Comments: Kittitas County Building Services, Kittitas County Public Health, Kittitas County Public Works, Washington State Department of Fish & Wildlife and Washington State Department of Archaeology & Historic Preservation.
    - 12.1 Kittitas County Public Health: Public health commented that they had no concerns with the project.
    - 12.2 Kittitas County CDS- Building: Kittitas County Building Department provided comment saying that public service agency power transmission projects are exempt from local building permits per the 2018 IBC code.
    - 12.3 Kittitas County Public Works: Kittitas County Public works commented that grading over 100 cubic yards would require a grading permit and any grading over 500 cubic yards would require engineered grading and storm water plans. They also mentioned that engineered stormwater plans are required if generating impervious surface of over 5,000 square feet and that stormwater systems shall comply with the Stormwater Management Manual for Eastern Washington (SWMMEW).
    - 12.4 Department of Archaeology & Historic Preservation (DAHP): DAHP commented that there is a high probability of encountering cultural resources within the proposed project area and that are numerous prehistoric sites located directly south of the

project. They recommended a professional archaeological survey of the project area be conducted and a report produced prior to ground disturbing activities.

- 12.5 Washington State Department of Fish and Wildlife: WDFW commented on the surrounding habitat in the area as being sagebrush and obligate species including sage thrashers, sagebrush sparrows and sharp-tailed snakes. They note that their online Priority Habitats and Species map has the project location in shrubsteppe and as mule deer winter range habitat and that the Washington Connected Landscapes Project maps the least cost pathway for elk migration through the project area. They commented on the net loss of the shrubsteppe habitat and species and recommended no less than a 2:1 mitigation ratio for the impacts. Eventually, WDFW agreed to a vegetation mitigation of 1.5:1 for permanently disturbed areas.
- 12.6 Yakama Nation. Yakama Nation commented the project is located within the traditional territory of Pshwanapam band. They mentioned that there is at least one precontact site located with the project location and another immediately adjacent and requested a cultural resource survey.
13. No public comments were received.
14. This decision includes conditions to address the comments submitted.
15. In review of this proposal, it is important to consider the goals and policies of the comprehensive plan, applicable county code, public and agency comments, any identified environmental concerns and state and federal requirements.
16. Consistency with the Comprehensive Plan: The proposal is consistent with the goals and policies of the Kittitas County Comprehensive Plan. As referenced above, the following Comprehensive Plan goals and policies apply to this proposal: CF-P29, CF-P34, U-P3, U-P4, U-P6 and RR-P27. Provided the applicant follows and maintains the goals and policies, they shall be in compliance with the Kittitas County Comprehensive Plan. Therefore, the County and applicant are in compliance with the Comprehensive Plan.
17. KCC 17.60A.015 provides the following review criteria to be considered in a conditional use analysis:
  - 17.1 The proposed use is essential or desirable to the public convenience and not detrimental or injurious to the public health, peace, or safety or to the character of the surrounding neighborhood.
    - 17.1.1 Applicant Response: This project will better serve the electrical load growth and improve the service reliability in the surrounding area. It will be adjoined to an existing facility so there is no anticipated impact.
    - 17.1.2 Hearing Examiner Finding: The project has very little development surrounding it. It is desirable to the public convenience in providing reliable electrical service. The proposed use is not anticipated to be detrimental or injurious to the public health, peace, safety, or character of the surrounding neighborhood.
  - 17.2 The proposed use at the proposed location will not be unreasonably detrimental to the economic welfare of the county and that it will not create excessive public cost for facilities and services by finding that:

- a. The proposed use will be adequately serviced by existing facilities such as highways, roads, police and fire protection, irrigation and drainage structures, refuse disposal, water and sewers, and schools; or
  - b. The applicant shall provide such facilities; or
  - c. The proposed use will be of sufficient economic benefit to offset additional public costs or economic detriment.
- 17.2.1 Applicant Response: “It will adequately serviced by existing facilities such as highways, roads, police and fire protection, irrigation and drainage structures, refuse disposal, water and sewer, and schools”.
  - 17.2.2 Hearing Examiner Finding: As proposed, the project will be adequately serviced by existing facilities and will not require additional public costs. The project will not have a detrimental economic impact.
- 17.3 The proposed use complies with relevant development standards and criteria for approval set forth in this title or other applicable provisions of Kittitas County Code.
- 17.3.1 Applicant Response: “Proposed site complies with relevant development standards and criteria for approval set forth in this title or other applicable provisions of Kittitas County Code.”
  - 17.3.2 Hearing Examiner Finding: The use is consistent with the relevant development standards and criteria in Kittitas County Code. The expanded substation is permitted in the Agricultural 20 zone through a Conditional Use Permit under KCC 17.61.020(6).
- 17.4 The proposed use will mitigate material impacts of the development, whether environmental or otherwise.
- 17.4.1 Applicant Response: “Project is adjacent to an existing and operational electric utility substation and there is no anticipated impact.”
  - 17.4.2 Hearing Examiner Finding: The proposed use has very few existing neighboring land uses. It is in a very sparsely populated area with mainly only windmills nearby.
- 17.5 The proposed use will ensure compatibility with existing neighboring land uses.
- 17.5.1 Applicant Response: “Project is adjacent to an existing and operational electric utility substation and there is no anticipated impact.”
  - 17.5.2 Hearing Examiner Finding: The proposed use has very few existing neighboring land uses. It is in a very sparsely populated area with mainly only windmills nearby.
- 17.6 The proposed use is consistent with the intent and character of the zoning district in which it is located.
- 17.6.1 Applicant Response: “Project is adjacent to an existing and operational electric utility substation and there is no anticipated impact.”
  - 17.6.2 Hearing Examiner Finding: The proposed project is located in Agricultural 20 zoning. Agricultural zoning is an area wherein farming, ranching and rural lifestyle are dominant. The intent of this zone is to preserve farmland from encroachment by non-agricultural uses. While this proposed use is not agricultural in nature, the land is not well suited for agricultural uses and is not designated as agricultural land uses by the Washington State Department of Agriculture on its agricultural land use geodatabase and it is outside of irrigation district boundaries.
- 17.7 For conditional uses outside of Urban Growth Areas, the proposed use:

- a. Is consistent with the intent, goals, policies, and objectives of the Kittitas County Comprehensive Plan, including the policies of Chapter 8, Rural and Resource Lands;
  - b. Preserves “rural character” as defined in the Growth Management Act;
  - c. Requires only rural government services; and
  - d. Does not compromise the long term viability of designated resource lands.
- 17.7.1 Applicant Response: “Project is adjacent to an existing and operational electric utility substation and there is no anticipated impact.”
  - 17.7.2 Hearing Examiner Finding: The proposal is consistent with the Kittitas County Comprehensive Plan as described above. The Hearing Examiner finds that the project will preserve rural character as defined in the GMA, will require only existing rural government services, and will not compromise the long-term viability of designated resource lands.
  - 17.7.3 The Kittitas County Hearing Examiner finds the application, as conditioned, is consistent with KCC 17.60A Conditional Uses. The use will only require rural government services and does not compromise the long-term viability of any resource lands.
- 18. Consistency with the provisions of the KCC Title 17A, Critical Areas: CDS conducted an administrative critical area review in accordance with KCC 17A and found no critical areas on the property.
  - 19. Consistency with the provisions of the KCC Title 14.04, Building Code: Any future buildings must be consistent with International Building Codes.
  - 20. Consistency with the provisions of KCC Title 12, Roads and Bridges: As conditioned, the proposal is consistent with the provisions of KCC Title 12.
  - 21. Consistency with the provisions of KCC Title 20, Fire and Life Safety: As conditioned, the proposal is consistent with the provisions of KCC Title 20.
  - 22. The following agencies provided comments during the comment period:
    - 22.1 Kittitas County Building Services;
    - 22.2 Kittitas County Public Health;
    - 22.3 Kittitas County Public Works;
    - 22.4 Washington State Department of Fish & Wildlife;
    - 22.5 Washington Department of Archaeology & Historic Preservation;
    - 22.6 Yakama Nation provided comments after the comment period ended on August 5, 2021.
  - 23. No public comments were received.
  - 24. An open record public hearing after due legal notice was held on September 20, 2021 via video conferencing due to the ongoing Covid-19 pandemic.
  - 25. At the open record public hearing the following exhibits were entered into the record:
    - 25.1 Ex. 1 Pre-Application Meeting Notes

- 25.2 Ex. 2 Application
- 25.3 Ex. 3 Receipt (CUP and SEPA)
- 25.4 Ex. 4 Site Plan and Details
- 25.5 Ex. 5 Projective Narrative
- 25.6 Ex. 6 Construction Stormwater Permit Notice of Intent
- 25.7 Ex. 7 SEPA Checklist
- 25.8 Ex. 8 6-30-2021 Amended SEPA Checklist
- 25.9 Ex. 9 CDS Staff Maps
- 25.10 Ex. 10 Deemed Complete
- 25.11 Ex. 11 Affidavit of Sign Posting & Picture
- 25.12 Ex. 12 Affidavit of Mailing and Publication – Notice of Application
- 25.13 Ex. 13 Notice of Application
- 25.14 Ex. 14 Notice of Application - Email
- 25.15 Ex. 15 Comments: Kittitas County Public Health
- 25.16 Ex. 16 Comments: Kittitas County – CDS Building Dept.
- 25.17 Ex. 17 Comments: Kittitas County Public Works
- 25.18 Ex. 18 Comments: Department of Archaeology & Historic Preservation (DAHP)
- 25.19 Ex. 19 Comments: Washington Department of Fish & Wildlife
- 25.20 Ex. 20 Transmittal of Comments
- 25.21 Ex. 21 Yakama Nation Comments
- 25.22 Ex. 22 Transmittal of Yakama Nation Comments to Applicant
- 25.23 Ex. 23 E-mail communication about Shrubsteppe Mitigation
- 25.24 Ex. 24 SEPA DNS
- 25.25 Ex. 25 Notice of SEPA Action & Public Hearing Notice
- 25.26 Ex. 26 Affidavit of Publication & Mailing: Notice of SEPA Action & Hearing
- 25.27 Ex. 27 PowerPoint Presentation
- 25.28 Ex. 28 Staff Report.

- 26. Appearing and testifying on behalf of the applicant was Matt Boast, General Manager of the Kittitas County PUD. Mr. Boast testified that he is an agent for the owner/applicant and was authorized to speak on his behalf. He stated that the owner/applicant had no objection to any of the proposed conditions of approval.
- 27. Testifying from the public was Jennifer Nelson on behalf of WDFW. Ms. Nelson stated that WDFW agreed to a 1.5:1 mitigation for all permanent disturbed areas.
- 28. The Kittitas County Hearing Examiner considered all evidence within the record in rendering this decision.
- 29. Any Conclusion of Law that is more correctly a Finding of Fact is hereby incorporated as such by this reference.

## II. 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 Buildings and Construction, and Title 20 Fire and Life Safety.
6. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.

### **III. DECISION**

Based on the above Findings of Fact and Conclusions of Law, CU-21-00004 is hereby **APPROVED** subject to the following 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. The project shall proceed in substantial conformance with the plans and application materials on file with CDS dated June 21, 2021 and subsequent information included in the complete file index except as amended by the conditions herein.
2. A boundary line adjustment with Bonneville Power Administration (BPA) must be approved by Kittitas County and then finalized by Kittitas County Assessor's office before any construction commences.
3. The applicant shall comply with all Local, State and Federal environmental standards and regulations.
4. The project site shall be secured by a fence. Any fence taller than 7 feet shall require a building permit from Kittitas County.
5. A grading permit is required for any dirt work exceeding 100 cubic yards of excavation and/or fill.
6. If stormwater plans are required, they shall be in compliance with the Eastern Washington Storm Water Manual. These plans shall be submitted to Kittitas County Public Works for review and approval prior to final CUP approval.
7. All development, design and construction shall comply with International Fire Code requirements and KCC Title 20 Fire and Life Safety. Please contact the Kittitas County Fire Marshal for specific requirements.
8. The applicant shall complete a Cultural Resource Survey, shall submit this survey to Washington State Department of Archaeology and Historic Preservation (DAHP), the



Yakama Nation, and Kittitas County, and shall comply with all recommendations within the Cultural Resource Survey and those submitted by DAHP, Yakama Nation and Kittitas County. This shall be accomplished prior to any ground disturbing activities for the project.

9. Should ground disturbing or other activities related to the proposed project 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 & Historic Preservation (DAHP) and Yakama Nation. 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.
10. Shrubsteppe vegetation shall be replanted within one (1) year of completion of the project. It shall be a 1.5:1 mitigation ratio for all ground vegetation that is permanently removed for this project. This mitigation requirement can also be met off-site. All disturbed vegetation areas shall also be restored. A mitigation plan including a monitoring component shall be approved by Washington Department of Fish and Wildlife prior to construction.
11. It is a proponent's responsibility to demonstrate compliance with the approval conditions of a conditional use permit. Compliance with all conditions must be demonstrated in writing to Kittitas County CDS prior to Final Conditional Use Permit issuance. Final approval of a Conditional Use Permit is required within 5 years of the approval date pursuant to KCC 17.60A.090.

Dated this 21 day of September, 2021.

KITTITAS COUNTY HEARING EXAMINER

  
\_\_\_\_\_  
Andrew L. Kottkamp

This Decision is subject to appeal pursuant to the Kittitas County Code and the Revised Code of Washington.