

KITTITAS COUNTY COMMUNITY DEVELOPMENT SERVICES

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"Building Partnerships – Building Communities"

NOTICE OF DECISION

To: Interested Parties
Applicant

From: Dan Valoff, Staff Planner

Date: January 11, 2010

Subject: Dakota Heights Performance Based Cluster Plat (P-07-53)

Pursuant to RCW 36.70B.130 and KCC 15A.06, notice is hereby given that the Kittitas County Board of County Commissioners granted preliminary plat approval for the Dakota Heights Performance Based Cluster Plat (P-07-53) located east off of Upper Peoh Point Road, Cle Elum, WA on December 15, 2009.

Copies of the Kittitas County Board of Commissioners Resolution 2009-161 and related file documents may be examined at Kittitas County Community Development Services, 411 N. Ruby Suite 2, Ellensburg, WA 98926. (509) 962-7506.

Issuance of this land use decisions may be appealed by parties with standing, by filing a land use petition in Superior Court, and serving said petition on all required parties pursuant to RCW 36.70C and KCC 15A.08, within twenty-one days of the issuance of the land use decision.

If you have any questions, please do not hesitate to contact our office at (509) 962-7506.

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

**PRELIMINARY PLAT APPROVAL
DAKOTA HEIGHTS PERFORMANCE BASED CLUSTER PLAT (P-07-53)**

RESOLUTION

NO. 2009- 1601

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 Dakota Heights Performance Based Cluster Plat and described as follows:

The division of 21.03 acres into 14 lots, located southeast of the City of South Cle Elum located off of Upper Peoh Point Road, Cle Elum, WA 98922, located in a portion of Section 6, T19N R16E, WM, in Kittitas County. Map number 19-16-06010-0019. Proponent: Todd & Terry Geiger, landowners.

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. Todd and Terry Geiger landowners have applied for a 14-lot cluster plat pursuant to Kittitas County Code 16.09 on approximately 21.03 acres of land that is zoned AG-3. The project proposes individual on-site septic systems and a Group B water system having to obtain water via the exempt wells and a water rights.
2. The subject property is located southeast of the City of South Cle Elum located off of Upper Peoh Point Road, Cle Elum, WA 98922, located in a portion of Section 6, T19N R16E, WM, in Kittitas County. Map number 19-16-06010-0019.
3. The Notice of Application for the preliminary plat application was issued on January 30, 2008. 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 15, 2008.

4. Community Development Services issued a Mitigated Determination of Non-Significance (MDNS) on September 10, 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 Dakota Heights Performance Based Cluster Plat (P-07-53).
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 Dakota Heights Performance Based Cluster Plat (P-07-53). A motion was made and seconded that the preliminary plat be approved subject to adding two additional conditions. 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. A note shall be placed on the face of the final mylars that states:
"Final approval of this plat is conditioned upon the applicant obtaining a Determination of Water Neutrality from the Washington State Department of Ecology. At final approval, if the applicant can show that under the then existing Upper Kittitas County Ground Water Rule such a determination is not required, then the applicant may be released from this condition. In order to secure such a release the applicant must prove that either the withdraw had already commenced before July 16th, 2009 or that the Upper Kittitas county Ground Water Rule has changed and that under the new rule the applicant is not required to obtain a Determination of Water Neutrality and the applicant has meet all the conditions that are required by the new rule."
9. 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.

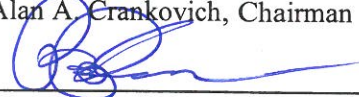
NOW, THEREFORE BE IT RESOLVED: That the Kittitas County Board of Commissioners hereby grants preliminary plat approval to the Dakota Heights Performance Based Cluster Plat (P-07-53) and adopts the Kittitas County Land Use Hearing Examiner's Recommended Finds of Fact, Conclusions of Law, Decision and Conditions of Approval (See Exhibit A) and the same hereby is, approved with the proposed development configuration (See Exhibit B).

DATED this 15th day of December, 2009 at Ellensburg, Washington.

BOARD OF COUNTY COMMISSIONERS
KITITAS COUNTY, WASHINGTON



Alan A. Crankovich, Chairman



Paul Jewell, Vice Chairman



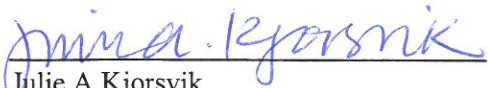
Mark McClain, Commissioner

APPROVED AS TO FORM:

Greg Zempel WSBA #19125



CLERK OF THE BOARD



Julie A Kjorsvik

Exhibit "A"

**KITTITAS COUNTY
LAND USE HEARING EXAMINER**

IN THE MATTER OF)
)
P-07-53)
Dakota Heights Performance Based Cluster Plat)
)
**RECOMMENDED FINDINGS OF
FACT, CONCLUSIONS OF
LAW, DECISION AND
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. Todd and Terry Geiger landowners have applied for a 14-lot cluster plat pursuant to Kittitas County Code 16.09 on approximately 21.03 acres of land that is zoned AG-3. (Staff Report)
2. The applicant is Todd and Terry Geiger, 11109 48th St. E., Edgewood, WA 98372. (Application materials)
3. The proposed lot sizes range from 0.50 acres to 0.93 acres with 11.91 acres to be designated open space. The project is proposed to be served by a Group "B" public water system and individual on-site septic systems. (Staff Report)
4. The property is located southeast of the City of South Cle Elum located off of Upper Peoh Point Road, Cle Elum, WA 98922, located in a portion of Section 6, T19N R16E, WM, in Kittitas County. Map number 19-16-06010-0019. (Staff Report)
5. Site Information:

Total Project Size:	210-.03 acres
Number of Lots:	14
Zoning district	Agriculture-3
Domestic Water:	Group "B" community water system
Sewage Disposal:	Individual on-site septic system
Power/Electricity:	Puget Sound Energy
Fire Protection:	Fire District #7
Irrigation District:	Kittitas Reclamation District

(Staff Report)

6. Site Characteristics: The area is lightly forested and has been in agriculture for over 25 years. (Staff Report)
7. Surrounding Property:
North: Vacant
South: Residential
East: Residential
West: Residential
(Staff Report)
8. The Comprehensive Plan designation is Rural. (Staff Report)
9. The subject property is zoned Agriculture-3, which allows for one residential unit per 3 acres. (Staff Report)
10. A complete long plat application was submitted to Community Development Services on September 26, 2009. The Notice of Application for the preliminary plat application was issued on January 30, 2008. 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. (Staff Report)
11. 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 September 10, 2009. The appeal period ended on September 24, 2009 at 5:00 p.m. 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 individual on-site septic systems and a Group B water system having to obtain water via the exempt wells and a water rights. The details of the proposal's water source are outlined in a letter from Department of Ecology dated 3/16/2009. Staff conducted and an administrative critical area review in accordance with KCC 17A and found an area of steep slopes (25-50%) on the project site. (Staff Report)
13. This proposal is consistent with the Kittitas County Subdivision Code Chapter 16.09 for Performance Based Cluster Platting. (Staff Report)
14. All roads are required to meet all Kittitas County Road Standards as outlined in the November 20, 2007 memorandum issued by the Department of Public Works. As conditioned, the proposal is consistent with the provisions of KCC Title 12. (Staff Report)
15. The following agencies provided comments during the comment period: Department of Ecology, 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)

16. 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)
17. This Application was found to be technically complete as required by law. (Staff report))
18. The entire Planning Staff file was admitted into the record at the public hearing. (Public hearing record)
19. Staff submitted Exhibit 1 which was admitted into the record. This was an email from Deidre Link to Dan Valoff dated October 8, 2009. (Public hearing record)
20. 56.6% of the property (11.91 acres) will be placed in open space for perpetuity. (Public hearing record)
21. The applicant will develop a Class B water system. (Public hearing record)
22. The applicant will create wider easements than required for multi-modal transportation. (Public hearing record)
23. Based upon the above three findings of fact, the applicant is eligible for 106 points pursuant to the Public Benefit Rating System (PBRs). This results in an increase of density of 100%. (Public hearing record)
24. The Kittitas County Community Development Services recommended approval of this permit, subject to the recommended conditions of approval. (Public hearing record)
25. Public hearing after due legal notice was held on October 8, 2009. Appearing and testifying on behalf of the applicant was John Ufkes. Mr. Ufkes testified that he was the attorney for the applicant and that he was authorized to appear and speak on their behalf. Mr. Ufkes presented Exhibit 2, an aerial photograph of the site, and Exhibit 3, a letter from Mr. Ufkes to the Hearing Examiner with attachments. Exhibits 2 and 3 were admitted into the record. Mr. Ufkes indicated that the applicant agreed with all of the proposed conditions of approval. It was Mr. Ufkes' position that the Department of Ecology had withdrawn their concerns as stated in their March 16, 2009, agency comment, pursuant to the emails that were attached to Exhibit 3. (Open record public hearing testimony)
26. The Hearing Examiner finds that the comments contained in the Department of Ecology letter dated March 13, 2009, have not been withdrawn by the Department of Ecology. (Public hearing record)
27. The following members of the public testified in opposition to the project:
 - 27.1 Larry Fuller testified that he objected to the hearing because of the claimed deficiency of the notice that was published in the *Daily Record*. He testified that the notice contained some inaccurate information that did not truly put all area residents on notice of this particular application. He also testified that the property itself was last posted over a year ago. He claims that there was no posting of the property for SEPA comment. Mr. Fuller

submitted Exhibit 4 which was admitted into the record. Exhibit 4 is a copy of the September 4, 2009, *Daily Record*, Legal Advertising section. Mr. Fuller testified that there is significant wildlife in this area that utilized the applicant's property. Mr. Fuller claims that the applicant ignored the existence of wildlife in their SEPA checklist disclosures. Mr. Fuller requested that the project be returned to staff and that new notices for SEPA comments and appeal time periods be permitted.

27.2 Also testifying in opposition to this project was Robert Deeds. Mr. Deeds testified that the development is generally acceptable but only if it complied with the zoning density requirements of the underlying zone. He complained that this is a cluster development that is not located near a city where city services would be available.
(Open record public hearing testimony)

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 P-07-53, Dakota Heights Performance Based Cluster 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 September 26, 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. 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. 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.”*
9. 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).
10. A certificate of title of the property proposed to be platted shall be submitted with the final plat.
11. Computer sheets shall be submitted with the final plat showing the closure of plat boundaries, blocks, lots or any other area with no more error than one foot in five thousand feet, together with the acreage of each lot.
12. It appears that the parcel number is wrong in the treasurer’s approval block. The correct information shall be submitted with the final plat.
13. 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.
14. Access shall be constructed as a High-Density Private Road and serve no more than 40 tax parcels. See current 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 22’, with 1’ shoulders, for a total width of 24’.
 - b. Minimum centerline radius shall be 60’.
 - c. Surface requirement BST/ACP.

- 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 with a county road.
15. A cul-de-sac shall be required at the end of the private road. An alternative turnaround may be used, with prior written approval from the County Fire Official. Permanent dead-end streets shall have a turn-around having an outside right-of-way easement diameter of at least 110' (55' radius) at the closed end. 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 cul-de-sac requirements.
16. Access to lot 14 shall be via the proposed 60' access and utility easement. No direct access onto Upper Peoh Point Road shall be allowed as access to lot 14.
17. Plat notes shall reflect the following:
- a. Entire private road shall achieve 95% compaction and shall be inspected and certified by a licensed engineer in the State of Washington specifying that the road meets current Kittitas County Road Standards prior to the issuance of building permit for this plat.
 - b. 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.
 - c. Maintenance of the access is the responsibility of the property owners who benefit from its use.
 - d. An approved access permit will 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.

- e. Any further subdivision or lots to be served by proposed access may result in further access requirements. See Kittitas County Road Standards.
 - f. A public utility easement 10 feet in width is reserved along all lot lines. The 10 foot easement shall abut the exterior plat boundary and shall be divided 5 feet on each side of interior lot lines. Said easement shall also be used for irrigation.
18. The applicant shall meet all applicable conditions of any pre-established or required Private Road Maintenance Agreements.
 19. It is the responsibility of the Professional Licensed Surveyor (PLS) to ensure the lot closures are correct and accurate.
 20. 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.
 21. Contact the Kittitas County Fire Marshall regarding any additional access requirements for emergency response.
 22. 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.
 23. 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."
 24. 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.
 25. Both sheets shall reflect the Plat number: P-07-53.

Dated this 15th day of October, 2009.

KITTITAS COUNTY HEARING EXAMINER

Andrew L. Kottkamp

