

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

ORDINANCE NO. 2009- 03

**TUMBLING RIDGE PLANNED UNIT DEVELOPMENT (PUD) REZONE (Z-07-16)
AND TUMBLING RIDGE PRELIMINARY PLAT (P-07-61)
IN THE MATTER OF AMENDING THE KITTITAS COUNTY ZONING ATLAS
FOR A PORTION OF SECTION 31 OF TOWNSHIP 20 N., RANGE 15 E. WM. FROM
RURAL 3 TO PLANNED UNIT DEVELOPMENT (PUD) AND THE PLATTING OF
17.74 ACRES INTO 14 LOTS**

WHEREAS, according to Kittitas County Code Titles 15A & 17, relating to general rezones, adopted pursuant to RCW 36.70B & 36.70 respectively, and according to Kittitas County Code Title 16, relating to Subdivision of Land, adopted pursuant to RCW 58.17, an open record hearing was held by the Kittitas County Hearing Examiner on December 11, 2008 for the purpose of considering a zone change consisting of approximately 17.74 acres from Rural 3 to Planned Unit Development (PUD), and a preliminary plat known Tumbling Ridge and described as follows:

The division of 17.74 acres into 14 lots, map number 20-15-31050-0001 located in portions of Section 31, T20N, R15E, WM in Kittitas County. Proponent: Anne Watanabe, authorized agent for Tumbling Ridge LLC, 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 change of zoning and platting; and,

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

WHEREAS, a closed record public meeting was held by the Board of County Commissioners on March 3, 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 rezone and preliminary plat:

1. Ann Watanabe authorized agent for Tumbling Ridge LLC landowners, for a project specific Planned Unit Development (PUD) rezone and associated 14-lot Preliminary Plat on approximately 17.74 acres of land that is currently zoned Rural-3. The lots range in

size from 0.5 to 0.75 acres in size with 10 acres dedicated as open space.

2. The project is located west of the City of Cle Elum off of Bullfrog Road and Jenkins Drive, Cle Elum, WA 98922 located in a portion of the North ½ of Section 31, T20N R15E, W.M., in Kittitas County. Map number 20-15-31050-000
3. The Kittitas County Comprehensive Plan's Land Use Element designates the subject property as Rural and the current zoning is Rural 3.
4. Community Development Services issued a Notice of Application pursuant to KCC 15A.03 on January 22, 2008.
5. Community Development Services issued a Mitigated Determination of Non-Significance (MDNS) on May 30, 2008. No appeals were filed.
6. The Planning Commission conducted an open record hearing on June 24, 2008 to consider this matter where testimony was heard. On October 14, 2008 the Planning Commission passed a motion by a vote of 2 to 0 with 2 abstentions to forward a recommendation of approval for the Tumbling Ridge PUD rezone and preliminary plat and approved their Findings of Fact.
7. On November 18, 2008, the Kittitas County Board of Commissioners conducted a closed record hearing to consider the Planning Commission's recommendation. The Board continued the hearing to December 2, 2008, when they voted to remand this matter to the Hearing Examiner to reexamine the record, to reopen the record and conduct a continued open record public hearing.
8. On January 22, 2009, the Kittitas County Hearing Examiner conducted an open record hearing where testimony was heard. On February 5, 2009 the Hearing Examiner submitted his Recommended Findings of Fact, Conclusions of Law, and Conditions of Approval of the Tumbling Ridge PUD rezone and Preliminary Plat.
9. The Board of County Commissioners conducted a closed record hearing on February 18, 2009 for the purpose of considering the Tumbling Ridge PUD rezone (Z-07-16) and Preliminary Plat (P-07-61).
10. The Board of County Commissioners finds that when the county comprehensive plan and zoning code are used to define whether this application is rural or urban in nature, the Board finds that it must be defined as rural. Because it is rural, GPO 2.190 which states: "*Except in areas designated for urban growth, new urban growth, new urban or suburban land use shall be precluded by the county in the vicinity of a Master Plan Resort*", has not been violated.

11. The Board of County Commissioners finds that the record clearly shows a relationship between the owners of Lots 1 and 2 of the Tumbling Ridge Short Plat (SP-06-84). Specifically, the fact that one parcel is using almost the entirety of the allowable exempt water withdrawal, leaving an insufficient amount for the other parcel does not create a materially detrimental use of properties in the immediate vicinity as both parcel owners are related. Notice of this proposed land use action was given, and no comments or complaint was received.

12. The Board of County Commissioners after review of the record and deliberation closed the hearing where a motion was made and seconded that the proposed Tumbling Ridge PUD, rezone (Z-07-16) and Preliminary Plat (P-07-61) be approved. The motion carried with a vote of 2 to 0 with Commissioner Crankovich being absent.

13. The Board of County Commissioners finds that additional conditions **are not** necessary to protect the public's interest.

NOW, THEREFORE BE IT RESOLVED: That the Kittitas County Board of Commissioners hereby grants approval of the rezone and preliminary plat approval to the **Tumbling Ridge PUD (Z-07-16) and Preliminary Plat (P-07-61)** and adopts the Kittitas County Land Use Hearing Examiner's Recommended Finds of Fact, Conclusions of Law, Decision and Conditions of Approval (Exhibit A), with the proposed development configuration (Exhibit B).


DATED this 17th day of March, 2009 at Ellensburg, Washington.

BOARD OF COUNTY COMMISSIONERS
KITTITAS COUNTY, WASHINGTON

ABSTAINED

~~Alan A. Crankovich, Chairman~~


Paul Jewell, Vice Chairman


Mark McClain, Commissioner



Julie A Kjorsvik
Julie A Kjorsvik

APPROVED AS TO FORM:

Greg Zempel WSBA #19125

Exhibit "A"

**KITTITAS COUNTY
LAND USE HEARING EXAMINER**

IN THE MATTER OF)	RECOMMENDED FINDINGS OF
)	FACT, CONCLUSIONS OF
RZ-07-16 and P-07-61)	LAW, DECISION AND
Tumbling Ridge PUD Rezone and)	CONDITIONS OF APPROVAL
Preliminary Plat)	

THIS MATTER having come on for hearing in front of the Kittitas County Hearing Examiner on January 22, 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. Anne Watanabe, authorized agent for Tumbling Ridge LLC, landowners, has submitted an application for a rezone from Rural-3 to PUD along with a Preliminary Plat to subdivide approximately 17.74 acres into 14-lots. The proposed lot sizes range from 0.50 to 0.75 acres with 10 acres designated as open space for perpetuity. (Staff report)
2. The applicant is Tumbling Ridge, LLC, 2435 Highway 970, P.O. Box 37, Cle Elum, WA 98922. (Application materials)
3. The Hearing Examiner reviewed the record from the open record public hearing held by the Kittitas County Planning Commission on July 22, 2008. All testimony and evidence offered at said hearing was admitted into the record. (Hearing Examiner action at January 22, 2009, hearing)
4. The Planning Commission recommended approval of the rezone and preliminary plat. (Planning Commission action)

5. On November 18, 2008, the Kittitas County Board of Commissioners conducted a closed record hearing to consider the Planning Commission's recommendation. The Board continued the hearing to December 2, 2008, when they voted to remand this matter to the Hearing Examiner to reexamine the record, to reopen the record and conduct a continued open record public hearing and to enter recommended findings of fact, conclusions of law, decision and, if appropriate, recommended conditions of approval for the Board of County Commissioner's consideration. (Staff report and Kittitas County Board of County Commissioners Minutes)
6. The project is proposed to be served by a Group B Public Water System and community septic areas. (Staff report)
7. The project is located west of the City of Cle Elum located off Bullfrog Road and Jenkins Drive, Cle Elum, WA 98922, in the North ½ of Section 31 T20N R15E WM in Kittitas County. Map number 20-15-31050-0001. (Staff report)
8. Site Information:

Total Project Size:	17.74 acres
Number of Lots:	14
Existing zoning district	Rural-3
Proposed zoning district	Planned Unit Development
Domestic Water:	Group B Public System
Sewage Disposal:	Community septic and drainfields
Power/Electricity:	Puget Sound Energy
Fire Protection:	Kittitas County Fire District #7
Irrigation District:	N/A

 (Staff report)
9. Site Characteristics: The area is forested and relatively steep with portions of the property exceeding 25% slope. There is evidence that the land has been logged in the past 10-years. (Staff report)
10. Surrounding Property:
 - North: Suncadia Master Plan Resort
 - South: Vacant
 - East: Cle Elum UGA
 - West: Suncadia Master Plan Resort
 (Staff report)
11. The Comprehensive Plan designation is Rural. (Staff report)
12. The subject property is zoned Rural-3, which allows for a 3 acre minimum lot size. (Staff report)

13. Applications for a rezone from Rural-3 to PUD and a 14-lot Preliminary Plat were received on December 14, 2007. The applications were deemed complete on December 14, 2007. (Staff report)
14. 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 on January 4, 2008. (Staff report)
15. The Notice of Application was issued on January 22, 2008. Said notice was published in the official county newspaper of record and was also mailed to jurisdictional government agencies, adjacent property owners as required and other interested parties. The last day to submit written comments was September 21, 2008. (Staff report)
16. Kittitas County issued a Mitigated Determination of Nonsignificance (MDNS) on May 30, 2008 in accordance with WAC 197-11-355 (Optional DNS process). There were no appeals filed. (Staff report)
17. The proposal is consistent with the goals and policies of the Kittitas County Comprehensive Plan. The proposed subdivision will be adequately served by rural levels of service. The lots will be served by a Group B Public System. Staff has conducted an administrative critical area review in accordance with KCC 17A and found areas with steep slopes in excess of 25% on the subject property. (Staff report)
18. This proposal is consistent with the Kittitas County Subdivision Code Chapter 16.12 for Preliminary Plats. (Staff report)
19. The Kittitas County Department of Public Works has identified that the project shall be served by a single private road, having a 60' wide easement and 22' wide road surface, beginning at Bull Frog Road and ending in a cul-de-sac. The road is required to meet all Kittitas County Road Standards as outlined in the memorandum issued by the Department of Public Works prior to issuance of a building permit. As conditioned, the proposal is consistent with the provisions of KCC Title 12. (Staff report)
20. The following agencies provided comments during the comment period: Department of Ecology, Community Trade & Economic Development, Yakama Nation, Washington Department of Archaeology & Historic Preservation, Washington Department of Transportation, Kittitas County Environmental Health, and Kittitas County Public Works. These comments have been included as conditions of approval to address these agency concerns. (Staff report)
21. Several comments were received during the comment period and these comments have been included as an exhibit in the Hearing Examiner packet and were considered in making the SEPA threshold determination. (Staff report)

22. 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)
23. The entire Planning Staff file was admitted into the record at the public hearing. (Public hearing record)
24. The Kittitas County Community Development Services recommended approval of this preliminary plat, subject to the recommended conditions of approval. (Public hearing record)
25. Public hearing after due legal notice was held on January 22, 2009. Appearing and testifying on behalf of the applicant was Ann Watanabe. Ms. Watanabe offered Exhibit No. 2 into evidence which was admitted into the record. This is a copy of a Road Use Agreement and Easement Exchange for an access easement benefiting the applicant's property. She further testified that the division of 17.74 acres into 14 lots is in affect one lot per 1.26 acres and it is their opinion that such use is rural. It is recognized that the individual lots will be smaller than 1.26 acres with the inclusion of open space into the project. She further testified that Jenkins Drive will stay within the Tumbling Ridge property and will not extend into Suncadia property. All road improvements will be done at the applicant's sole expense. The applicant recognizes that the easement for the use of Jenkins Drive does not include utilities and that it will be necessary for the applicant to bring utilities to the subject property from another point.

Exhibit 2: Road Use Agreement

Exhibit 3: Photographs of Jenkins Drive before road improvements (4 photographs)

Exhibit 4: Jenkins Drive after some road improvements (3 pages)

Exhibit 5: Photographs dated January 17, 2009 (12 photographs)

Exhibits 2 through 5 were admitted into the record. (Public hearing record)

Ms. Watanabe acknowledged that Short Plat 06-84, of which the applicant's property is Lot 1, is only allowed a cumulative total of 5,000 gallon per day withdrawal of water from a well. Ms. Watanabe acknowledged that this project will consume all water allowable to the above-referenced short plat. Ms. Watanabe testified that the owners of Lot 2 of this short plat were aware of this application and aware that this applicant's proposed use will consume and utilize all water usage authorized by the short plat, and that the owners of Lot 2 of SP 06-84 had no objection to the applicant's proposed uses for Lot 1. (Testimony of Ann Watanabe)

26. The owners of Lot 2 of Short Plat 06-84, the Nathan and Lisa Weis Family LLC, received notice of the application materials, the notice of opportunity to comment on this application, and notice of the open record public hearing. The Nathan and Lisa Weis Family LLC provided no comment and no testimony in opposition to this project. (Public hearing record)
27. Supplemental materials were submitted by Staff into the record at the hearing which were Exhibit 1 which was a January 21, 2009, letter to the Hearing Examiner from Jan Sharar with attachments. (Public hearing record)
28. There were no members of the public that testified in favor of the project. (Hearing Examiner finding based on the record)
29. Testifying in opposition to the project were the following individuals:
 - 29.1 Testifying in opposition of the project was Melissa Bates of Cle Elum. She testified that in her opinion and understanding that the 14 homes would exceed the number of users authorized for a Class B well. She offered into the record Exhibit 6 which was her typewritten and handwritten notes. Exhibit 6 was admitted into the record. (Testimony of Melissa Bates)
 - 29.2 Testifying in opposition to the project was Deidre Link of Cle Elum. Her testimony related to her opinion that the general policies of the Comprehensive Plan were vague, that this project constituted urban density in a rural area, that there is a need for facilities to support these created lots, that Suncadia has appropriate densities, that this project would be more appropriately located within the Urban Growth area of Cle Elum and further testified regarding limited liability companies and exempt wells. (Testimony of Deirdre Link)
 - 29.3 Testifying in opposition to the project was Jeff Slothower. Mr. Slothower testified that he is an attorney who is representing the interests of Suncadia, LLC. Mr. Slothower testified as to the difficulty for the predecessor of Suncadia to acquire all proper permits in order to have their Master Planned Resort approved. Mr. Slothower's letter to the Hearing Examiner dated January 15, 2009, with 8 exhibits was admitted into the record and considered by the Hearing Examiner.

Mr. Slothower testified that the Master Planned Resort designation grants to Suncadia certain rights including the right contained within a Comprehensive Plan that no new urban/subdivision development will occur outside of the Urban Growth area next to a Master Planned Resort. Mr. Slothower was referencing Policy 2.190 of the Kittitas County Comprehensive Plan.

The Kittitas County Comprehensive Plan, Section 2.4, relates to Master Planned Resorts. GPO 2.190 is contained within Section 2.4(C) entitled "Self-contained."

and states in its entirety, “[E]xcept in areas designated for Urban Growth, new urban or suburban land uses shall be precluded by the County in the vicinity of a MPR.”

It was Mr. Slothower’s opinion that GPO 2.190 is fatal to this application because the proposed use constitutes urban development as opposed to rural development.

Mr. Slothower further testified his understanding that both parcels of Short Plat 06-84 are essentially within the same beneficial ownership although there may be separate legal entities.

Mr. Slothower further testified that the well water in this area is tied to surface water and that the City of Cle Elum withdraws its water from wells tied to surface water from the Cle Elum and Yakima Rivers. Further, Mr. Slothower was of the opinion that an interruptible water supply, such as this Class B System cannot be the basis for a dedicated water supply for this plat. Mr. Slothower further indicated that the trail within the Suncadia property is at this point, only conceptual, and will have limited access. Mr. Slothower indicated that the proposed road on Jenkins Drive is outside the scope of the easement and that the applicant will not be granted a greater easement area in which to construct a road.

Mr. Slothower testified that Suncadia is developing secondary emergency egress and that the improvements to Jenkins Road will be of no benefit to Suncadia.

Finally, Mr. Slothower indicated that there has been no demonstration of where public utilities to the project will enter the property and that it should be demonstrated at this time during the public hearing process. (Testimony of Jeff Slothower)

30. Planned unit developments, cluster developments and other similar uses are allowed within rural zoning districts, including land within the Rural-3 zoning district. (Kittitas County Zoning Code)
31. Note number 9 on Short Plat 06-84 specifically restricts well water withdrawals applicable to both lots created by the short plat. This note states in its entirety, “[P]ursuant to RCW 90.44.050, the cumulative effect of water withdrawals for this development shall not exceed 5,000 gallons per day.” (SP 06-84)
32. The water usage for the 14 lots proposed in Application RZ-07-16 and P-07-61 will utilize and consume all water permitted under the Tumbling Ridge Short Plat, Short Plat No. 06-84. No additional water is available onto this short plat for Lot 2. (SP 06-84, testimony of Ann Watanabe)
33. The owners of Lot 2 of SP 06-84 had notice of applications RZ-07-16 and P-07-61, had opportunity to provide written comment to the applications prior to the open record public hearing, had notice of the open record public hearing and had the opportunity to present testimony regarding these applications at the open record public hearing. The

owners of Lot 2 of SP 06-84 have not provided any comment or testimony regarding the pending applications. (Staff report and Hearing Examiner finding)

34. The Kittitas County Comprehensive Plan provides policy guidelines, while the Kittitas County Zoning Code provides zoning regulations. Although it is the intent that zoning regulations be consistent with the Comprehensive Plan policies, in the event of an inconsistency, zoning regulations control. (Hearing Examiner finding)
35. In determining what is an “urban” land use, the Kittitas County Comprehensive Plan 2.3(A) recognizes that urban land uses are within a designated Urban Growth area and provide for orderly street systems and utilities. Additionally, GPO 2.94(a) recognizes that urban land uses necessitate the adaptability of a proposal to both public and private utilities such as municipal water and sewer systems. (Hearing Examiner finding)
36. The Kittitas County Comprehensive Plan discussion of the rural element again references public facilities and recognizes that said public facilities such as water and sewer, are not to extend outside of an Urban Growth area. (Hearing Examiner finding)
37. The Kittitas County Zoning Code provides zoning designations, referencing a distinction between urban and rural zoning designations. (Hearing Examiner finding)
38. The rural zoning designations (17.20/RR, 17.30/R3, 17.30A/R5) set forth the purposes for the specific rural zoning designations as well as limitations on lot sizes. (Hearing Examiner finding)
39. The stated purpose of the RR zone, which has 5-acre minimum lot size, is for low density semi-rural development in outlying transitional areas. The purpose of R3 and R5 zoning designations is to permit residential development on a low density basis primarily to minimize the adverse affects on adjacent natural resource land. Minimum lot size in the R3 district is 3 acres and the minimum lot size in the R5 district is 5 acres. (Hearing Examiner finding)
40. It is referenced that cluster subdivisions are permitted in rural zoning designations which would allow lot sizes smaller than those stated in the Code for the specific zoning designation. However, any lot size less than ½ acre for a cluster subdivision must be served by public water and sewer. (Hearing Examiner finding)
41. When examining urban residential use designations, the common characteristic is that these smaller lot sizes, (the smallest being 7,200 sq. ft. in the R zone, are 2-zone and UR II zone) must be served by public water and sewer. (Hearing Examiner finding)

42. The Hearing Examiner finds that according to the Kittitas County Code, urban uses are those uses within a designated Urban Growth area, those which are served by public utilities and facilities, and those in which the minimum lot size is ½ acre. (Hearing Examiner finding)
43. Chapter 17.36 of the Kittitas County Zoning Code references requirements for a Planned Unit Development. (Hearing Examiner finding)
44. There are no zoning regulations prohibiting the location of a Planned Unit Development next to a Master Planned Resort. (Hearing Examiner finding)
45. 17.36.010 of the Kittitas County Code sets forth the purposes and intent of a Planned Unit Development District. The purpose and intent stated within the Code are rather general statements. The applicant's project does satisfy the purpose and intent of a Planned Unit Development District. (Testimony of Ann Watanabe and staff report conclusion)
46. Kittitas County Code 17.98.020(7) sets forth seven criteria of which each must be proven before a change on the zoning map from one zone to another can be accomplished. Each of the seven criteria are discussed below:
 - 46.1 The first criteria is that "the proposed amendment is compatible with the Comprehensive Plan." This criteria is met as the Hearing Examiner has found that the proposed use is more consistent with a rural use and therefore is consistent with the Comprehensive Plan. (Hearing Examiner finding)
 - 46.2 The second criteria is that "the proposed amendment bears a substantial relation to the public health, safety or welfare." The Hearing Examiner finds that this criteria is met in that there is a creation of a substantial portion of open space of which there is an aesthetic benefit to the public. Additionally, public benefit is that because all water permitted with SP 06-84 will be utilized on Lot 1 of the short plat, that no further residential development will occur pursuant to the terms of the short plat, Note 9. (Hearing Examiner finding)
 - 46.3 The third criteria is that "the proposed amendment has merit and value for Kittitas County or a sub-area of the County." The requested rezone to a Planned Unit Development District has merit and value for Kittitas County in that it will improve certain public roadways and provide development on property that is subject to steep slopes and limited development opportunity. (Hearing Examiner finding)
 - 46.4 The next criteria states in its entirety "the proposed amendment is appropriate because of changed circumstances or because of a need for additional property in the proposed zone or because the proposed zone is appropriate for reasonable development of the subject property." The applicant encourages the Hearing

Examiner to find that the changed circumstance of the area is the existence of the Master Planned Resort Suncadia. The Hearing Examiner declines to adopt this reason. However, the Hearing Examiner does find that a Planned Unit Development is appropriate for this specific parcel of property for the reasonable development of the property given the topographical limitations as to the development of the subject property. (Application materials and staff report)

- 46.5 The next criteria is that “the subject property is suitable for development in general conformance with the zoning standards for the proposed zone.” The Hearing Examiner finds that the zoning code development standards can be applied to the proposed use without the need for variances in the development of the individual lots. (Hearing Examiner finding)
- 46.6 The next criteria is that “the proposed amendment will not be material detrimental to the use of properties in the immediate vicinity of the subject property.” The Hearing Examiner finds that although the property is essentially surrounded by property of Suncadia, a Master Planned Resort, that there has not been a showing that the creation of these 14 residential lots with substantial open space will be materially detrimental to Suncadia’s use of its own property. Indeed, although Jenkins Drive is to be improved, Suncadia representatives indicate that a new emergency ingress and egress is being created for the Suncadia property. Nonetheless, it is possible that Suncadia could utilize Jenkins Drive for additional access to its property. Additionally, as recognized by the Hearing Examiner that because Lot 1 of SP 06-84 is utilizing all of the available water, additional residential development on Lot 2 of SP 06-84 will not be able to occur pursuant to the limitations of water use contained within Note 9 of the final plat of SP 06-84. (Hearing Examiner finding)
- 46.7 The final criteria is “the proposed changes in use of the subject property shall not adversely impact irrigation water deliveries to other properties.” There is no irrigation rights on the subject property. This criteria has been satisfied. (Hearing Examiner finding)
47. 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)
48. 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)
49. 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)

50. 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. The criteria for zoning amendments set forth in 17.98.020(7) a-g have been met.
7. As conditioned, the proposed use is consistent with the intent, purposes and regulations of the Kittitas County Code and Comprehensive Plan.
8. As conditioned, the proposal does conform to the standards specified in Kittitas County Code.
9. As conditioned, the use will comply with all required performance standards as specified in Kittitas County Code.
10. 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.
11. As conditioned, this proposal does comply with Comprehensive Plan, the Shoreline Master Program, the zoning code and other land use regulations, and SEPA.
12. Although it is the intent that zoning regulations are consistent with the Comprehensive Plan policies, in the event of an inconsistency, zoning regulations control.
13. 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 RZ-07-16 and P-07-61, Tumbling Ridge PUD Rezone and 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 which were deemed complete on December 14, 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 and its Appendices.
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. Based on the comments received during the public comment period and other information submitted with this project permit application, a SEPA Mitigated Determination of Nonsignificance (MDNS) was issued by Community Development Services on May 30, 2008. The following are the mitigations contained within the MDNS and shall be conditions of approval:

I. **Transportation**

- A. Prior to final plat approval, the applicant shall provide a complete set of road plans including profiles, cross-sections, and a slope stabilization design that are signed and stamped by a licensed Professional Engineer to be reviewed and approved by Kittitas County Department of Public Works.

II. Air

- A. 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.
- B. Washington Administrative Code (WAC) 173-400-040 requires that reasonable precautions be taken to prevent dust from leaving the project site. Additionally, dust is prohibited from interfering unreasonably with the use and enjoyment of property, causing health impacts or damaging property or business. As a result, the applicant shall be responsible for creating a site-specific Fugitive Dust Control Plan (FDCP) before starting this project. The plan shall be followed throughout the duration of any activity and construction of the project.

III. Water/Stormwater

- A. 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.
- B. The applicant shall develop an on-site storm water management plan that conforms to the specifications of the most current version of the Eastern Washington Stormwater Management Manual. Stormwater systems shall be designed to store storm water generated by a 24-hour, 25-year event. Stormwater system designs shall be prepared and stamped by a civil engineer licensed in the State of Washington. The storm water system construction and a copy of the design shall be included with the road certification and is required prior to the issuance of a building permit.
- C. Withdrawals of groundwater on the subject property are subject to the rules and regulations adopted and administrated by the Washington State Department of Ecology; this includes the use of water for irrigation. Legally obtained water must be used on-site.
- D. The applicant shall develop a "Group B" water system to be used to serve all 14 lots. Water withdrawals shall not exceed the single daily withdrawal exemption of 5,000 gallons per day cumulatively, as set forth by the Department of Ecology.
- E. Flow meters shall be installed both at the well head and on each individual lot and records documenting water usage both at the well head and on each individual lot shall be maintained and available for public inspection by a Satellite Management Agency.

- F. The “Group B” water system cannot be used for irrigation purposes.
- G. Washington Administrative Code (WAC) 173-150 provides for the protection of existing rights against impairment, i.e. interruption or interference in the availability of water. If the water supply in your area becomes limited your use could be curtailed by those with senior water rights.

IV. Light and Aesthetics

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

V. Noise

- A. Development and construction practices for this project shall only occur between the hours of 7:00am to 7:00pm to minimize the effect of construction noise on nearby residential properties.

- 7. 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.
- 8. Proof of potable water must be shown prior to final plat approval.
- 9. 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.
- 10. 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 includes no guarantee that there is a legal right to withdraw groundwater within the land division. The approval of this division of land provided 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. *“The Tumbling Ridge Plat No. P-07-61 currently has 5000 gallons of water per day for domestic-use from the exemption. Each parcel will receive 357 gallons per day.”*

14. 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 unplatted shall be so indicated. (K.C.C.16.20.040, 11, Plat drawing, Surrounding Area).
12. Prior to receiving final approval, the applicant shall provide for the record a complete set of road plans including profiles, cross-sections, and a slope stabilization design that are signed and stamped by a Professional Engineer.
13. On-site stormwater management that conforms to the specifications of the most current version of the Stormwater Management Manual for Eastern Washington is required of this development. Stormwater systems shall be designed to store stormwater generated by a 24-hour, 25-year storm event. Stormwater system designs shall be prepared and stamped by a civil engineer licensed in the State of Washington. The stormwater system construction and a copy of the design shall be included with the road certification and is required prior to the issuance of a building permit.
14. 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.
15. Access from Bullfrog Road to the cul-de-sac shall be constructed to meet or exceed the conditions of a High-Density Private Road that serves 15-40 lots. 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.
 - k. A paved apron shall be constructed at the intersection of the proposed private intersection and the county road right-of-way.
16. Cul-de-sac turn-around having an outside right-of-way easement diameter of at least 110 feet shall be constructed at the closed end of all dead-end roads serving 3 or more lots. The driving surface shall be at least 96 feet in diameter. Cul-de-sacs must also conform to the requirements specified by the 2006 International Fire Code. Contact the Fire Marshal regarding any additional cul-de-sac requirements.
17. A joint-use access shall serve no more than two tax parcels. See Kittitas County Road Standards, 9/6/05 edition.
- a. Access easements shall be a minimum of 20' wide. The roadway width shall have a minimum width of 12'.
 - b. The surface requirement is for a minimum gravel surface depth of 6".
 - c. Maintenance of driveway approaches shall be the responsibility of the owner whose property they serve. The County will not maintain accesses.
 - d. Any further subdivision or lots to be served by proposed access may result in further access requirements.
18. A single-use access shall serve no more than one lot. See Kittitas County Road Standards, 9/6/05 edition.
- a. The roadway shall be a minimum of 8' wide with gravel surface.
 - b. Maintenance of driveway approaches shall be the responsibility of the owner whose property they serve. The County will not maintain accesses.

- c. Any further subdivision or lots to be served by proposed access may result in further access requirements.
- a. 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.
- 20. All plats must show the acceptance signature of the County Engineer. The acceptance block shall be as follows (per KCC 16.24.170):

EXAMINED AND APPROVED
 This ____ day of _____, A.D., 20 ____.

Kittitas County Engineer

- 21. The applicant shall meet all applicable conditions of any pre-established or required Private Road Maintenance Agreements.
- 22. It is the responsibility of the Professional Licensed Surveyor (PLS) to ensure the lot closures are correct and accurate.
- 23. 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.

24. 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.
25. Contact the Kittitas County Fire Marshal regarding any additional access requirements for Emergency Response.
26. The U.S. Postal Service requires that private roads with 6 or more residences install USPS approved Cluster Box Units (CBUs) at a safe location at the mouth of the private road. Contact your local Post Office for location and additional design requirements before beginning construction.
27. Private roads shall meet the following conditions:
 - 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.”

Dated this 5th day of February, 2009.

KITTITAS COUNTY HEARING EXAMINER

Andrew L. Kottkamp

Exhibit "B"

