

**From:** [Paul Dempsey](#)  
**To:** [Arden Thomas](#)  
**Cc:** [Marc Kirkpatrick](#); [Rhondda Dietrich](#); [Kelly Bacon \(CD\)](#); [Jeremy Johnston](#); [Larry Martin](#)  
**Subject:** RE: Hein Short Plat - Conservation Easements  
**Date:** Monday, October 12, 2020 12:55:00 PM  
**Attachments:** [Draft Conservation Easement 10.12.2020 AT and PD redlines and comments.docx](#)

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Arden~

Thank you! You and I are very much on the same page. I have accepted most of your proposed changes and added a few “flyspecks” and responsive comments/questions, here and there. See attached.

Mark, note particularly my comment on the last page of this document. Please advise if you have or can prepare legal descriptions for the proposed Lots 2 and 4.

Arden, If we can agree on the fundamental, substantive terms as provided in this revised document (with or without technical corrections or clarifications), my client will be OK. So, if the attached is provisionally acceptable at your end, I’m hoping you can share with County counsel this week – in order to maintain some momentum under the pending SP App.

As always, we appreciate the County’s interdepartmental coordination! I’ll stand by at this end...

Best,

Paul



Paul C. Dempsey, Attorney

p. 509.248.6030 f. 509.453.6880

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**From:** Arden Thomas <arden.thomas@co.kittitas.wa.us>  
**Sent:** Monday, October 12, 2020 12:06 PM  
**To:** Paul Dempsey <pdempsey@hnw.law>

**Cc:** Marc Kirkpatrick <[mkirkpatrick@encompasses.net](mailto:mkirkpatrick@encompasses.net)>; Rhondda Dietrich <[rdietrich@hnw.law](mailto:rdietrich@hnw.law)>; Kelly Bacon (CD) <[kelly.bacon.cd@co.kittitas.wa.us](mailto:kelly.bacon.cd@co.kittitas.wa.us)>; Jeremy Johnston <[jeremy.johnston@co.kittitas.wa.us](mailto:jeremy.johnston@co.kittitas.wa.us)>; Larry Martin <[lmartin@hnw.law](mailto:lmartin@hnw.law)>  
**Subject:** RE: Hein Short Plat - Conservation Easements

Paul –

Thank you for taking the step to prepare a discussion draft Conservation Easement – given that we are starting from scratch this is helpful and honestly I am familiar with CEs that have to meet funder needs and result in long and complicated documents – it is refreshing to see a straight forward document.

I've attached comments. The only substantive comment I have is that the term used throughout the document is domestic, but our code is specific to new groundwater uses. I have made edits to match our code language.

After this is in a more final form (as long as we are on the same page about domestic vs groundwater and after you have made any changes that may be necessary for your client), I'll need to send this through our prosecutor's office for their legal review.

I am available today at 4, or tomorrow between 1 and 4 if you would like to talk.

Regards,  
Arden

**Arden Thomas** | Water Resource Program Manager  
Kittitas County Public Works | 411 North Ruby, Suite 1 | Ellensburg, WA 98926  
Direct: 509.962.7690

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**From:** Paul Dempsey <[pdempsey@hnw.law](mailto:pdempsey@hnw.law)>  
**Sent:** Sunday, October 11, 2020 1:22 PM  
**To:** Arden Thomas <[arden.thomas@co.kittitas.wa.us](mailto:arden.thomas@co.kittitas.wa.us)>  
**Cc:** Marc Kirkpatrick <[mkirkpatrick@encompasses.net](mailto:mkirkpatrick@encompasses.net)>; Rhondda Dietrich <[rdietrich@hnw.law](mailto:rdietrich@hnw.law)>  
**Subject:** FW: Hein Short Plat - Conservation Easements

Hi, Arden.

On behalf of Mr. Hein, checking in again on this Conservation Easement item for the pending SP Application. Are you able to provide guidance re our proposed approach under the draft Easement document?

I believe we have more or less checked remaining the “boxes” under the SP App, so wishing to tie down this item as soon as possible.

Thanks again for the consult on this. And may I give you a follow-up call Monday or Tuesday?

Best,

Paul



Paul C. Dempsey, Attorney

p. 509.248.6030 f. 509.453.6880

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**From:** Paul Dempsey

**Sent:** Monday, October 5, 2020 5:07 PM

**To:** 'Kelly Bacon (CD)' <[kelly.bacon.cd@co.kittitas.wa.us](mailto:kelly.bacon.cd@co.kittitas.wa.us)>; Arden Thomas <[arden.thomas@co.kittitas.wa.us](mailto:arden.thomas@co.kittitas.wa.us)>

**Cc:** Jeremy Johnston <[jeremy.johnston@co.kittitas.wa.us](mailto:jeremy.johnston@co.kittitas.wa.us)>; Larry Martin <[lmartin@hnw.law](mailto:lmartin@hnw.law)>; Shawna Holden <[sholden@hnw.law](mailto:sholden@hnw.law)>

**Subject:** RE: Hein Short Plat - Conservation Easements

Kelly (and Arden):

Thanks for this response. As you can appreciate, Applicant under the pending short app application hopes to proceed toward final SP approval as quickly as the County can complete the necessary administrative reviews. Toward that end, I've taken the liberty of preparing a “discussion draft” Conservation Easement, attached, to address the Adequate Water Supply requirement for two of the proposed SP Lots not slated for development in the foreseeable

future.

As I've acknowledged to Kelly recently, apart from the statutory authorities cited in my below email (and included in the draft Conservation Easement), I don't find much in the way of suggested sample or "template" documents to accomplish the desired goal, namely, to prohibit construction or other activities on the subject lots that would otherwise be subject to the County's AWS requirements under the SP application. So, I've borrowed from some example documents from other jurisdictions. Suffice it to say, I am absolutely open to suggested different or additional language to establish a Conservation Easement on terms and conditions suitable for both the Applicant and County. Also, because I have not yet obtained formal client approval for the attached draft document, I need to reserve rights to suggest minor, additional changes to the proposed document, following client review and comment.

Please let me know at your earliest convenience if the attached Conservation Document, or something similar, will be sufficient for the County's purposes under the pending SP application. Otherwise, if additional negotiation is required, let's please commit to undertaking those discussions as soon as possible. (Kelly, when we have a basic agreement with Public Works concerning a Conservation Easement in this case, we'll reengage with you and CDS to complete any still-outstanding items under the SP review.)

Many thanks in advance. I'll stand by at this end...

Best,

Paul Dempsey



Paul C. Dempsey, Attorney

p. 509.248.6030 f. 509.453.6880

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**From:** Kelly Bacon (CD) <[kelly.bacon.cd@co.kittitas.wa.us](mailto:kelly.bacon.cd@co.kittitas.wa.us)>

**Sent:** Monday, October 5, 2020 11:58 AM

**To:** Paul Dempsey <[pdempsey@hnw.law](mailto:pdempsey@hnw.law)>; Arden Thomas <[arden.thomas@co.kittitas.wa.us](mailto:arden.thomas@co.kittitas.wa.us)>

**Cc:** Shawna Holden <[sholden@hnw.law](mailto:sholden@hnw.law)>; Jeremy Johnston <[jeremy.johnston@co.kittitas.wa.us](mailto:jeremy.johnston@co.kittitas.wa.us)>

**Subject:** RE: Hein Short Plat - Conservation Easements

Good morning Paul,

In conversation regarding the conservation easement regarding water on two of the lots located in the Hein Short Plat, we concluded that the applicant would need to work with Arden Thomas in Public Works to determine necessary application of this section of code to the short plat. I have included Arden in the email to allow for these conversations to take place.

Thank you,

## Kelly Bacon

**Planner I**

**Kittitas County Community Development Services**

411 N. Ruby Street, Ste 2

Ellensburg, WA 98926

Office: (509) 962-7539

[Kelly.bacon.cd@co.kittitas.wa.us](mailto:Kelly.bacon.cd@co.kittitas.wa.us)

Please Note: In an effort to mitigate the spread of COVID-19 and the Governor's "Safe Start" reopening plan, Kittitas County Community Development Services is currently in Phase 3 and is open to the public in a limited capacity. At this time many of us are on a rotating schedule working from home and in the office; during this time I will do my best to respond to you as promptly as possible.

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**From:** Paul Dempsey <[pdempsey@hnw.law](mailto:pdempsey@hnw.law)>

**Sent:** Monday, October 5, 2020 11:30 AM

**To:** Kelly Bacon (CD) <[kelly.bacon.cd@co.kittitas.wa.us](mailto:kelly.bacon.cd@co.kittitas.wa.us)>

**Cc:** Shawna Holden <[sholden@hnw.law](mailto:sholden@hnw.law)>

**Subject:** RE: Hein Short Plat - Conservation Easements

Hi, Kelly.

It's been a week or two since you and I were in touch on this issue. Checking back in with you regarding CDS' recommended approach for the preparation and negotiation of **conservation easements** for use in the pending Hein Short Plat Application.

And please let me know if I can provide anything else at this end...

Best,

Paul



Paul C. Dempsey, Attorney

p. 509.248.6030 f. 509.453.6880

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**From:** Paul Dempsey  
**Sent:** Thursday, September 24, 2020 4:08 PM  
**To:** Kelly Bacon (CD) <[kelly.bacon.cd@co.kittitas.wa.us](mailto:kelly.bacon.cd@co.kittitas.wa.us)>  
**Cc:** Shawna Holden <[sholden@hnw.law](mailto:sholden@hnw.law)>  
**Subject:** Hein Short Plat - Conservation Easements

Hi, Kelly.

Always a pleasure to speak with you. As discussed this pm, and on behalf of the Applicant in this case, we are requesting guidance concerning use of conservation easements under the pending SP Application. Specifically:

Applicant wishes to impose conservation easements against proposed Lots 2 and 4 under the SP, to prohibit use of domestic water thereon (and, by extension, our obligation to comply with Adequate Water Supply requirements as a condition of SP approval). Statutory authority for use of such easements is at KCC 16.32.050, which provides in relevant part:

The planning official shall be vested with the responsibility of processing short plat applications. The county shall review and consider the proposed short subdivision with regard to ... Its compliance with Kittitas County Code Chapter 13.35, Adequate Water Supply Determination or work voluntarily with Kittitas County to develop an authorized conservation easement, see section 16.08.061.

In turn, the cited KCC 16.08.061 provides:

“Conservation easement” is a specified land area with no domestic water consumption that is used for open space or agriculture only and shall be established during a platting process. The easement areas shall be created from an existing parcel and shall have a different legal description than the original parcel. The conservation easement shall be voluntarily agreed upon by the landowner and reviewed and authorized by the County. The signed document must be recorded with the County auditor’s office prior to submission for final approval. The landowner will continue to privately own and manage the land. Upon accepting the conservation easement agreement, the easement holder has a responsibility to ensure compliance with the terms of the agreement. The landowner may discontinue the conservation easement through a platting process subject to compliance with Kittitas County Code Title 13 and Title 16.

In this case, Applicant intends for the conservation easements solely to meet the above-quoted fundamental requirements, i.e., that Lots 2 and 4 will be used exclusively for open space or agricultural purposes unless and until such easements are terminated in the manner provided. And consistent with the required open space/agricultural use of those Lots, no construction or improvements thereon requiring domestic water delivery will be permitted.

Our immediate questions, then:

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- Under the typical CDS process, is it the “grantor” (Applicant) or the “grantee” (Kittitas County) who prepares the initial draft conservation easement for discussion/negotiation? If the County has a preferred “template” or otherwise prefers to prepare an initial draft in this case, great! Otherwise, I’ll be happy to do so on behalf of Applicant.
- When do we undertake this discussion/negotiation process with the County? Right now? Or at some point later in your administrative review

of the SP Application? Suffice it to say, we wish to keep moving as quickly as possible toward final Planning determination on this App!

Many thanks again. Please let us know how CDS proposes to proceed in this case. And as soon as we have mapped out an agreed plan for consideration of conservation easements, I'll provide some brief, supplemental Applicant responses to the earlier-provided agency comments in this case.

All the best,

Paul



Paul C. Dempsey, Attorney

p. 509.248.6030 f. 509.453.6880

[pdempsey@hnw.law](mailto:pdempsey@hnw.law)

405 E. Lincoln Avenue, Yakima, WA 98901

[halversonNW.com](http://halversonNW.com)

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