BOARD OF COUNTY COMMISSIONERS
COUNTY OF KITTITAS
STATE OF WASHINGTON

ORDINANCE NO. 2013-_____

ZENTZ REZONE (RZ-13-00001) IN THE MATTER OF AMENDING THE KITTITAS COUNTY ZONING ATLAS FROM AGRICULTURE 3 TO AGRICULTURE 5

WHEREAS, according to Kittitas County Code Titles 15A & 17, relating to rezones, adopted pursuant to RCW 36.70B & 36.70 respectively, an open record hearing was held by the Kittitas County Hearing Examiner on August 15, 2013 for the purpose of considering a zone change consisting of approximately 10 acres from Agriculture 3 to Agriculture 5 described as follows:

> *That portion of the southwest quarter of the northwest quarter of Section 20, T18N, R18E, WM in Kittitas County. Assessor's map number: 18-18-20020-0004. Proponent: Teresa Zentz landowner.*

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,

WHEREAS, a closed record public meeting was held by the Board of County Commissioners on September 17, 2013 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:

1. Teresa Zentz, landowner, has submitted an application for a rezone from Agriculture 3 to Agriculture 5 on March 27, 2013.

2. The property is located approximately 4 miles northwest of Ellensburg at 430 Klocke Road, in a portion of Section 20, T18N, R18E, WM in Kittitas County, bearing Assessor's map number 18-18-20020-0004.

3. The Kittitas County Comprehensive Plan's Land Use Element designated the subject property as Rural and the Zoning as Agriculture 3 on the date that the application was submitted.

4. Community Development Services issued a Notice of Application pursuant to KCC 15A.03 on April 19, 2013.

5. Community Development Services issued a Determination of Non-Significance (DNS) on July 30, 2013. No appeals were filed.

6. On August 15, 2013, the Kittitas County Hearing Examiner conducted an open record hearing where testimony was heard. On August 29, 2013 the Hearing Examiner submitted his Recommended Findings of Fact, Conclusions of Law, and Conditions of Approval of the Zentz Rezone.

7. The Board of County Commissioners conducted a closed record hearing on September 17, 2013 for the purpose of considering the Zentz Rezone (RZ-13-00001).

8. The Board of County Commissioners after review of the record and deliberation finds that the "down-zone" as proposed by the Zentz Rezone is outside of the scope of consideration in, and the legislative intent of KCC 17.13 Transfer of Development Rights, and as such removes the Hearings Examiner recommended condition of approval four (4) as a requirement for approval of the rezone.

9. The Board of County Commissioners after review of the record and deliberation finds that because the Zentz Rezone was submitted concurrently with a Short Plat application, it may be considered under the provisions of KCC 17.98.020(5) Amendments (to the zoning map).

10. The Board of County Commissioners after review of the record and deliberation closed the hearing and a motion was made and seconded that the proposed Zentz Rezone (RZ-13-00001) be approved. The motion carried with a vote of 2 to 0. Commissioner Obie O'Brien, Chairman, was absent.

11. The Board of County Commissioners finds that additional conditions **are** necessary to protect the public's interest.

    a. The approval of this Rezone is contingent upon the administrative approval of the Short Plat submitted with this Project Rezone. In the event that the Short Plat is not approved, or for whatever reason not executed and recorded within the timeframes as provisioned in KCC 16.32.090 and RCW 58.17.140, the zoning designation for the parcel under consideration shall remain Agriculture 20 as passed in Ordinance 2013-001 by the Board of County Commissioners on February 11, 2013.

NOW, THEREFORE BE IT RESOLVED: That the Kittitas County Board of Commissioners hereby grants approval of the **Zentz Rezone (RZ-13-00001)** and adopts the

Kittitas County Land Use Hearing Examiner's Recommended Finds of Fact, Conclusions of Law, Decision and Conditions of Approval (Exhibit A) as modified in 8 and 11a above.

DATED this _____ day of _____ , 2013 at Ellensburg, Washington.

BOARD OF COUNTY COMMISSIONERS
KITTITAS COUNTY, WASHINGTON

_____
Obie O'Brien, Chairman

_____
Paul Jewell, Vice Chairman

_____
Gary Berndt, Commissioner

ATTEST:
CLERK OF THE BOARD

_____
Julie A Kjorsvik

APPROVED AS TO FORM:

_____
Greg Zempel WSBA #19125

Exhibit A

RECEIVED
AUG 29 2013
KITTITAS COUNTY
CDS

KITTITAS COUNTY
LAND USE HEARING EXAMINER

IN THE MATTER OF	)	**RECOMMENDED FINDINGS OF FACT, RECOMMENDED CONCLUSIONS OF LAW, RECOMMENDED DECISION AND RECOMMENDED CONDITIONS OF APPROVAL**
RZ-13-00001 and SP-13-00003 Zentz	)	

THIS MATTER having come on for hearing in front of the Kittitas County Hearing Examiner on August 15, 2013, the Hearing Examiner having taken evidence hereby submits the following Recommended Findings of Fact, Recommended Conclusions of Law, Recommended Decision and Recommended Conditions of Approval as follows:

I. RECOMMENDED FINDINGS OF FACT

1. Teresa Zentz, landowners, have submitted an application for a rezone from Agriculture 3 to Agriculture 5 along with a 2 lot Preliminary Short Plat to subdivide one existing parcel totaling ten acres into two five acre lots. The project is proposed to be served by individual wells and individual on-site septic systems.

2. The subject property is located approximately 4 miles northwest of Ellensburg at 430 Klocke Road, in a portion of Section 20, T18N, R18E, WM in Kittitas County, bearing Assessor's map number 18-18-20020-0004.

3.

Total Project Size:	10 acres
Number of Lots:	2
Domestic Water:	Individual wells
Sewage Disposal:	Individual on-site septic system
Power/Electricity:	Puget Sound Energy
Fire Protection:	Kittitas Valley Fire and Rescue (Fire District 2)
Irrigation District:	Ellensburg Water Company

4. Surrounding Property:

North:	Undeveloped Forest/Shrub
South:	Agriculture
East:	Agriculture
West:	Residential

5. Site Characteristics: The site is a relatively flat pasture with one existing residence and is permitted for an accessory dwelling unit (as approved by KCCDS 7/22/2011 AU-11-00002 Hansen) and associated outbuildings on the property. The site contains a PUBH wetland; a zone A (100 year) floodplain designation; falls under the provisions of the Shoreline Master Program Rural designation; and is located in the Ellensburg Water Company irrigation entity boundary.

6. The Comprehensive Plan designation is Rural.

7. The subject property's vested zoning is zoned agriculture 3 and proposes a downzone to Agriculture 5. The minimum residential lot size for the proposed zoning classification shall be five acres in the Agriculture 5 zone. The overall density of any residential development shall not exceed one dwelling for each five acres.

8. A complete Rezone and Short Plat application was submitted to Community Development Services on March 27, 2013. A Notice of Application for said applications was issued on April 19, 2013. 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.

9. Based upon review of the submitted application materials including an environmental checklist, correspondence received during this 15 day comment period and other information on file with Community Development Services, a Mitigated Determination of Non-Significance (MDNS) was issued on July 30, 2013. The appeal period ended on August 14, 2013 at 5:00 p.m. No appeals were filed.

10. 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 wells and private septic systems. Staff has conducted an administrative critical area review in accordance with KCC 17A and found critical areas which include a wetland, floodplain, and Shoreline Master Program designation.

11. This proposal is consistent with the Kittitas County Subdivision Code Chapter 16.32 Short Plats.

12. This proposal is consistent with the Kittitas County Subdivision Code for Preliminary Plats.

13. All roads are required to meet all Kittitas County Road Standards as outlined in the December 6, 2011 memorandum issued by the Department of Public Works. As conditioned, the proposal is consistent with the provisions of KCC Title 12.

14. The following agencies provided comments during the comment period: Department of Ecology, Department of Archaeology & Historic Preservation, Fire District 7, Kittitas County Fire Marshal, Kittitas County Department of Public Works and Environmental Health, Washington Department of Fish and Wildlife, Bonneville Power Administration. These comments have been included as conditions of approval to address these agency concerns.

15. Public and agency comments that were received were considered by the Hearing Examiner in rendering this Decision and forming Conditions of Approval.

16. The entire Planning Staff file was admitted into the record at the public hearing.

17. The Kittitas County Community Development Services recommended approval of this preliminary plat, subject to the recommended conditions of approval.

18. An open record public hearing after due legal notice was held on August 15, 2013.

19. The following exhibits were admitted into the record:
    - 19.1. Short Plat Application – 3/27/2013;
    - 19.2. SEPA Checklist – 3/27/2013;
    - 19.3. Rezone Application – 3/27/2013;
    - 19.4. Prior Rezone Documentation 4/26/2000 & 7/11/2000;
    - 19.5. Prior ADU Documentation – 7/22/2011;
    - 19.6. Planner Preliminary Analysis and Maps – 4/15/2013;
    - 19.7. Affidavit of Posting – 4/17/2013;
    - 19.8. Notice of Application Documentation – 4/15-19/2013;
    - 19.9. Fire Marshal Comments – 4/1/2013;
    - 19.10. Public Works Comments – 4/18/2013;
    - 19.11. Floodplain Manager Comments – 4/18/2013;
    - 19.12. Irrigation Comments – 4/23/2013;
    - 19.13. Ecology Comments – 5/1/2013;
    - 19.14. Public Health Comments – 5/22/2013;
    - 19.15. Transmittal of Comments Letter – 7/30/2013;
    - 19.16. Notice of SEPA Action Documentation - 7/30/2013;
    - 19.17. SEPA MDNS – 7/30/2013;
    - 19.18. Notice of Public Hearing Documentation - 8/8/2013;
    - 19.19. Hearings Examiner Staff Report - 8/8/2013;
    - 19.20. Staff power point presentation;

20. Appearing and testifying on behalf of the applicant was Teresa Zentz. Ms. Zentz testified that she was one of the owners of the subject property. Ms. Zentz testified that there would be no variance required on either of the proposed short plat lots in order to

conduct a single family residence or normal accessory structures. She testified that all of the proposed conditions of approval were acceptable.

21. No member of the public testified at the hearing.

22. 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.

23. The proposed use will not cause significant adverse impacts on the human or natural environments that cannot be mitigated by conditions of approval.

24. The proposal will be served by adequate facilities including access, fire protection, water, storm water control, and sewage disposal facilities.

25. Any Conclusion of Law that is more correctly a Finding of Fact is hereby incorporated as such by this reference.

II. RECOMMENDED CONCLUSIONS OF LAW

1. The Hearing Examiner has been granted authority to render this decision.

2. As conditioned, the proposed use is consistent with the intent, purposes and regulations of the Kittitas County Code and 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 12 Roads and Bridges, Title 14 Building and Construction, Title 15 Environmental Policy, Title 16 Subdivision, Title 17 Zoning, Title 17A Critical Areas, and Title 20 Fire Life Safety.

6. As conditioned, the proposal does conform to the standards specified in Kittitas County Code.

7. As conditioned, the use will comply with all required performance standards as specified in Kittitas County Code.

8. 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.

9. As conditioned, this proposal does comply with Comprehensive Plan, the Shoreline Master Program, the zoning code and other land use regulations, and SEPA.

10. 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 Findings of Fact and Conclusions of Law, the Hearing Examiner hereby recommends that Application RZ-1300001 and SP-13-000003 Zentz, be **APPROVED** subject to the following recommended Conditions of Approval.

IV. RECOMMENDED CONDITIONS OF APPROVAL

All recommended 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 conformance with the plans and application materials (RZ-13-00001 Zentz and SP-13-00001 Zentz) on file dated March 27, 2013, and all submitted revisions 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. The applicant will be required to obtain 1 (one) Transfer of Development Right Credit as per KCC 13.13.030 prior to final approval.

5. The applicant shall be responsible for meeting or exceeding all conditions and requirements set forth by the Department of Public Works.

6. Joint-Use Driveway: 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.

7. Single-Use Driveway: A single-use access shall serve no more than one lot. See Kittitas County Road Standards, 9/6/05 edition.

    e. The roadway shall be a minimum of 8' wide with gravel surface.

    f. Maintenance of driveway approaches shall be the responsibility of the owner whose property they serve. The County will not maintain accesses.

    g. Any further subdivision or lots to be served by proposed access may result in further access requirements.

8. Private Road Maintenance Agreement: The applicant shall meet all applicable conditions of any pre-established or required Private Road Maintenance Agreements.

9. Lot Closure: It is the responsibility of the Professional Licensed Surveyor (PLS) to ensure the lot closures are correct and accurate.

10. Access Permit: 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.

11. Addressing: 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.

12. Mailbox Placement: Mailboxes must be approved by U.S. Postal Service. Mailbox locations are site specific. Contact your local Post Office for location and design standards before beginning construction.

13. 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.

14. 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.

15. 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.

16. If any structures are constructed within the 100-year floodplain, current location at time of development, base flood elevations must be determined for the entire Zone A within the property boundaries as required by KCC 14.08.220(4).

17. The subject parcel is completely under the Rural designation of the Shoreline Master Program (SMP). The subdivision as proposed meets the minimum parcel size and dimension requirements for the subject designation. All future development of the site must comply with the provisions of the SMP.

18. Lot 1 of the Zentz Short Plat contains a PUBH wetland within its boundaries. The Final mylars shall reflect the location of this wetland and a statement on the plat shall read as follows: "Future development of lots may require a study by a certified wetland biologist to determine wetland classification and for buffer requirements pursuant to KCC Critical Areas Code."

19. Ground water withdrawals of up to 5,000 gallons per day used for single or group domestic supply industrial purposes or for the irrigation of up to one-half acre of lawn and garden are exempt from the permitting process. Water use under the RCW 90.44.050 exemption establishes a water right that is subject to the same privileges, restrictions, laws and regulations as a water right permit or certificate obtained directly from Ecology.

20. 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.

21. The RCW 90.44.050 permit exemption does not apply where a developer of a residential subdivision proposes multiple wells to serve each lot in the development if in combination the withdrawal will exceed the exemption criteria.

22. Chapter 173-150 WAC provides for the protection of existing rights against impairment, i.e. interruption or interference in the availability of water. If water supply in an area becomes limited, use could be curtailed by those with senior water rights.

23. All water wells constructed shall be in accordance with the provisions of Chapter 173-160 WAC by a driller licensed in the State of Washington. All wells must be located a minimum of 100 feet from any known, suspected, or potential source of contamination and shall not be located within 1,000 feet of the property boundary of solid waste landfills. A well report must be submitted to the Department of Ecology within thirty days after the completion of a well.

24. Prior to receiving final approval for subdivisions in Kittitas County, applicants shall be required to make appropriate provisions for potable water supplies per RCW 58.17.110 which includes, but is not limited to, the minimum requirements outlined in the Kittitas County Board of Commissioners Resolution 2012-027.

25. Applicants shall submit a well log(s) and four hour draw down test from each proposed parcel within a subdivision, water budget neutrality determination(s) from DOE referencing the relevant subdivision and proposed parcels within the subdivision (if required by Chapter 173-539A WAC), and passing bacteriological and nitrate water quality test from each well. If the proposed subdivision does not have an existing well within the boundaries of each lot, a well must be drilled and the above information shall be provided to KCPHD prior to recommendation by KCPHD for final plat approval. If shared wells are proposed, in addition to the above requirements a copy of a shared well user's agreement shall be recorded at the Kittitas County Auditor's Office for each proposed parcel that proposes to utilize a 2-party shared water system.

26. 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.

27. 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.

28. The subject property is within the boundaries of the Ellensburg Water Company (EWC) Irrigation Entity. The applicant will need to comply with the requirements set forth in the EWC General Guidelines during all phases of development and construction.

29. Irrigation delivery shall not be impaired at any time to the surrounding farming practices and all costs associated with any potential relocation of irrigation delivery routes shall be the burden of the developer and not that of the surrounding landowners.

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

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

32. Addresses of all new residences shall be clearly visible from both directions at the county road.

33. The driveway for the new property must comply with Kittitas County Code, i.e. any driveway greater in length than 150' shall be no less than 16 feet in width.

34. All future development must comply with the International Fire Code.

35. The subject property is within or near land used for agriculture on which a variety of commercial activities may occur that is not compatible with residential development for periods of varying duration. (RCW 36.70A.060(1)) Commercial natural resource activities performed in accordance with county, state and federal laws are not subject to legal action as public nuisances. (RCW 7.48.305).

36. This property is located inside of the Kittitas County Stock Restricted Area; it shall be the responsibility of the property owner to fence in their grazing livestock.

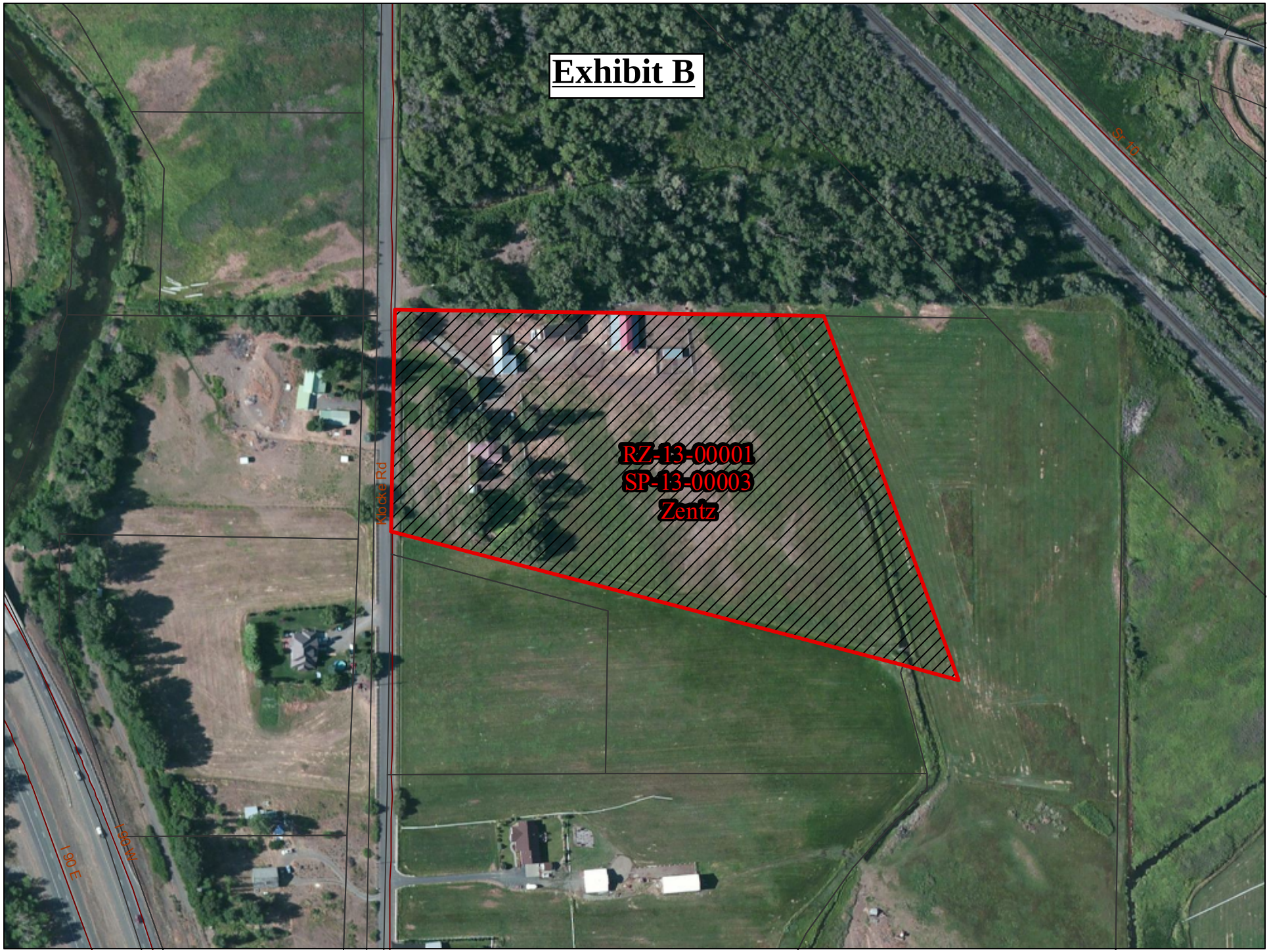
37. The final plat shall be in conformance with KCC 16.20.040 and 16.20.020.

38. Lots created by this short plat shall be configured so that no variance will be necessary to construct a single family residence and/or accessory structures.

Dated this 28th of August, 2013.

KITTITAS COUNTY HEARING EXAMINER

Andrew L. Kottkamp


Exhibit B
RZ-13-00001
SP-13-00003
Zentz
Mockel Rd
I-90 E
I-90 W
SR 10