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KITITAS COUNTY
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KITTITAS COUNTY LAND USE HEARING EXAMINER

IN THE MATTER OF)
)
LP-08-00017)
Eagle Nest Preliminary 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 September 25, 2008, 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. Wayne Nelson, applicant and authorized agent for Jolly Mountain Group LLC, landowner, has submitted a Preliminary Plat application to subdivide approximately 43.28 acres into 14 lots on land that is currently zoned Rural-3. (Application materials and public hearing testimony of Wayne Nelson)
2. The applicant's address is P.O. Box 52, Cle Elum, WA 98922. (Application materials)
3. The proposed lot sizes range from 3.02 acres to 3.33 acres. The project is proposed to be served by a Group B water system and individual on-site septic systems. The 14 lots proposed by this project will be able to collectively utilize at the most 5,000 gallons per day. This results in a maximum use per household of 357 gallons per day. (Staff report, Department of Ecology comment and staff presentation at hearing)
4. The property is located five (5) miles north of the town of Ronald and east of Salmon La Sac Road, Ronald WA 98940, located in a portion of the west half of Section 21, T21N R14E, W.M in Kittitas County. Assessor's map numbers 20-14-21000-0017 & 20-14-210050-0014. (Staff report and application materials)

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5. Site Information:

Total Project Size:	43.28 acres
Number of Lots:	14
Zoning district	Rural 3
Domestic Water:	Group B community system
Sewage Disposal:	Individual on-site septic system
Power/Electricity:	Puget Sound Energy
Fire Protection:	Outside Fire District #6 (WUIC)
Irrigation District:	Not applicable

(Staff report and application materials)

6. Site Characteristics: The area is forested and relatively steep with portions of the property exceeding 30% slope. There is evidence that the land has been logged in the past 10-years. The property is separated from Lake Cle Elum by Salmon La Sac Road, there is no direct access to the shoreline. (Staff report and application materials)

7. Surrounding Property:
 - North: Vacant
 - South: Vacant
 - East: Vacant
 - West: across Salmon La Sac Road is Lake Cle Elum

(Staff report)

8. The Comprehensive Plan designation is Rural. (Staff report and application materials)

9. The subject property is zoned Rural 3, which allows for one residential unit per 3 acres. (Staff report and application materials)

10. A long plat application and SEPA Environmental Checklist was submitted to Community Development Services on April 25, 2008 and was determined complete upon receipt of the Affidavit of Posting on June 4, 2008. The Notice of Application for the preliminary plat application was issued on July 8, 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 July 23, 2008. (Staff report and specific documents referred in this finding that are in the staff report)

11. 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 and is included as part of the record. (Staff report and affidavit of posting)

12. Kittitas County issued a Mitigated Determination of Nonsignificance (MDNS) on August 27, 2008 in accordance with WAC 197-11-355 (Optional DNS process). There were no appeals filed. (Staff report and MDNS document)
13. 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 community water system and on-site septic systems. Staff has conducted and an administrative critical area review in accordance with KCC 17A and found that portions of the site have areas of steep slopes. (Based upon the Hearing Examiner's review of the application materials, staff report and public hearing testimony)
14. This proposal is consistent with the Kittitas County Subdivision Code Chapter 16.12 for Preliminary Plats. (Hearing Examiner's review of evidence)
15. The Kittitas County Department of Public Works has identified that Salmon La Sac Road is classified as a Collector. 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. (Public Works' comments and staff report)
16. The following agencies provided comments during the comment period: Department of Ecology, Kittitas County Department of Public Works, Washington State Department of Health, and Kittitas County Environmental Health. These comments have been included as conditions of approval to address these agency concerns. (Staff report and individual agency comments)
17. 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)
18. This Application was found to be Technically Complete as required by law. (Staff report)
19. The entire Planning Staff file was admitted into the record at the public hearing. (Hearing Examiner finding)
20. Exhibit 1 was admitted into the record. Exhibit 1 is a comment letter from the City of Cle Elum Community Development Director, Matthew Morton, to Dan Valoff of Kittitas County Community Development, dated September 23, 2008. (Public hearing testimony)

21. The Kittitas County Department of Land Services recommended approval of this preliminary plat, subject to their recommended conditions of approval. (Staff report and public hearing testimony)
22. Public hearing after due legal notice was held on September 25, 2008. Appearing and testifying on behalf of the applicant was Wayne Nelson. Mr. Nelson testified that he was the agent of property owner, Jolly Mountain Group LLC. He testified that he was authorized to appear and speak on their behalf. (Public hearing testimony of Mr. Nelson)
23. Mr. Nelson testified that the applicant agreed with all representations contained within the staff report and agreed with all conditions of approval proposed by Kittitas County Community Development and those conditions of approval suggested by the City of Cle Elum. (Public hearing testimony of Mr. Nelson)
24. Mr. Nelson testified that any metering and/or testing of the well or delivery systems to any of the individual residences would be acceptable to the applicant. (Public hearing testimony of Mr. Nelson)
25. Mr. Nelson testified that there would be no need for a variance on any of the lots in order for lot owners to build a normal single family residence with accessory structures. This is despite various steep slopes throughout the property and the need for individual septic systems. (Public hearing testimony of Mr. Nelson)
26. Mr. Nelson submitted Exhibit 2 for the record. Exhibit 2 is an executed Fire Protection Agreement that has been recorded with the Kittitas County Auditor. This document was admitted as Exhibit 2 to the hearing. (Public hearing testimony of Mr. Nelson)
27. Mr. Nelson also testified in rebuttal that they would comply with all requirements of the International Fire Code and the International Wildland Urban Interface Code and would agree to participate in a Firewise Program coordinated through any agency with jurisdiction. (Public hearing testimony of Mr. Nelson)
28. There was no testimony in favor of the project. (Hearing Examiner finding)
29. Testifying in opposition to the project was Deidre Link. Ms. Link submitted for the record Exhibit 3 which was a written statement by Melissa Bates of Cle Elum. Ms. Link read this statement into the record, Exhibit 3 was admitted into the record. (Public hearing testimony of Ms. Link)

30. Ms. Link testified that she agreed with Ms. Bates' comments and believed that fire protection and suppression issues were paramount in her concerns. She had concerns about water usage in an R-3 Zoning District for this plat and an appeal that is currently working its way through the court system involving R-3 Zoning Districts within Kittitas County and their rights to use water. Ms. Link testified that she was concerned that this area surrounding Lake Cle Elum is losing its rural nature. She testified that because Kittitas County has elected not to incorporate a water shed plan that she had concerns about the impacts of this project on drinking water. (Public hearing testimony of Ms. Link)
31. Also testifying in opposition to this project was Dr. Bonnie Reay of Cle Elum. Dr. Reay is a member of the Cle Elum City Council but was appearing and testifying at this hearing as a private citizen. (Public hearing testimony of Dr. Reay)
32. Dr. Reay testified that Lake Cle Elum is a reservoir and provides drinking water throughout the area. She has also had concerns about water quality as a result of these subdivisions such as the applicant's. She has witnessed dead animals (2 deer and 1 elk) on Salmon La Sac Road and believed that the increased development is resulting in increased traffic and therefore having such impacts on wildlife. She testified that the forests in the area are dying and are ripe for fire and had significant concerns as to how fire hazards would be managed. (Public hearing testimony of Dr. Reay)
33. Also testifying in opposition to the project was James Boyle of Ronald, Washington. Mr. Boyle's primary concerns related to the risk of wildland fires originating from the development and the programs that would be implemented to reduce the risk of such fires. Mr. Boyle testified that he had been told that the prevailing winds from the north/northwest would direct any fire from the development towards the City of Roslyn. Mr. Boyle also had concerns regarding the steep slopes of the property and the impact of the development on drinking water for the area residents. Admitted into the record as Exhibit 4 was Mr. Boyle's written comments. Admitted into the record as Exhibit 5 was Section 1 of the *Daily Record* from September 25, 2008. (Public hearing testimony of Mr. Boyle)
34. Also testifying in opposition to the project was Catherine Clerf of Ellensburg. Ms. Clerf's primary concerns related to fire risks. She also testified that there is only one way in and out to this and other properties on the east side of Lake Cle Elum and that is Salmon La Sac Road. Her concern is that this was urban development in a rural area and because forests in the area are dying, by putting in urban developments unnecessarily increases the risk of wildland fire. Her concern was that there was not enough water to fight a fire and that there would be a panicked exodus down Salmon La Sac Road in the event of an uncontrolled fire. (Public hearing testimony of Ms. Clerf)

35. Ms. Clerf believed that there needs to be scientific studies for Upper Kittitas County water availability and quality but none has been completed. She also testified that the Volunteer Fire District would likely not include any new “residence” of this development and that her concern was that these property owners would be from out of the area, utilizing this property as vacation homes. (Public hearing testimony of Ms. Clerf)
36. Dr. Reay additionally testified that the water allotment for the City of Cle Elum is 254 gallons per day while the residents in the subject development would be allowed 357 gallons per day. (Public hearing testimony of Dr. Reay)
37. 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. (Finding based upon Hearing Examiner review of evidence)
38. The proposed use will not cause significant adverse impacts on the human or natural environments that cannot be mitigated by conditions of approval. (Finding based upon Hearing Examiner review of evidence)
39. The proposal will be served by adequate facilities including access, fire protection, water, storm water control, and sewage disposal facilities. (Finding based upon Hearing Examiner review of evidence)
40. 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 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 Findings of Fact and Conclusions of Law, Application LP-08-00017, Eagle Nest Preliminary Plat, is hereby **APPROVED** subject to the following 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 April 25, 2008 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 Urban-Wildland Interface 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. 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 August 27, 2008. The following are the mitigations contained within the MDNS and shall be conditions of approval:

I. Transportation

- A. The applicant shall be responsible for meeting or exceeding all conditions and requirements set forth by the 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

- 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. Stormwater and surface runoff generated from this project shall be retained and treated onsite and shall not be allowed to flow into County road right-of-ways.
- C. Withdrawals of groundwater on the subject property are subject to the rules and regulations adopted and administered 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 will develop a Class “B” water system for the project. The Group B water system will be designed by a licensed engineer and approved by the Washington State Department of Health.
- E. The Eagle Nest Preliminary Plat (LP-08-17) shall be considered as one project and therefore shall be limited to one groundwater withdrawal exemption for all 14 proposed lots combined. The cumulative groundwater withdrawal of all lots combined shall not exceed the 5,000 gallon per day exemption limit set forth by the Department of Ecology. Private covenants documenting the intention to use less than the amount of gallons per day of water assumed in WAC 173-539A-050 (2). Specifically the covenants’ shall state that the Group B Water System will provide a maximum of 357 gallons per day to be used only for inside domestic use and not for irrigation of each lot.
- F. 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. Historic and Cultural preservation

- A. The applicant shall immediately contact the Washington State Department of Archaeology & Historic Preservation, and the Yakima Nation if any items of possible cultural or historic significance are encountered during construction activities. Work shall be immediately halted with the area and a large enough perimeter established in order to maintain the integrity of the site.

V. Light and Aesthetics

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

VI. 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 Eagle Nest Plat No. LP-08-00017 currently has 5000 gallons of water per day for domestic-use from the exemption. Each parcel will receive 357 gallons per day.”*
11. The well shall be metered to insure usage no greater than 5,000 gallons per day and each parcel shall be metered to insure usage no greater than 357 gallons per day.
12. 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).

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. All access shall be from the internal road system. No direct access from any individual lot to Salmon La Sac Road shall be allowed.
15. Hex Mountain Drive and Newport Creek Drive shall be labeled on the final plat.
16. Hex Mountain Road Improvements: Access from Salmon La Sac Road shall be constructed to meet or exceed the conditions of a High-Density Private Road that serves 15-40 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.

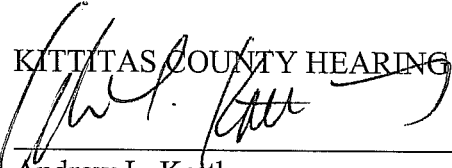
20. Private Road Maintenance Agreement: The applicant shall meet all applicable conditions of any pre-established or required Private Road Maintenance Agreements.
21. Lot Closure: It is the responsibility of the Professional Licensed Surveyor (PLS) to ensure the lot closures are correct and accurate.
22. 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.
23. 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.
24. Fire Protection: The applicant shall comply with any requirements of the Kittitas County Fire Marshal regarding access requirements to the project area for emergency response.
25. The project shall comply with all applicable requirements of the International Fire Code and the International Wildland-Urban Interface Code. In addition, the applicant shall initiate, coordinate and cooperate with an effort to finalize a Firewise Program for this development.
26. 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."

- 27. 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 reseeded of areas disturbed by development to preclude the proliferation of noxious weeds."
- 28. 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.
- 29. Both sheets shall reflect the Plat number: LP-08-00017.

Dated this 3rd day of October, 2008.

KITTITAS COUNTY HEARING EXAMINER


Andrew L. Kottkamp