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KITTITAS COUNTY
LAND USE HEARING EXAMINER

IN THE MATTER OF) **RECOMMENDED FINDINGS OF**
) **FACT, CONCLUSIONS OF**
Z-08-05 and SP-08-10) **LAW, DECISION AND**
Bensch Rezone and Short Plat) **CONDITIONS OF APPROVAL**

THIS MATTER having come on for hearing in front of the Kittitas County Hearing Examiner on May 14, 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. Stanley & Kay Bensch, landowner, have submitted an application for a rezone from Forest & Range to Rural-3 along with a Short Plat to subdivide approximately 7.62 acres into 2-lots. The proposed lot sizes are 4.6 and 3.01 acres in size. (Staff Report)
2. The applicant is Stanley & Kay Bensch, 5944 Road 13.2 NW, Ephrata, WA 98823. (Application materials)
3. The project is proposed to be served by Reservoir Hill Water Association and individual on-site septic systems. (Staff Report)
4. The property is located south of the city of Cle Elum at 880 south Cle Elum Ridge Road (Forest Service Road #3350), Cle Elum, WA in Section 08, T19N, R15E, WM in Kittitas County. Map number 19-15-08010-0015. (Staff Report)
5. Site Information:

Total Project Size:	7.62 acres
Number of Lots:	2
Existing zoning district:	Forest & Range
Proposed zoning district:	Rural-3
Domestic Water:	Reservoir Hill Water Association
Sewage Disposal:	On-site septic
Power/Electricity:	Puget Sound Energy
Fire Protection:	Kittitas County Fire District #7
Irrigation District:	N/A

 (Staff Report)

6. 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)
7. Surrounding Property:

<u>North:</u>	Residential
<u>South:</u>	Residential
<u>East:</u>	Residential
<u>West:</u>	Residential

(Staff Report)
8. The Comprehensive Plan designation is Rural. (Staff Report)
9. The subject property is zoned Forest & Range, which allows for a 20 acre minimum lot size. (Staff Report)
10. Application for a rezone from Forest & Range to Rural-3 was received on March 6, 2008. The application was deemed complete on June 4, 2008. A Notice of Application was issued on June 26, 2008. Said notice was mailed to all neighbors within 500 feet and to interested state agencies. (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 on June 17, 2008. (Staff Report)
12. Kittitas County issued a Mitigated Determination of Nonsignificance (MDNS) on February 10, 2009 in accordance with WAC 197-11-355 (Optional DNS process). There were no appeals filed. (Staff Report)
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 the Reservoir Hill Water Association. Staff has conducted an administrative critical area review in accordance with KCC 17A and found no critical areas on site. (Staff Report)
14. This proposal is consistent with the Kittitas County Subdivision Code Chapter 16.32 for Short Plats. (Staff Report)
15. The Kittitas County Department of Public Works has conditioned the project and the conditions are included as part of the record. As conditioned, the proposal is consistent with the provisions of KCC Title 12. (Staff Report)

16. The following agencies provided comments during the comment period: Kittitas County Public Health, Kittitas County Public Works and the Department of Ecology. These comments have been included as conditions of approval to address the agency concerns. (Staff Report)
17. Surrounding landowners submitted comments 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)
18. 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)
19. The entire Planning Staff file was admitted into the record at the public hearing. (Public hearing record)
20. The Kittitas County Community Development Services recommended approval of this permit(s), subject to the recommended conditions of approval. (Public hearing record)
21. Public hearing after due legal notice was held on May 14, 2009. Appearing and testifying on behalf of the applicant was Noah Goodrich. Mr. Goodrich testified that the applicant agreed with all of the proposed conditions of approval. Mr. Goodrich also provided testimony emphasizing the factual basis for the seven criteria for the rezone and the criteria for the plat. (Open record public hearing testimony)
22. No member of the public testified at the hearing. (Hearing Examiner finding based on the record)
23. Admitted at the hearing as Exhibit 1 was a copy of the Bensch Short Plat Road Variance 08-39 approved November 20, 2008. (Open record public hearing record)
24. 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)
25. 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)

26. 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)
27. Any Conclusion of Law that is more correctly a Finding of Fact is hereby incorporated as such by this reference. (Hearing Examiner finding based on the record)

II. RECOMMENDED CONCLUSIONS OF LAW

1. The Hearing Examiner has been granted authority to render this recommended decision.
2. As conditioned, the development meets the goals, policies and implementation recommendations as set forth in the Kittitas County Comprehensive Plan.
3. As conditioned, this proposal is consistent with applicable federal and state laws and regulations.
4. Public use and interest will be served by approval of this proposal.
5. As conditioned, the proposal is consistent with Kittitas County Code Title 16 Subdivision, Title 17 Zoning, Title 17A Critical Areas, Title 15 Environmental, and Title 12 Roads and Bridges.
6. As conditioned, the proposed use is consistent with the intent, purposes and regulations of the Kittitas County Code and Comprehensive Plan.
7. As conditioned, the proposal does conform to the standards specified in Kittitas County Code.
8. As conditioned, the use will comply with all required performance standards as specified in Kittitas County Code.
9. As conditioned, the proposed use will not be contrary to the intent or purposes and regulations of the Kittitas County Code or the Comprehensive Plan.
10. As conditioned, this proposal does comply with Comprehensive Plan, the Shoreline Master Program, the zoning code and other land use regulations, and SEPA.
11. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.

III. RECOMMENDED DECISION

Based on the above Recommended Findings of Fact and Recommended Conclusions of Law, the Hearing Examiner hereby recommends that Application Z-08-05 and SP-08-10, Bensch Rezone and Short 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 June 4, 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 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 February 10, 2009. The following are the mitigations contained within the MDNS and shall be conditions of approval:

I. Transportation

- A. Any future subdivision or development of the properties involved within this rezone will result in the enactment of road standards review and will require road improvements to be made that will be subject to all agency standards including Kittitas County Road Standards in place at the time of the development application. Kittitas County Department of Public Works suggests a "maximum build-out" plan be discussed in a pre-applicant meeting with the applicant to clarify some of these issues.

II. Air

- A. The proponent may need to obtain a burn permit from the Department of Ecology if they are planning to remove trees or debris from the property.
- B. Due to the dry conditions in the area, extra efforts are needed to control blowing dust and dirt. The proponent shall create a site-specific Fugitive Dust Control Plan (FDCP) before developing property, and then follow the plan for construction of the project and duration of activity on the property. The FDCP shall include, but is not limited to, the following components;
- Identify all potential fugitive dust emission points.
 - Assign dust control methods.
 - Determine the frequency of application.
 - Record all dust control activities.
 - Train personnel in the FDCP.
 - Shut down during windy conditions.
 - Follow the FDCP and monitor dust control efforts.

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.
- B. Storm water and surface runoff generated by this project must be retained and treated on site in accordance with regulating agencies' standards, and not be allowed to flow onto County rights-of-way.
- C. Withdrawals of groundwater on the subject property will be subject to the rules & regulations adopted and administrated by the Washington State Department of Ecology.

IV SEPA Review

- A. Any future subdivision or development of the properties involved within this rezone will be subject to additional SEPA review.
7. 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.
8. The Road Variance Committee approved RV-08-39 allowing the applicant to

subdivide without the requirement to provide a second access to FS RD 3350.

9. The road shall be labeled as Forest Service Road 3350.
10. In accordance with KCRS 12.05.030(4): Lots that access state routes, forest service roads, or access railroad easements will require separate access permits from those agencies. The County cannot grant access to roads or easements it does not control.
11. This short plat is located beyond the paved portion of FS RD 3350. The applicant shall contact the USFS for any required road improvements or agreements. The applicant shall submit to Public Works these documents or provide a document stating there are no requirements prior to final approval.
12. If the access is required to be brought to county standards, the following requirements shall apply. Access shall be constructed to meet or exceed the requirements of a Low-Density Private Road. See 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 20', with 1' shoulders, for a total width of 22'.
 - b. Minimum centerline radius will be 60'.
 - c. The surface requirement is for a minimum gravel surface depth of 6".
 - 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 of county road.
 - k. A paved apron shall be constructed at the intersection of the proposed private intersection and the county road right of way.
13. A cul-de-sac turn-around having an outside right-of-way or 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.

14. 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.

15. 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.

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

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

18. 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.

19. 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.

20. Contact the Kittitas County Fire Marshal regarding any additional access requirements for Emergency Response.

21. 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.

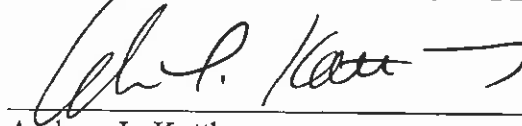
22. Private roads shall meet the following conditions:
 - a. Private roads shall meet the minimum access requirements of the International Fire Code as adopted by the County, and
 - b. Shall be designed and constructed in conformance with AASHTO Guidelines

- 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 28th day of May, 2009.

KITTITAS COUNTY HEARING EXAMINER



Andrew L. Kottkamp