

**KITTITAS COUNTY  
LAND USE HEARING EXAMINER**

<b>IN THE MATTER OF</b>	)	<b>RECOMMENDED FINDINGS OF</b>
	)	<b>FACT, CONCLUSIONS OF</b>
LP-08-00019	)	<b>LAW, DECISION AND</b>
F & G Performance Based Cluster Plat	)	<b>CONDITIONS OF APPROVAL</b>

THIS MATTER having come on for hearing in front of the Kittitas County Hearing Examiner on November 19, 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. Cool Water LLC and Fortune Creek LLC, landowners, have submitted an application for a 51-lot Performance Based Cluster Plat on approximately 89.10 acres of land that is zoned Rural-3. Proposed lots will be served by Class 'A' water system and individual/community onsite septic systems. (Staff report)
2. The applicant is Cool Water LLC and Fortune Creek LLC, P.O. Box 923, Cle Elum, WA 98922. (Application materials)
3. The proposed lot sizes range from 0.65 acres to 1.84 acres. The project is proposed to be served a Group 'A' water system and individual & community onsite septic systems. (Staff report)
4. The property is located southeast of Woods & Steel Road and Forest Service Road #4510, Cle Elum, WA, in a portion of Section 7, T9N, R15E, WM, Kittitas County. Map numbers 19-15-07000-0029 & 0030. (Staff report)

5. Site Information:
 

Total Project Size:	89.10 acres
Number of Lots:	51
Domestic Water:	Group 'A' water system
Sewage Disposal:	Community & individual on-site septic system
Power/Electricity:	Puget Sound Energy
Fire Protection:	Fire District #7.
Irrigation District:	Not applicable

 (Staff report)
  
6. Site Characteristics: The area is generally mountainous terrain. (Staff report)
  
7. Surrounding Properties:
  - a. North: Vacant, zoned Rural 3
  - b. South: Vacant, zoned Commercial Forest
  - c. East: Vacant, zoned Rural 3
  - d. West: Vacant, zoned Forest & Range.
 (Staff report)
  
8. The Comprehensive Plan designation is "Rural." (Staff report)
  
9. The subject property is zoned Rural 3, which allows for one residential unit per 3 acres. (Staff report)
  
10. A long plat application was submitted to Community Development Services on April 24, 2009. The Notice of Application for the preliminary plat application was issued on May 19, 2009. 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 June 3, 2009. (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 on May 7, 2008 by the applicant and returned to Community Development Services, and is included as part of the record. (Staff report)
  
12. Kittitas County issued a Mitigated Determination of Nonsignificance (MDNS) on October 29, 2009 in accordance with WAC 197-11-355 (Optional DNS process). No appeals were 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 a Group 'A' water system and community & individual onsite septic systems. (Staff report)
14. Staff has conducted and an administrative critical area review in accordance with KCC 17A and found that portions of the site have areas of 25-50% steep slopes.. As conditioned, the proposed development is consistent with the provisions of KCC Title 17A. (Staff report)
  15. The Department of Public Works has reviewed this proposal for consistency with KCC Title 12 Roads and Bridges. Several conditions have been applied to the construction of onsite private roads, as outlined in the July October 19, 2009 memorandum issued by the Department of Public Works, which will be required prior to issuance of a building permit. 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 Department of Public Works, Kittitas County Public Health Department, Kittitas County Community Development Services, Kittitas County Fire District #7, and Washington State Department of Ecology. These comments have been included as conditions of approval to address these agency concerns. (Staff report)
  17. Written comments were received from the public submitted by Katherine Woods, Deidre Link and Cecile B. Woods, (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, subject to the recommended conditions of approval. (Public hearing record)
  21. Public hearing after due legal notice was held on November 19, 2009. Appearing and testifying on behalf of the applicant was Mark Kirkpatrick of Encompass Engineering. Mr. Kirkpatrick testified that all proposed conditions of approval were acceptable but did ask that proposed Condition No. 7 be revised to allow for the option greater than 40% open space. (Open record public hearing testimony)
  22. Testifying in opposition to the project was Melissa Bates. Ms. Bates submitted an exhibit which was a letter from Diedra Link. Ms. Bates was concerned that there had

- been no Department of Health comments and questioned whether or not they were even notified. There was also a question regarding whether water rights had been obtained and whether there would be the need for storage ponds. (Open record public hearing testimony)
23. Testifying on behalf of the applicant was Sean Northrop. Mr. Northrop indicated that he was the property owner of this project. He testified that they currently own a water right to serve the project but that they will be utilizing a water bank with mitigation credits. (Open record public hearing testimony)
  24. Also testifying on behalf of the applicant was attorney Traci Shallbetter. Ms. Shallbetter testified that bonus points are allowed pursuant to the Kittitas County Code even though a Group A water system is required for a project. (Open record public hearing testimony)
  25. 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)
  26. 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)
  27. 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)
  28. 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, this proposal is consistent with the Kittitas County Subdivision Code Chapter 16.09 for Performance Based Cluster Plats.
3. As conditioned, the development meets the goals, policies and implementation recommendations as set forth in the Kittitas County Comprehensive Plan.

4. As conditioned, this proposal is consistent with applicable federal and state laws and regulations.
5. Public use and interest will be served by approval of this proposal.
6. 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.
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. 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 LP-08-00019, F & G Performance Based Cluster 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 on file dated April 24, 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. 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.

Platting Standards, Building, and Zoning Code:

5. Performance Based Cluster Plats: The Performance Based Cluster Platting conveyance instruments and the face of the final plat shall contain the following notice: The subject property is within or near existing agricultural or other natural resource areas on which a variety of activities may occur that are not compatible with residential development for certain periods of varying duration. Agricultural or other natural resource activities performed in accordance with county, state and federal laws are not subject to legal action as public nuisances. Kittitas County has adopted right to farm provisions contained in Section 17.74 of the Kittitas County Zoning Code.
6. Certificate of Title: A certificate of title of the property proposed to be platted shall be submitted with the final plat.
7. Lot Closure Computer Sheets: Computer sheets shall be submitted with the final plat showing the closure of plat boundaries, blocks, lots or any. It is the responsibility of the Professional Licensed Surveyor (PLS) to ensure the lot closures are correct and accurate.
8. Open Space: In accordance with KCC 16.09.030 and KCC 16.09.100C, the minimum required open space acreage, not including the 200-foot building setback area, is 35.64 acres. The plat shall be revised to comply with this requirement. The applicant may provide for greater open space should the applicant so desire. The face of the final plat shall contain the following note: *The open space shall remain in perpetuity and cannot be further subdivided.*
9. 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 reseeding of areas disturbed by development to preclude the proliferation of noxious weeds.*"

10. 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.
11. Both sheets shall reflect the Plat number: LP-08-00019.

Transportation and Infrastructure:

12. Timing of Improvements: This application is subject to the latest revision of the Kittitas County Road Standards, dated 9/6/05. The following conditions apply and must be completed prior to the issuance of a building permit for any of the residence within this plat. A Performance Bond or acceptable financial guarantee may be used, in lieu of the required improvements, per the conditions outlined in the current Kittitas County Road Standards.
13. Private Road Certification: 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. FS 4510 Road Construction Requirements:
  - a. A road maintenance agreement or other agreement with the US Forest Service shall be required for this plat. The terms of the agreement shall be accepted by the USFS prior to the issuance of Final Approval.
  - b. FS Road 4510 shall be constructed as required by the US Forest Service. All required road work shall be bonded for or completed to the satisfaction of the Forest Service prior to issuance of a building permit. Building permits shall not be issued without approval from USFS.
15. Private Road Improvements: Access within the plat 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.
  - 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: 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.
17. Temporary Cul-de-Sac: Temporary cul-de-sac easements shall be required due to phasing of the project. A temporary cul-de-sac easement with a diameter of at least 110' shall be shown near Lot 25 in Phase 2 and near Lot 17 in Phase 3. The temporary easements may be relinquished after each subsequent phase's roads have been constructed and certified. The temporary cul-de-sacs shall be constructed to the same standards as a permanent cul-de-sac.
18. Driveway Easements: All driveway easements shall be labeled with their width and use. This includes easements across Lots 5, 24, 35, 37, and 42.
19. Existing Easement: The AFN for the existing easement is not complete. The AFN shall be corrected on the final plat.
20. Private Road Maintenance Agreement: The applicant shall meet all applicable conditions of any pre-established or required Private Road Maintenance Agreements.



21. 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.
22. 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.
23. Fire Protection: Contact the Kittitas County Fire Marshal regarding any additional access requirements for Emergency Response.
24. Mailbox Placement: 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.
25. 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:
  - i. *“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.”*

Water and Stormwater:

- 26. A Group ‘A’ water system is proposed for this plat. Public systems exceeding 14 connections require a water right, according to RCW 0.44.050. Demonstration of adequate water rights to serve the entire F&G Performance Based Cluster Plat, inclusive of all four proposed phases, shall be completed prior to the recording of mylars for phase one. A well site inspection must be performed to approve the site where the well is to be located. The water system must be approved by the Washington State Department of Health prior to final plat approval.
- 27. The 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.
- 28. Final approval from Kittitas County Public Health will be conditioned upon: 1) Documentation from the State of Washington, Department of Ecology verifying the quantity of water required for the plat has been transferred, and 2) All proposed wells being placed and well logs showing yields consistent with the requirements above being proven and the required nitrate and bacteriological tests showing potability of that water
- 29. Note that additional valid water rights may be required for irrigation water. If irrigation is not available through an irrigation district, the Department of Ecology encourages the use of covenants to help property owners stay within the group water exemption criteria until a valid water right is obtained for irrigation.
- 30. Prior to final plat approval the proponent must demonstrate the suitability of the soils for each lot for onsite septic. Soil logs must be taken on the site per WAC 246-272 or as amended. The result of soil testing may result in requirements to resize lots or reduce the overall number of lots.

31. An NPDES Construction Stormwater General Permit from the Washington State Department of Ecology is required if there is a potential for stormwater discharge from a construction site with more than one acre of disturbed ground. This permit requires that the SEPA checklist fully disclose anticipated activities including building, road construction and utility placements. Obtaining a permit is a minimum of a 38 day process and may take up to 60 days if the original SEPA does not disclose all proposed activities.
32. This NPDES Construction Stormwater General Permit requires that a Stormwater Pollution Prevention Plan (Erosion Sediment Control Plan) is prepared and implemented for all permitted construction sites. These control measures must be able to prevent soil from being carried into surface water (this includes storm drains) by stormwater runoff. Permit coverage and erosion control measures must be in place prior to any clearing, grading, or construction.

#### Land Use and Recreation

33. The applicant has proposed trails throughout the designated open space area and project site. This recreational amenity is at the applicant's option and is not required to achieve the proposed density bonus. If the trail proposal is retained, the 15-foot wide trail easements shown on the preliminary plat shall be shown as tracts and be included with the open space tract on the final plat.
34. The following shall be submitted to CDS for review, approval, and recording, if necessary, to ensure consistency with the applicant's proposal and KCC 16.09: any proposed restrictive covenants (CC&Rs); homeowners' association bylaws and applicable documents; and proposals related to roads, the Group A water system transfer, onsite sewage treatment systems, and recreation, as applicable, and open space. Any conditions of approval of the Group A Water system transfer and onsite sewage treatment system shall be a condition of the final plat approval and included as a plat note, as appropriate.
35. The following note shall be placed on the face of the final plat: If fencing is proposed for any lot, it shall be a two-rail split fence design no greater than 42 inches in height in order to encourage wildlife presence and to facilitate wildlife passage.

#### Air Quality

36. A burn permit must be obtained from Ecology if the proponent plans to burn trees or debris from the property. Only natural, unprocessed vegetation may be burned in an outdoor fire.

37. The proponent should create a site-specific Fugitive Dust Control Plan (FDCP) before starting this project, and then follow the plan for the construction of the project and the duration of activity on property.
38. Washington Administrative Code (WAC) 173-400-040 requires that reasonable precautions be taken to prevent dust from leaving the site. Also, dust is prohibited from interfering unreasonably with the use and enjoyment of property, causing health impacts, or damaging property or business.

### SEPA MDNS Conditions

39. 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 [DATE]. The following are the mitigations contained within the MDNS and shall be conditions of approval:

#### I. Transportation

- A. A road maintenance agreement or other agreement with the US Forest Service shall be required for this plat. The terms of the agreement shall be accepted by the USFS prior to the issuance of Final Approval. All required road work shall be bonded for or completed to the satisfaction of the Forest Service prior to issuance of a building permit. Building permits shall not be issued without approval from USFS.
- B. A second access is required of this project. Prior to final approval, the applicant must submit a route that has easement or other access rights secured and recorded to Public Works for approval. The second access must conform to Kittitas County Road Standards and the second access requirements as clarified by the Board of County Commissioners on April 2, 2007. The BOCC clarified KCRS 12.01.095(2) with the following requirements: 1) If the second access is restricted to emergency access only, it must meet or exceed the following requirements: 60' easement, 20' roadway width, BST/ACP surface, and a paved apron. Access restrictions such as gates or bollards must be approved by the Fire Marshall; 2) If the second access is to be used for ingress and egress, it must meet the same standards of the first access.

Kittitas County Public Works may apply additional conditions to the second access prior to approval. If the second access does not conform to Kittitas County Road Standards, the project may be required to be reopened to public comment due to changed circumstances.

The second access is not required for Phase 1. The second access shall be bonded for or constructed and certified prior to receiving a building permit for Phases 2, 3 and 4.

## II. Stormwater

- A. 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 design shall be presented to Public Works and approved by the County Engineer prior to final approval. The stormwater system construction shall be certified by a licensed engineer. The certification shall be included with the road certification and is required prior to the issuance of a building permit.

## III. Light and Aesthetics

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

## IV. Environment and Wildlife

- A. If fencing is proposed for any lot of the F&G Performance Based Cluster Plat, it shall be a two-rail split fence design no greater than 42 inches in height in order to encourage wildlife presence and to facilitate wildlife passage.

## 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.

## VI. Public Safety

- A. An approved fire hydrant system shall be required in accordance with the 2006 International Fire Code Appendix C101.1. Per Kittitas County Fire District #7, said fire hydrants shall be evenly spaced no further than 600 feet in separation. Minimum fire flow requirements for residential development shall be met.

Dated this 1<sup>st</sup> day of December, 2009.

KITTITAS COUNTY HEARING EXAMINER

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Andrew L. Kottkamp