

**PROJECT NAME:
LP-07-00040 Big Buck Ridge**

Completed for: **Hearing Examiner Post Hearing Record 6/5/2015**

Index #	Document Name
1	Application Receipt – 6/20/2007
2	Closures – 6/19/2007
3	Well Reports – Multiple Dates
4	SEPA Checklist – 6/19/2007
5	Plat Application 6/20/2007
6	Preliminary Plat – 6/20/2007
7	Public Health Form Letter – 6/20/2007
8	Road Variance Request – 5/18/2007
9	Deem Incomplete Letter – 7/18/2007
10	Adjoining Property/Mailing Labels 7/23/2007
11	Traffic Impact Analysis Required Letter – 8/16/2007
12	Second Access Required Letter – 12/5/2007
13	Sixty Days to Submit Letter – 2/9/2010
14	TIA Correspondence Letter – 6/14/2010
15	Extension Request – 6/15/2010
16	Extension Granted Letter – 6/25/2010
17	Extension Request – 10/19/2010
18	Extension Granted Letter – 10/17/2010
19	Extension Request – 6/27/2011
20	Extension Granted Letter – 6/27/2011

21	Extension Request – 9/29/2011
22	Extension Granted Letter – 9/30/2011
23	Extension Request – 1/11/2012
24	Extension Granted Letter – 1/11/2012
25	Comments – City of Cle Elum – 1/13/2012
26	Correspondence RE TIA – 1/26/2012
27	Extension Request – 6/26/2012
28	Extension Granted Letter – 6/26/2012
29	Extension Request – 10/9/2012
30	Extension Granted Letter – 10/23/2012
31	Traffic Impact Analysis – 2/19/2013
32	Memo from Public Works – 5/6/2013
33	Email from Public Works – 5/29/2013
34	Site Visit Photos – 12/19/2014
35	Critical Areas Checklist – 1/21/2015
36	Planners Maps – 1/21/2015
37	Notice of Application Documentation – 2/9/2015
38	Newspaper Article – 2/12/2015
39	Owens Comments – 2/24/2015
40	Higgs Comments – 2/24/2015
41	Carmody Comments – 2/24/2015
42	McDuff Comments - 2/24/2015
43	McKim Comments – 2/23/2015
44	Suman Comments – 2/23/2015
45	Rogers Comments – 2/23/2015
46	Skvarla Comments – 2/23/2015

47	Person Comments – 2/22/2015
48	Clark Comments – 2/22/2015
49	McDonald Comments – 2/21/2015
50	Thompson Comments – 2/21/2015
51	Ecology Comments – 2/24/2015
52	Daly Comments – 2/18/2015
53	Burnett Comments – 2/16/2015
54	Johnson Comments – 2/16/2015
55	Remeto Comments – 2/16/2015
56	Jones Comments – 2/16/2015
57	Kasowski Comments – 2/16/2015
58	Kittitas County Public Health Comments – 2/10/2015
59	Mulhbeier Comments – Beginning 2/13/2015
60	Washington State Department of Health Comments – 2/9/2015
61	City of Cle Elum Comments – 1/13/2012
62	Transmittal of Comments – 3/19/2015
63	Chapman Exhibit – 2/24/2015 (9:43 p.m.)
64	Ecology Exhibit – 3/3/2015
65	Public Works Exhibit – 3/16/2015
66	Washington State Department of Health Exhibit – 2/25/2015
67	Road Maintenance Exhibit (Public Works) – 3/20/2015
68	Notice of SEPA Action and Public Hearing – 3/25/2015
69	Mitigated Determination of Non-Significance – 3/25/2015
70	Published Notice of SEPA Action and Public Hearing – 3/25/2015
71	Newspaper Article – 3/26/2015
72	Newspaper Article – 3/30/2015

73	Request to Postpone Public Hearing – 3/31/2015
74	Notice of SEPA Action & Postponement – 3/31/2015
75	Notice of SEPA Action & Postponement Publication Documents – 4/2/2015
76	Notice of Public Hearing Documentation – 4/14/2015
77	Ordinance 2007-22 – 7/19/2007
78	Chapter 17.30 Rural-3 Zone – 7/10/2007
79	Hearings Examiner Public Hearing Staff Report 4/23/2015
80	Memorandum of Authorities – Applicant 4/21/2015
81	Staff Power Point Presentation from Public Hearing 4/23/2015
82	Exhibit from Melissa Bates 4/23/2015
83	Public Health Memorandum 4/15/2015
84	Fire Marshall Memorandum 4/23/2015
85	Revised Proposed Conditions of Approval 4/23/2015
86	Hearings Examiner Public Hearing Agenda 4/23/2015
87	Hearings Examiner Public Hearing Sign In Sheet 4/23/2015
88	Affidavit of Publication Notice of Public Hearing 4/17/2015
89	Email Chain Regarding Hearing Record Documents 4/29/2015
90	Email Chain Regarding Clarification of Issues and Disclosure 4/29/2015
91	Applicant's Motion to Supplement the Record 5/8/2015
92	Email Correspondence Between All Parties 5/8/2015 to 5/26/2015
93	Letter from Applicant to Jan Ollivier Signed 2/16/2010
94	Post Hearing Memorandum of Authorities Cle Elum Ridge Assoc. 5/22/2015
95	Post Hearing Memorandum of Authorities Applicant

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KITTITAS COUNTY HEARINGS EXAMINER

9 Plat Application of:

LP-07-00040

10 Becky Andrus

11 APPLICANTS' SUPPLEMENTAL
12 MEMORANDUM OF
13 AUTHORITIES IN SUPPORT OF
14 CLUSTER PLAT APPLICATION

15 At the conclusion of the open record hearing on the above-referenced application, the Hearings
16 Examiner indicated he would like to receive supplemental briefing on several issues. In an email dated
17 April 29, 2015 the Hearings Examiner clarified the issues he wanted supplemental briefing on as
18 follows:

- 19 1. Vesting and, in particular, what a "project action" is and what constitutes vesting as a
20 complete application as a matter of law when no letter of complete application is
21 issued.
- 22 2. The legal effect of the lack of a letter of complete application in 2007, and the impact
23 of it being issued in 2015.
- 24 3. The legal effect of the February 9, 2010 letter from the county to the applicant advising
25 that the application would be deemed withdrawn if the TIA was not submitted April 10,
26

1 2010, and then the TIA was not submitted by that date but the application continued to
2 be processed by the County.

3 4. The legal impact of the original SEPA checklist submitted 6-19-2007 that mentions
4 nothing of potential traffic impacts although the rezone ordinance applying to this
5 property made note of traffic impacts supporting the requirement of a TIA at time of
6 project action.

7 5. The related legal impact of the optional DNS process noticed 2-9-2015 and the MDNS
8 issued 3-25-2015.

9 6. The legal authority of the County to set a "de facto" date of complete
10 application almost 9 years before the date the application was noticed to the public.

11 I. DISCUSSION

12 1.1 Vesting and, in particular, what a project action is and what constitutes vesting as a 13 complete application as a matter of law when no letter of complete application is issued.

14 1.1.1 The Vested Rights Doctrine

15 The Applicants provide a general outline of vesting in Applicants' Memorandum of Authorities
16 in Support of Plat Application at page 3, line 4 to page 4, line 13. This application is a plat application
17 that is vested under RCW 58.17.033, which provides as follows:

18 (1) A proposed division of land, as defined in RCW
19 58.17.020, shall be considered under the subdivision or short
20 subdivision ordinance, and zoning or other land use control
21 ordinances, in effect on the land at the time a fully completed
22 application for preliminary plat approval of the subdivision, or short
23 plat approval of the short subdivision, has been submitted to the
24 appropriate county, city, or town official.

25 (2) The requirements for a fully completed application shall
26 be defined by local ordinance.

(3) The limitations imposed by this section shall not restrict
conditions imposed under chapter 43.21C RCW. (Emphasis added.)

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1 This statute now controls vesting in the context of a plat. In *Potala Village Kirkland, Llc, v. City of*
2 *Kirkland*, 183 Wn. App. 191 (2014), the court held the statutory vested rights doctrine replaced, rather
3 than supplemented, the common law vested rights doctrine. Under this decision, vested rights apply
4 only in the context of building permit applications (RCW 19.27.095) and short subdivision and
5 subdivision applications (RCW 58.17.033), although city or county policies may grant broader vested
6 rights.

7 Submission of a completed plat/short plat application vests the developer with the right to both
8 divide the property and to develop it in the manner disclosed in the application in accordance with the
9 land use and zoning laws in effect on the date of submission of the application. *Noble Manor v. Pierce*
10 *County*, 133 Wn.2d 269 (1997). The reliance and over emphasis on the phrase “zero tolerance
11 approval for completeness” (see Cle Elum Ridge Association Post Hearing Memorandum; *Lauer v.*
12 *Pierce County*, 173 Wn.2d 242, 259, 267 P.3d 988 (2011); *Friends of the Law v. King County*, 123
13 Wn.2d 518, 869 P.2d 1056 (1994)) is misplaced. *Lauer* involved vesting of a building permit
14 application. The case stands for the proposition that the definition of a “fully complete” application
15 depends on local law. 173 Wn.2d at 257; see also RCW 19.27.095(2). The real issues in that case
16 were that the building permit application “falsely represented the site.” *Id.* at 260. As a result of the
17 misrepresentation the house should not have been built at that location. *Id.* at 260. In *Lauer*, the court
18 did not reach the issue of whether there was a complete application because the court concluded the
19 application was not “valid” and sought to permit a building that was not allowed under the then-
20 existing ordinances. *Id.* at 262. Similarly in *Friends of the Law*, the court concluded what constituted
21 a complete application is up to the local jurisdiction. *Friends of the Law*, 123 Wn.2d at 523. There,
22 the court went on to deal with King County’s confusing and unclear rules on what constitutes a
23 complete application. *Id.* at 524-525.

24 If a zone or development regulation is found to not comply with the Growth Management Act,
25 the noncompliance does not affect the vesting. *Town of Woodway v. Snohomish County*, 180 Wn.2d
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1 165, 322 P.3d 1219 (2014); see also, *King County v. Puget Sound Growth Mgmt. Hearings Bd.*, 138
2 Wn.2d 161, 181, 979 P.2d 374 (1999). Thus, the County's Comprehensive Plan and development
3 regulations being deemed to not comply with the GMA after the date the application was filed by the
4 Applicants does not impact the Applicants' vested rights.

5 KCC 15A.03.040¹ applied when this application was submitted. This statute sets out the terms
6 and conditions under which an application is determined to be complete. KCC 15A.03.040(1) requires
7 the County, within 28 days after receiving a project permit application, to determine if it is complete or
8 incomplete.² In this case, Kittitas County did that, sending Ms. Andrus a letter indicating she needed to
9 submit the address list of the landowners. Ms. Andrus then submitted the address list and the County
10 proceeded forward with processing the application. The only part of Kittitas County Code that defines
11 a complete application is KCC 15A.03.040(3), which provides as follows:

12 A project permit application is complete for the purposes of this title
13 when it meets the procedural submission requirements of Kittitas
14 County and is sufficient for continued processing even though
15 additional information may be required or project modifications may
16 be undertaken subsequently. The determination of completeness shall
17 not preclude Kittitas County from requesting additional information
18 or studies either at the time of the notice of completeness or
19 subsequently if new information is required or substantial changes in
20 the proposed action occur. (Emphasis added.)

21 In *Friends of the Law v. King County*, 123 Wn.2d at 522, the court ruled a developer's good faith
22 attempt to comply with the terms of a vesting ordinance is sufficient to vest when the ordinance fails to
23 define what constitutes a complete application or the definition of a complete application is vague.
24 KCC 15A.03.040(4) provides that within 14 days of the Applicants providing the additional
25 information the County is required to notify the application whether the application is complete or
26 identify additional information needed. Mr. Valoff's July 18, 2007 letter only says the address of

¹ See Exhibit 5 to Applicants' Memorandum of Authorities in Support of Plat Application, Item 80 of the record before the Hearings Examiner (hereinafter referred to as the "Record").

² See also, Exhibit 1 to Applicants' Memorandum of Authorities in Support of Plat Application, Staff Report, § 111, pp. 2-3.

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1 adjoining property owners is missing.³ That is the only reason given for an incomplete application.
2 The last sentence infers that when the additional information (address list) is received the application
3 will be complete. The County did not respond to the submission of the addresses within 14 days and as
4 a result the application should be deemed complete by the County. In Mr. Valoff's August 16, 2007
5 letter he indicates the TIA referenced in the rezone is additional information the County will need,
6 along with the road variance. This request for additional information does not impact whether there is
7 a complete application. KCC 15A.03.040(3). Neither the TIA nor the road variance were identified by
8 Mr. Valoff as materials necessary to have a "complete application in his July 18, 2007 letter.

9 The rezone of the Andrus property in 2006 referenced by Mr. Valoff was approved by the
10 Board of County Commissioners and implemented through Ordinance No. 2006-57.⁴ The Ordinance,
11 at page 3, indicates the following at Condition 8:

- 12 8. Additional conditions are necessary to protect the public's
13 interest. The Condition is as follows:
14 a. SEPA review will be required for any future development
15 regardless of the exemption status at time of development.
16 **(See attached Exhibit B)**

17 The attached Exhibit B referenced in Ordinance No. 2006-57 is the rezone SEPA Mitigated
18 Determination of Non-Significance (MDNS). It provides under subsection I.c. the following language:

19 At the time of a project action, the applicant shall submit a stamped
20 traffic analysis for a licensed engineer in the State of Washington
21 considering among other factors, intersection spacing, sight distances,
22 traffic volumes, load bearing capacity of soils, pavement thickness
23 design, etc. Reference Current Kittitas County Road Standards.
24 (Emphasis added.)

25 The rezone ordinance did not make the TIA a required part of any subsequent development activity
26 application. Ordinance No. 2006-57 does not suggest, nor can it be construed, that the Board of
County Commissioners intended to alter the definition of a "project permit application" under County
Code. Project Permit Application is defined as follows:

³ Item 9 of the Record.

⁴ Attached as Exhibit 3 to Applicants' Memorandum of Authorities in Support of Plat Application.

1 "Project permit" or "project permit application" means any land use or
2 environmental permit or license required from a local government for
3 a project action, including but not limited to building permits,
4 subdivisions, binding site plans, planned unit developments,
5 conditional uses, shoreline substantial development permits, site plan
6 review, permits or approvals required by critical areas ordinances,
7 site-specific rezones authorized by a comprehensive plan or subarea
8 plan, but excluding the adoption or amendment of a comprehensive
9 plan, subarea plan, or development regulations.

10 KCC 15A.02.080. What the County rezone ordinance said was future development, regardless of
11 whether it was exempt from SEPA, would require compliance with SEPA.

12 The Hearings Examiner referenced WAC 197-11-704, which provides as follows:

13 (1) "Actions" include, as further specified below:

14 (a) New and continuing activities (including projects and
15 programs) entirely or partly financed, assisted, conducted, regulated,
16 licensed, or approved by agencies;

17 (b) New or revised agency rules, regulations, plans, policies,
18 or procedures; and

19 (c) Legislative proposals.

20 (2) Actions fall within one of two categories:

21 (a) Project actions. A project action involves a decision on a
22 specific project, such as a construction or management activity
23 located in a defined geographic area. Projects include and are limited
24 to agency decisions to:

25 (i) License, fund, or undertake any activity that will
26 directly modify the environment, whether the activity will be
conducted by the agency, an applicant, or under contract.

(ii) Purchase, sell, lease, transfer, or exchange natural
resources, including publicly owned land, whether or not the
environment is directly modified.

(b) Nonproject actions. Nonproject actions involve decisions
on policies, plans, or programs.

(i) The adoption or amendment of legislation,
ordinances, rules, or regulations that contain standards controlling use
or modification of the environment;

(ii) The adoption or amendment of comprehensive
land use plans or zoning ordinances;

(iii) The adoption of any policy, plan, or program that
will govern the development of a series of connected actions (WAC
197-11-060), but not including any policy, plan, or program for which
approval must be obtained from any federal agency prior to
implementation;

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1 (iv) Creation of a district or annexations to any city,
town or district;

2 (v) Capital budgets; and

3 (vi) Road, street, and highway plans.

4 (3) "Actions" do not include the activities listed above when an
agency is not involved. Actions do not include bringing judicial or
5 administrative civil or criminal enforcement actions (certain
6 categorical exemptions in Part Nine identify in more detail
governmental activities that would not have any environmental
impacts and for which SEPA review is not required). (Emphasis
added.)

7 This definition has significance in SEPA and project actions generally refers to a specific
8 activity on land, such as construction, etc. It should be read in context with WAC 197-11-704(2)(b),
9 which defines "nonproject activities" as activities that do not involve decision specific actions but
10 instead involve decisions on rules, policies, etc. The Andrus rezone was a nonproject activity because
11 it had no development proposed with the rezone request. The reference to "Project Action" in the
12 rezone MDNS is thus logical because an application for a specific project on the rezoned property
13 would require compliance with SEPA even if existing code did not require compliance with SEPA
14 (e.g., a short plat).

15 The phrase in the rezone ordinance and attached SEPA MDNS says the TIA should be "at the
16 time of a project action." That language does not change the definition of a complete application. The
17 only interpretation that makes sense is that the TIA, as Mr. Valoff notes, is additional information that
18 would have to be submitted as a part of the processing and not a necessary requirement to have a
19 complete application.

20 **1.2 The legal authority of the County to set a "de facto" date of complete application almost**
21 **9 years before the date the application was noticed to the public, and the legal effect of**
22 **the lack of a letter of complete application in 2007 and the impact of it being issued in**
23 **2015.**

24 As part of the application process the County is required to send out notice of application (KCC
25 15A.03.060). However, that notice does not affect whether the application is complete for vesting
26 purposes. Item 7 of the Record is the Notice of Application. The Notice of Application describes the

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1 application, sets comment periods and a date for a public hearing. The notice also discusses SEPA and
2 the SEPA process (see Section 1.4 below). The Notice of Application under KCC 15A.03.060 should
3 be provided within 14 days of the “determination of completeness.” It is unclear if the phrase
4 “determination of completeness” is the same as a complete application.

5 The Applicants, the Andruses, have no control over when this notice goes out. The Hearings
6 Examiner should not now penalize the Applicant for the County’s failures.⁵ No interested parties were
7 precluded from commenting as a result of the delay by the County. The parties who did comment had
8 the benefit of the current circumstances in the neighborhood and vicinity on which to base their
9 comments as opposed to the situation that existed when the application was filed. The only parties
10 prejudiced by the delay are the Applicants because over time there has been more development in the
11 area and thus more potential impacts as a result of the development that must be addressed.

12 The statute makes it clear it is the County’s obligation to send the notice out. There is nothing
13 in the Record other than Mr. Watson’s verbal statement on the night of the hearing to the Hearings
14 Examiner to explain why the County did not send the Notice of Application out earlier. The County
15 code does not contain any provisions that impacts the status of the application because the County
16 failed to send the notice out in accordance with the County Code.

17 **1.3 The legal effect of the February 9, 2010 letter from the county to the applicant advising**
18 **that the application would be deemed withdrawn if the TIA was not submitted April 10,**
19 **2010, and then the TIA was not submitted by that date but the application continued to**
20 **be processed by the County.**

21 The Applicant responded to this letter (see Declaration of Jeff Slothower in Support of Motion
22 to Supplement the Record, Exhibit 1, which the Hearings Examiner admitted into the Record based
23 upon the stipulation of the parties). The County acknowledged that response and set a new deadline
24 before the withdrawal became effective (see Declaration of Jeff Slothower in Support of Motion to

25 ⁵ This is another area where the status of the Record is confusing. The Notice of Application is dated February 9, 2015
26 yet there is a comment letter from the City of Cle Elum dated July 13, 2012 (Item 25 of the Record). Cle Elum
certainly had notice prior to February 2015. In addition, some of the comment letters infer the neighborhood was
aware of this development proposal. (See Items 52 and 59 of the Record, which contains specific references to
objecting to the plat in 2007).

1 Supplement the Record, Exhibit 2, which was also admitted into the Record based upon the stipulation
2 of the parties). Thus, this issue should now be moot.

3 **1.4 The legal impact of the original SEPA checklist submitted 6-19-2007 that mentions
4 nothing of potential traffic impacts although the rezone ordinance applying to this
5 property made note of traffic impacts supporting the requirement of a TIA at time of
6 project action and the related legal impact of the optional DNS process noticed 2-9-2015
7 and the MDNS issued 3-25-2015.**

8 Whether the contents of the SEPA checklist, the mitigation measures imposed by the County in
9 the MDNS and the process used by the County to process SEPA were proper is not properly before the
10 Hearings Examiner at the present time. The County issued an MDNS. Kittitas County has an
11 administrative SEPA appeal process (see KCC 15.04.210). Any party who objected to the validity of
12 the SEPA checklist, the SEPA process or the MDNS and whether it adequately identified and/or
13 mitigated impacts to the environment had to administratively appeal that MDNS. RCW 36.70C(2)(d)
14 requires a petitioner in a LUPA to exhaust its administrative remedies before challenging a decision
15 such as a SEPA determination. No one appealed the SEPA MDNS and as a result the MDNS is now
16 not properly the subject of review.

17 Having said that, a SEPA checklist identifies the environmental issues. This one failed to
18 properly identify traffic issues. The County required additional information on the roads before the
19 County accepted comment on the SEPA checklist. Ultimately, the Applicant submitted a TIA and the
20 County issued a transportation concurrency letter (Item 32 of the Record). Thus, the fact that the
21 Applicant failed to identify the traffic impacts in the checklist is of no consequence because the County
22 required the TIA as additional information and based on the TIA concluded the application met County
23 transportation concurrency requirements. The legal authority of the County to set a "de facto" date of
24 complete application almost 9 years before the date the application was noticed to the public.

25 **1.5 The Fire Marshal Late Comments.**

26 The Applicant doesn't object to the Fire Marshal's comments but instead believes they are not
appropriate plat conditions. The plat conditions should not reference the comments because they must

1 be met when the owner of a lot applies for a building permit not at preliminary or final plat approval.
2 The International Fire Code requirements and similar building code requirements change periodically
3 and thus it makes sense to ensure the most recent code requirements in existence when a building
4 permit is applied for are what control the construction of structures on the property. If any comment or
5 condition is placed on the face of the plat it should be "all residential structures constructed in the
6 future on the lots created as a result of this plat shall meet all applicable building and fire codes then in
7 effect."

8 Respectfully submitted this 22 day of May, 2015.

9 LATHROP, WINBAUER, HARREL,
10 SLOTHOWER & DENISON L.L.P.

11 
12 _____
13 Jeff Slothower, WSBA #14526
14 Attorney for Becky Andrus
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CERTIFICATE OF SERVICE

I certify that I have this day caused a copy of the document to which this is attached to be served on the individual(s) listed below and in the manner noted below:

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[] BY OVERNIGHT DELIVERY
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I certify, or declare, under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed at Ellensburg, Washington this 22nd day of May, 2015.

Handwritten signature of Heather L. Hazlett
Heather L. Hazlett
Legal Assistant to Jeff Slothower

Handwritten number 95 in a circle

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KITTITAS COUNTY HEARINGS EXAMINER

In re Cluster Plat Application of: Becky Andrus	No. LP-07-00040 CLE ELUM RIDGE ASSOCIATION POST- HEARING MEMORANDUM OF AUTHORITIES
--------------------------------------------------------	-------------------------------------------------------------------------------------------------

This Post-Hearing Memorandum of Authorities is submitted on behalf of Cle Elum Ridge Association with respect to issues raised by Hearing Examiner regarding vesting of the project application.¹

I. Introduction

This is a very unusual case. The applicant – Becky Andrus – is seeking to proceed with a cluster plat subdivision based upon asserted vested rights arising from an application filed on June 20, 2007. The proposed subdivision is clearly contrary to existing zoning directives and violative of Growth Management Act (GMA) requirements regarding permissible rural densities. The application is simply an attempt to resurrect a stale application in order to achieve an impermissible result.

The statutory vesting rules are a two-way street intended “...to strike a balance between the public’s interest in controlling development and the developers’ interest in being able to plan their conduct with reasonable certainty.” *Abbey Road Group, LLC v. City of Bonney Lake*, 167 Wn.2d 242, 251 (2009). The recognition of vested rights in this case comes with a heavy public

¹ Hearing Examiner outlined a number of specific issues to be addressed in the post-hearing brief at the time of the hearing. The request for supplemental briefing was clarified by email dated April 29, 2015. *Exhibit 86*. We will address the issues raised by Hearing Examiner in both hearing comments and correspondence.

1 cost – urban density development on rural lands. “If a vested right is too easily granted, the
2 public interest could be subverted.” *Id.*

3 Vesting is determined as a matter of law by Hearing Examiner. It is not a matter decided
4 by staff or inferred from procedural acts or omissions. RCW 58.17.033 vests subdivision
5 applications only upon filing of a “fully complete” application. The courts have recognized that
6 the statutory mandate is “...taking a zero tolerance approach to completeness.” *Lauer v. Pierce*
7 *County*, 173 Wn.2d 242, 259 (2011).

8 Application requirements come from two sources: (1) ordinances for subdivision and
9 cluster plat subdivisions, and (2) Ordinance 2006-57-the rezone ordinance for this specific
10 property. Current CDS Staff *assumed* that the application was vested and the required Traffic
11 Impact Analysis (TIA) was not a “*procedural submission requirement*”. *Exhibit 79 (Staff*
12 *Report)*. This conclusion is in direct conflict with Ordinance 2006-57 which directed:

13 At the time of a project action, the applicant *shall submit* analysis
14 from a licensed engineer in the state of Washington considering
15 among other factors, intersection spacing, site distances, traffic
16 volumes, load bearing capacities of soils, pavement thickness
design, etc. Reference Current Kittitas County Road Standards.

17 This application requirement was clear, unambiguous and certain. Board of County
18 Commissioners established through the rezone ordinance a specific component required for a
19 complete project permit application. Staff had no authority to waive this requirement. The
20 application also failed to provide materials required by ordinance including critical area checklist
21 and density bonus documentation. There can be no serious debate regarding the deficiencies.
22 The application in this case was not *complete* until January 15, 2015. Applicant was told about
23 the missing TIA but simply ignored the requirement until it was convenient to proceed.

24 Finally, the parties have attempted to resurrect the record but it is clear that the files are
25 incomplete and contain significant gaps and uncertainties. The review has been compounded
26 because none of the participants during the early stages have testified or provided evidence to the
27 hearing examiner.² The project proponent bears the burden of proof to establish vesting.
28 Significantly, the applicant neither attended the hearing nor provided testimony.

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30 ² None of the CDS staff (Dan Valoff, Jan Ollivier, Christina Wollman) provided testimony or submitted
declarations with regard to the application, vesting or extensions. Jeff Watson admitted that he did not have

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2 **II. Procedural Application Background**

3 Becky Andrus (“Andrus” or “Applicant”) began the development process with a request
4 to rezone the subject property. The application requested a general zone change from Forest &
5 Range to Rural-3 zoning district for a 25 acre parcel of land.³ Ordinance No. 2006-57. Board of
6 County Commissioners approved the rezone on September 21, 2006. The rezone included
7 specific “[a]dditional conditions...to protect the public’s interests.” Ordinance No. 2006-57
8 Finding 8. The condition incorporated the SEPA mitigation measure:

9 C. At the time of a *project action*, the applicant shall submit a
10 stamped traffic analysis from a licensed engineer in the State of
11 Washington considering among other factors, intersection spacing,
12 site distances, traffic volumes, load bearing capacities of soils,
13 pavement thickness design, etc. Reference Current Kittitas County
14 Road Standards.

15 (Italics added). The rezone was processed as a “nonproject action.” The term “project action” is
16 drawn from SEPA regulations and directed specific application and environmental review
17 conditions. WAC 197-11-704. The referenced project action was the contemplated cluster plat
18 subdivision. Applicant was simply allowed to defer traffic impact analysis.

19 Andrus subsequently submitted a Long Plat Application (File no. P-07-40) on June 20,
20 2007. *Exhibit 5*. The project proposal was for a performance based cluster plat creating 14 one-
21 acre parcels and approximately eleven acres of open space. *Exhibit 79*. Applicable zoning and

22 personal knowledge of the handling of this file and only speculated with respect to matters associated with vesting.
23 More significantly, the applicant did not provide any testimony with respect to the application, Staff argued:

24 Convention dictates that a failure to respond or clarify the completeness of an
25 application within the timeframes provisioned in Chapter 15A amounts to a *de*
26 *facto* declaration of complete application. The request for the TIA was not a
27 “procedural submission requirement”.

28 *Exhibit 79 - Staff Report.*

29 ³ Andrus sought to rezone tax parcel no. 20-15-26010-0009, 0010. *Exhibit 11-Ordinance No. 2006-57*.
30 CDS issued a Notice of Application on June 30, 2006. The application included an environmental checklist and a
Mitigated Determination of Nonsignificance was issued on August 8, 2006. *Id.* The SEPA MDNS was attached to
Ordinance No. 2006-57. The rezone was reviewed as a “nonproject action” for environmental review purposes.
WAC 197-11-774 (“nonproject”) means actions which are different or broader than a single site specific project,
such as plans, policies, and programs. SEPA draws a distinction between “project actions” and “nonproject
actions”. WAC 197-11-704. Nonproject actions include amendments to zoning ordinances such as a rezone. *Id.*

1 application requirements were set for in KCC (h). 16.09. *Exhibit 77*. The record also includes a
2 SEPA Environmental Checklist that was also submitted with the application. *Exhibit 4*. The
3 application did not include the following required materials, (1) a list of all land owners within
4 300 feet of the site's tax parcel; (2) a critical areas application; (3) density bonus documentation;
5 or (4) traffic impact analysis from a licensed engineer. Each of these application components
6 were established by ordinance.

7 Kittitas County reviewed the preliminary plat application and concluded that the
8 application was incomplete and required additional information. *Exhibit 9*. Developer was
9 notified on July 18, 2007 that an "...address list of all land owners within 300-feet of the site's
10 tax parcel..." must be submitted as part of the required attachments to the long plat application.
11 The instructions specifically noted as follows:

12 When the additional information is received *and the application is*
13 *complete*, our review of the application will continue.

14 (Italics added). The instructions required provision of additional information *and* that there be a
15 subsequent determination of completeness. CDS did not issue a Notice of Completeness. Within
16 days of the initial notification, CDS Staff sent an additional letter to Applicant reiterating the
17 rezone requirement for a "...stamped traffic analysis from a licensed engineer in the State of
18 Washington." The letter specifically noted:

19 It has come to my attention as part of the Andrus Rezone (Z-06-
20 23) and review of the SEPA Mitigated Determination of
21 Nonsignificance, which I have attached, *one of the mitigation*
22 *measures is that at the time of a project action, the applicant shall*
23 *submit a stamped traffic analysis from a licensed engineer in the*
24 *state of Washington*. It further states that the traffic analysis shall
25 consider among other factors, intersection spacing, site distance,
26 traffic volumes, load bearing capacity of soils, pavement
27 thickness design, etc.

28 *Exhibit 11. (Italics added)* . Planning staff went on to state:

29 So in order to comply with the SEPA mitigation, *the review of*
30 *Big Buck Ridge Cluster Plat will require the submittal of the*
above-mentioned traffic analysis. Also, the outcome of the road
variance request will need to be completed.

When the additional information is received, our review of the
application will continue.

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2 Staff was clear with respect to the application deficiency – review was suspended until
3 the required information was submitted. Applicant did not respond, question or appeal the
4 notification. This is the substantive equivalent to a supplemental notice of incompleteness. They
5 simply did nothing on the application over the next six years.

6 The application laid dormant for nearly three (3) years. During the following years,
7 however, there was significant activity with regard to Kittitas County’s rural zoning standards
8 and compliance with the Growth Management Act (GMA). Zoning and development regulations
9 were challenged in two proceedings – *Kittitas County Conservation v. Kittitas County*, No. 07-1-
10 0004c, 2011 WL 2729590 (E) Wash. Growth Mgmt. Hr’gs Bd. August 20, 2007 ((*Kittitas*
11 *Conservation I*) and *Kittitas County Conversation v. Kittitas County*, No. 07-1-0015, 2008 WL
12 1766717 (E. Wash. Growth Mgmt. Hr’gs Bd. March 21, 2008) (*Kittitas Conservation II*).⁴ The
13 Supreme Court summarized Board decisions as follows:

14 The Board found that the regulations on rural densities and uses in
15 rural areas. Specifically, regarding the County’s cluster platting
16 regulation, Ch. 16.09 KCC, the Board was troubled that it “does
17 not include a limit on the maximum number of lots allowed on the
18 land including the cluster; prohibit the number of connections to
19 public and private water and sewer lines; nor include requirements
20 to limit development on the residential parcel.” *Kittitas*
Conservation I, 2007 WL 2729590, at *34; See *Kittitas*
Conservation II, 2008 WL 1766717, at *9, *36.

21 *Kittitas County v. Eastern Washington Growth Management Hearings Board*, 172 Wn.2d 144,
22 165 (2011). The Board’s actual order provided:

23 Kittitas County’s adoption of Ordinance 2007-22 allows urban
24 density in the rural areas with 3-acre zoning in the Agricultural-3
25 Rural-3 zones outside of the urban growth areas and limited areas
26 of more intensive rural development (LAMIRDs) in Chapter 16.09,
27 17.08, 17.22, 17.28, 17.30, and 17.56 of the Kittitas County Code
28 violate RCW 36.70A.070 and 36.70A.110 and substantially
29 interferes with GMA Goals RCW 36.70A.020 (1-2, 8-10, 12) and
30 the Board finds these provisions invalid.

⁴ Kittitas Conservation II specifically related to a challenge to Ordinance 2007-22. Ordinance 2007-22 was the ordinance applicable to the period. *Exhibit 77*.

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1 *Kittitas Conservation II*, 2008 WL 1766717 at *38. Kittitas County responded to the
2 administrative and judicial determinations and adopted Ordinance 2013-001 which eliminated
3 the three-acre zones and rezoned the subject property. Ordinance 2013-001 was adopted on
4 February 11, 2013. *Exhibit 41*. The required TIA was not received until February 20, 2013.
5 *Exhibit 32*.

6 Kittitas County reinstated contact with Applicant by letter dated February 9, 2010.
7 *Exhibit 13*. CDS Staff explained the process and reasoning for the correspondence as follows:

8 In the wake of sweeping changes to the structure and makeup of
9 CDS through 2009 an inventory was done in early 2010 to
10 determine the status of, and make appropriate notifications to, the
11 large cache of outstanding and pending land use applications on
12 file. On February 9th, 2010 the Interim Planning Manager notified
13 Mrs. Andrus that a request to withdraw application or the TIA
14 would need to be submitted within 60 days (April 10th) for the
15 application to remain active. On February 16th, 2010, Mr. Andrus
requested an extension of the timeline because of uncertainty
related to water withdrawal requirements in the Upper County; an
extension was granted on June 25th, 2010.

16 *Exhibit 79*. Applicant responded with countless requests for extensions covered an additional
17 three (3) year period. *Exhibits 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27, 28, 29, and 30*. An
18 incomplete Transportation Impact Analysis (TIA) was finally submitted on or about February 20,
19 2013. *Exhibits 31-33*. The TIA did not address intersection spacing, sight distance, load bearing
20 capacity of soils, or pavement design thickness. Each of these items were defined components
21 established by *Ordinance No. 2006-57*. Applicant did not file the required Critical Areas
22 Checklist until January 21, 2015. *Exhibit 35*.

23 CDS finally issued a Notice of Application on February 9, 2015. *Exhibit 37*. The Notice
24 of Application stated that the application was complete on August 16, 2007.⁵ The Notice of
25 Application also invoked environmental review for the first time. This was the first opportunity
26 for the public to comment upon the application. Upon being advised of the application adjacent
27 property owners immediately raised objections. *Exhibits 40-50, 52-60*. A Mitigated
28 Determination of Non-Significance (MDNS) was issued on March 25, 2015. *Exhibit 69*.

29
30 ⁵ This was the date on which CDS advised the Applicant that the TIA was required in order to continue
processing of the application. There was no determination of completeness on that date.

1 Hearing Examiner requested post-hearing briefing on various issues related to “vesting”
2 of the application under RCW 58.17.033. Also included in the inquiry was a question related to
3 “project action” under Ordinance No. 2006-57. The discussion incorporates matters of
4 environmental review as well as staff authority to establish “*de facto*” vesting dates. We will
5 address each of those issues.

6 III. Discussion

7 3.1 Statutory and Judicial Foundation for Vested Rights Doctrine.

8 As a beginning proposition, it is appropriate to review the vested rights doctrine
9 under judicial and statutory authorities. Washington’s vested rights doctrine grew out of case
10 law rooted in notions of fundamental fairness and provided a measure of certainty to developers
11 to protect their expectations against fluctuating land use policy. *Noble Manor Co. v. Pierce*
12 *County*, 133 Wn.2d 269, 278 (1997), *Erickson & Associates, Inc. v. McLerran*, 123 Wn.2d 864,
13 870 (1994); and *Potala Village Kirkland, LLC v. City of Kirkland*, 183 Wn. App. 191, 197-98
14 (2014). Washington’s vested rights doctrine, as it was originally judicially recognized, entitled
15 developers to have a land development proposal processed under the regulations in effect at the
16 time of filing a complete building permit application. *Hull v. Hunt*, 53 Wn.2d 125, 130 (1958).
17 The courts adopted a “date certain” vesting doctrine. *Erickson & Associates*, 123 Wn.2d at 867-
18 68. Washington’s rule is the minority rule.⁶

19 In 1987, the legislature codified vesting rules for building permits (RCW
20 19.27.095) and subdivisions (RCW 58.17.033). RCW 58.17.033 is applicable to this proceeding
21 and provides as follows:

22 (1) A proposed division of land, as defined in RCW 58.17.020,
23 shall be considered under the subdivision or short subdivision
24 ordinance, and zoning or other land use control ordinances, in
25 effect on the land at the time *a fully completed application* for
26 preliminary plat approval of the subdivision, or short plat

27
28 ⁶ The majority rule provides that development is not immune from changes in regulations and is not vested
29 until a building permit has been obtained *and* substantial development has occurred in reliance on the permit. *Abbey*
30 *Road Group, LLC v. City of Bonney Lake*, 167 Wn.2d 242, 250 (2009). Washington court’s rejected the *reliance*
based rule and adopted a date certain vesting point which ensured that “new land use ordinances do not unduly
oppress development rights, thereby denying a property owner’s right to due process under the law.” *Id.* 167 Wn.2d
at 251. See also, *Valley View Industry v. City of Redmond*, 107 Wn.2d 621, 637 (1987).

1 approval of the short subdivision, has been submitted to the
2 appropriate county, city or town official.

3 (2) The requirements for a fully completed application shall be
4 defined by local ordinance.

5 (3) The limitations imposed by this section shall not restrict
6 conditions imposed under Chapter 43.21C RCW.

7 (*Italics added*). While the vested rights originated at common law, the doctrine is now
8 statutory. *Potala Village Kirkland, LLC v. City of Kirkland*, 183 Wn. App. 191, 204-205 (2014)
9 (holding that the vested rights doctrine is now statutory) and *Town of Woodway v. Snohomish*
10 *County*, 180 Wn.2d 165, 173 (2014). In *Potala*, the court referenced the Final Bill Report for
11 the 1987 vesting legislation in 1987 which provided as follows:

12 BACKGROUND:

13 Washington state has adhered to the vested rights doctrine since
14 the supreme court case in *State Ex Rel. Ogden v. Bellevue*, 45 Wn.
15 2d 492 [275 P.2d 899] (1954). The doctrine provides that a party
16 filing a *timely and sufficiently complete* building permit application
17 obtains a vested right to have that application processed according
18 to zoning, land use and building ordinances in effect at the time of
19 the application. The doctrine is applicable if the permit application
20 *is sufficiently complete*, complies with existing zoning ordinances
21 and building codes, and is filed during the period the zoning
22 ordinances under which the developer seeks to develop are in
23 effect. If a developer complies with these requirements, a project
24 cannot be obstructed by enacting new zoning ordinances or
25 building codes. *West Main Associates v. Bellevue*, 106 Wn.2d 47
26 [720 P.2d 782] (1986).

27 SUMMARY:

28 The vested rights doctrine established by case law is made
29 statutory, *with the additional requirement that a permit application*
30 *be fully completed for the doctrine to apply*. The vesting of rights
doctrine is extended through applications for preliminary or short
plat approval. The requirements for a fully completed building
permit application or preliminary short plat application shall be
defined by local ordinance.

1 *Potala*, 183 Wn. App. at 204-205. The primary legislative change related to the requirement for
2 a “fully completed application.” Under prior case law, the operative requirement was that the
3 building permit or subdivision application must be (1) sufficiently complete, (2) comply with
4 existing zoning ordinances and building codes, and (3) be filed during the effective period. The
5 common law required only that an application be “sufficiently complete,” while the legislature
6 decided to change the standard and require a “fully completed application.” *Lauer v. Pierce*
7 *County*, 173 Wn.2d at 259. The legislature abrogated the common law rule when it substituted
8 “fully” for “sufficiently” and took “... a zero tolerance approach for completeness.” *Id.* and
9 *Friends of the Law v. King County*, 123 Wn.2d 518, 524 (1994). *Valley View Indus. Park v.*
10 *Redmond*, 107 Wn.2d 621, 638 (1987).⁷ It was recognized that “...[i]f a vested right is too
11 easily granted, the public interest could be subverted. *Abbey Road Group*, 167 Wn.2d at 251.

12 In applying the vested rights doctrine, the courts have been sensitive to the
13 inherent conflict between developer and public rights and interests. The courts have recognized,
14 however, that a liberal vesting rule necessarily comes at a price:

15 Development interests and due process rights protected by the
16 vested rights doctrine come at a cost to the public interest. The
17 practical effect of recognizing a vested right is to sanction the
18 creation of a new nonconforming use. A proposed development
19 which does not conform to newly adopted laws is, by definition,
20 inimical to the public interest embodied in those laws. If a vested
21 right is too easily granted, the public interest is subverted.

22 *Erickson*, 123 Wn.2d at 873-74; See also *Abbey Road Group*, 167 Wn.2d at 251. This balancing
23 consideration is particularly significant in this proceeding. Applicant seeks to vest to a zoning
24 density found to be violative of the Growth Management Act (GMA). *Kittitas County*
25 *Conservation v. Kittitas County*, Case No. 07-1-0015 (Final Decision Order – March 21, 2008).
26 The approval of this cluster plat subdivision is antithetical to GMA mandates and subverts clear
27 statutory and judicial determinations.

28 ⁷ The court has historically adhered to submission of a complete application as a prerequisite to the
29 application of the vested rights doctrine. *Parkridge v. Seattle*, 89 Wn.2d 454 (1978). In *Parkridge*, the court created
30 a limited exception to the requirement of completeness of building permit applications. The issue there was whether
a right to develop land could vest despite an incomplete building permit application when the developer’s diligent
attempts to complete the application prior to the zoning change had been obstructed by the local government. The
court held that a development right had vested, notwithstanding the incompleteness of the application, because the
developer’s good faith conduct merits recognition of the vested right. *Parkridge*, 89 Wn.2d at 465-66.

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1 The courts have held “that statutes should receive a sensible construction to effect the legislative
2 intent and ...to avoid unjust...consequences.” *Lauer v. Pierce County*, 173 Wn.2d 242, 263
3 (2011). It is unjust to validate noncompliant zoning standards under the guise of vesting.

4 **3.2 Hearing Examiner Determines Application of the Statutory Vesting Doctrine**
5 **as a Matter of Law.**

6 It is well-established that a Hearing Examiner is authorized to interpret and apply
7 statutory vesting provisions. See e.g. *Abbey Road Group, LLC v. City of Bonney Lake*, 167 Wn.
8 2d 242 (2009) (a review of Hearing Officer’s decisions that denied developer vested
9 development rights for condominium project applying statutory vesting rules); *Westside Business*
10 *Park, LLC v. Pierce County*, 100 Wn. App. 599 (2000)(affirming Hearing Examiner’s
11 determination that developer’s completed short plat application vested under water drainage
12 ordinance). It is the Hearing Examiner that determines if there is a *fully completed application*.
13 The decision is based on the facts and applicable ordinance requirements for application. There
14 is no case authority that supports an argument that “vesting” occurs as a matter of law based
15 upon staff interpretations or omissions.

16 The court in *Lauer v. Pierce County*, 173 Wn.2d 242 (2011) addressed a similar
17 issue. In *Lauer*, the County failed to issue a Notice of Incomplete Application under
18 36.70B.070(1) and (4). The applicant asserted that their building application was made complete
19 by operation of law. *Lauer*, 173 Wn.2d at 261. The court rejected this argument and held that
20 the failure of the County to inform landowners that their building permit application was
21 incomplete did not cause the application to become complete for vesting purposes.⁸

22
23 ⁸ The court in *Lauer* was also cognizant about the impact of misrepresentations in the context of an initial
24 application package. The court commented:

25 Further, the Garrisons’ interpretation of RCW 36.70B.070(4)(a) would yield a
26 troubling result: building permit applicants could misrepresent facts on their
27 application, and the county would have the daunting task of investigating every
28 part of the county to do so would cause the dishonest applicants’ rights to vest.
29 This court has held “that statute should receive a sensible construction to effect
30 the legislative intent and ... to avoid unjust ... consequences.” *State v. Vela*,
100 Wn.2d 636, 641 (1983).

Lauer, 173 Wn.2d at 263. In a similar way, the Applicant in this proceeding consciously failed to provide the TIA
required by Ordinance 2006-57. Vesting rights should not be extended to circumstances in which there has been a
conscious and knowing failure to submit required information.

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1 Determinations of completeness are not linked statutorily to the vesting provisions
2 of RCW 58.17.033. Rather, the concept was adopted as a part of Regulatory Reform which was
3 intended to address and establish procedural requirements for permit applications. RCW
4 36.70B.010.⁹ The issuance of a determination of completeness means only that the application is
5 ready for “regulatory processing”. In this case, there was no Notice of Completeness issued with
6 respect to the application. It was also clear that Kittitas County advised the applicant that the
7 application failed to include the required traffic impact analysis established by Ordinance 2006-
8 57. There is no authority to support the proposition that a fully complete application can arise as
9 a matter of law simply through omission or a delay of only a few days.

10 **3.3 Ordinance 2006-57 Incorporates the Concept of “Project Action” in the**
11 **Rezone Determination.**

12 Kittitas County rezoned the subject property from Forest & Range to Rural-3
13 zoning district. *Ordinance No. 2006-57 (Exhibit 11)*. The rezone was reviewed and processed as
14 a “nonproject action” under State Environmental Policy Act (SEPA). Under SEPA, a broad plan
15 is called a “nonproject” action. See e.g. *Klickitat County Citizens Against Imported Waste v.*
16 *Klickitat County*, 122 Wn.2d 619, 630 (1993). “Nonproject” means actions such as plans,
17 policies, or programs which are different or broader than a single site-specific project. WAC
18 197-11-774. Kittitas County processed rezones as “nonproject” actions.

19 Since the Andrus rezone did not require site specific project review, the rezone
20 ordinance set forth specific conditions with respect to submissions for a “project action”. SEPA
21 MDNS stated:

22 At the time of a *project action*, the applicant shall submit a
23 stamped traffic analysis from a licensed engineer in the state of
24 Washington considering among other factors, intersection spacing,
25 site distances, traffic volumes, load bearing capacity of soils,
26 pavement thickness design, etc. Reference Current Kittitas County
Road Standards.

27
28 ⁹ RCW 36.70B.050 required local governments to establish regulatory processes and procedures by
29 ordinance with respect to permit applications. Included in the required review components were provisions related
30 to determinations of consistency (RCW 36.70B.040); Determinations of completeness (RCW 36.70B.070); Notice
of Application (RCW 36.70B.110); Permit review processes (RCW 36.70B.120); and Notices of Decision (RCW
36.70B.130). The requirements were established for purposes of processing and not intended or designed to be a
substitute for vesting determinations under the applicable statutory provisions.

914

1
2 *Exhibit 11.* Hearing Examiner requested comment on “what is a project action.” SEPA
3 establishes two categories of “action”. WAC 197-11-704(2).

4 (2) Actions fall within one of two categories:

5 (a) **Project Actions.** A project action involves a decision on a
6 specific project, such as a construction or management
7 activity located in a defined geographic area. Projects are
8 limited to agency decisions to:

9 (i) license, fund, or undertake any activity that will
10 directly modify the environment, whether the activity will
11 be conducted by the agency, an applicant, or under
12 contract.

13 (ii) purchase, sell, lease, transfer or exchange natural
14 resources, including publically owned land, whether or not
15 the environment is directly modified.

16 (b) **Nonproject actions.** Nonproject actions involve
17 decisions on policies, plans, or programs.

18 (i) the adoption or amendment of legislation, ordinances,
19 rules or regulations that contain standards controlling use
20 or modification of the environment;

21 (ii) *the adoption or amendment of comprehensive land
22 use plans or zoning ordinances;*

23 ***

24 The reference to “project action” relates to the site specific development application. Board of
25 County Commissioners required the submission of a traffic impact analysis at the time of
26 application for the project. The submission would be in the context of the Environmental
27 Checklist and required as an integral part of the application. It was part of a “fully completed
28 application.”

29 **3.4 Kittitas County Ordinances Define Requirements for Fully Completed
30 Applications.**

Applicant submitted a performance based cluster plat for creation of 14 one-acre
single family parcels and approximately eleven acres of open space. The applicable ordinance

1 provisions are set forth in the record.¹⁰ *Exhibit 77*. Application requirements include the
2 following: (1) preliminary plat in conformance with KCC Title 16.12 (Preliminary Plats and
3 Title 12 (Road Standards); (2) SEPA Environmental Checklist in conformance with KCC 15.04;
4 (3) Critical areas application consistent with KCC Title 17A.C.; and (4) documentation
5 demonstrating consistency with density bonus. In addition, Ordinance No. 2006-57 required
6 submission of a traffic impact analysis signed by licensed engineer. *Exhibit 11*. Applicant
7 failed to include any of the identified materials. The application was deficient as a matter of
8 law.

9 RCW 58.17.033(1) requires a “fully completed application” and imposes a “zero
10 tolerance” policy. *Lauer*, 173 Wn.2d at 259. KCC 15A.03.010 defines a “complete
11 application” as including those items required by zoning code, subdivision code and
12 development agreements. Staff has no authority to modify, revise or waive these application
13 requirements. See e.g. *Kitsap County v. Kitsap Rifle and Revolver Club*, 184 Wn. App. 252,
14 296 (2014) (Equitable estoppel against government). Hearing Examiner is to determine as a
15 matter of law whether a “fully completed application” was filed for purposes of RCW
16 58.17.033.

17 As a beginning proposition, Kittitas County rezoned the property and imposed a
18 specific application requirement of a transportation impact analysis. The requirement was clear
19 and unambiguous and directly applicable to Andrus. KCC 15A.01.040(1) sets forth applicant
20 responsibilities with respect to permit applications and provides:

21 1. **Applicant.** An applicant is expected to read and understand the
22 county comprehensive plan and code and be prepared to fulfill the
23 obligations placed on the applicant. Pre-application conferences
24 are available to anyone who wishes to discuss such obligations
25 prior to submittal.

26
27 ¹⁰ CDS Staff summarized the project proposal in its Staff Report. The project was described as a
28 performance based cluster plat application to create 14 one-acre single family parcels in approximately 11 acres of
29 open space. *Staff Report I*. The performance based cluster plat provisions were eliminated from the zoning code in
30 2013 (Ordinance 2013-001). *Id.* The application sought to utilize the performance based cluster plat provisions to
increase densities beyond the maximum of what would be normally permitted for the R-3 zone based on public
benefit rating system. The applicant sought to utilize three public benefit categories to decrease the minimum lot
size from three-acres to one-acres. *Id.*

1 It was Applicant's responsibility to comply with the Ordinance No. 2006 filing requirements.
2 *Ordinance No. 2006-57*. Applicant was fully aware of the rezone requirement for submission of
3 a traffic impact analysis.¹¹ This proposition is also consistent with the fundamental legal premise
4 that a project proponent bears the burden of proof to establish rights with respect to the
5 application. On August 16, 2007, Applicant was specifically advised of the requirement and that
6 the processing of the application would not proceed without the report. Applicant then sat
7 quietly for 3 years. There can be no serious contention that Applicant failed to submit the
8 required TIA. The TIA was finally submitted on February 20, 2013 – days after the zoning was
9 amended to prohibit the proposed density.

10 Second, the Applicant failed to comply with the application requirements for cluster plats
11 under KCC 16.09.080. The application requirements include: (1) a critical area application; and
12 (2) documentation demonstrating consistency with bonus requests. KCC 16.09.090. The critical
13 areas checklist was not submitted until January 21, 2015. *Exhibit 35*. The record contains no
14 demonstration of compliance with the density bonuses.

15 Third, current staff incorrectly *assumed* that the application was complete on August 16,
16 2007. These determinations are pure conjecture and speculation. No evidence was presented
17 with respect to specific determinations at the time of the early communications. In fact, the
18 communications were clear that the application was incomplete (*Exhibit 9*); continued processing
19 required submission of the traffic analysis from a licensed engineer (*Exhibit 11*); and that review
20 of the application will continue only upon receipt of the identified information. *Id.* Applicant did
21 not object to the suspension of processing and did not submit the required information. The
22 applicable ordinance provisions are also clear that the failure to submit required information
23 within 180 days will result in voiding of the application. KCC 15A.03.040(4)(g). Kittitas
24 County was clear in its description of the process which was that "...[w]hen the additional
25 information is received *and the application is deemed complete, our review of the application*

26
27
28 ¹¹ Applicant argues that there is a distinction between a project "action" and development activity
29 "application". Applicant's Memorandum of Authorities – 5-6. This distinction makes little sense. The requirement
30 for a traffic impact analysis arose in the context of a "nonproject action" (i.e. a rezone) as a part of the SEPA
analysis. The rezone ordinance simply deferred preparation of the traffic impact analysis until there is a project
application. It is illogical to argue that a traffic impact analysis (which is a SEPA component) should be submitted
at a later point in the project review process. It is a necessary component of the SEPA submissions.

1 *will continue.*” (*Exhibit 9*). Planning Staff did not issue a Notice of Complete Application and it
2 did not further process the application.

3 Fourth, the record is consistent with a determination of incompleteness. KCC
4 15A.03.060 provides that “[t]he Notice of Application *shall be provided within 14 days after*
5 *the determination of completeness.*” See also, WAC 365-196-845 (“Notice of Application must
6 be provided with fourteen days of determining an application is complete). If the application
7 was deemed complete in 2007, the county was required to issue a Notice of Application. CDS
8 specifically advised Applicant that it would advise when the application is complete and would
9 begin review process only when the TIA was submitted. Kittitas County did not issue the Notice
10 of Application until February 9, 2015. (*Exhibit 37*). It should also be noted that the Notice of
11 Application specifically requires identification of “...existing environmental documents that
12 evaluate the proposed project.” KCC 15A.03.060. Public comment would have been impossible
13 without the TIA.

14 Fifth, Planning Staff asserts that the failure to respond or clarify the additional ordinance
15 requirement within the 14 day time period covered by KCC 15A.03.040(4) was a “...de facto
16 declaration of a complete application.” *Exhibit 79*. No legal authority or factual foundation is
17 provided to support this proposition. In fact, the argument is contrary to the prior
18 correspondence in which the applicant was advised that the application would not be further
19 processed until the required information was submitted to CDS. *Exhibit 9* (“when the additional
20 information is received *and the application is deemed complete*, our review of the application
21 will continue”); and *Exhibit 11* (“when the additional is received, our review of the application
22 will continue”). The argument is also contrary to required procedures. That is, if the application
23 was *de facto* complete CDS was required to issue the Notice of Application. All of CDS actions
24 were contrary to the speculative assumption that there was a fully completed application.

25 **3.4 SEPA Checklist Failed to Incorporate or Reference Rezone Ordinance and**
26 **MDNS Requiring TIA.**

27 Hearing Examiner specifically requested comment upon applicant’s failure to
28 reference prior environmental determinations with respect to SEPA mitigation measures for
29 potential traffic impacts. Applicant submitted a SEPA environmental checklist dated June 19,
30 2007. *Exhibit 4*. Environmental Checklist A.3. provides the following question and response:

1 3. List any environmental information you know about that had
2 been prepared, or will be prepared, directly related to this proposal.

3 None known or currently required.

4 This statement is patently false. Applicant knew that a TIA was required for the cluster plat
5 application. Where an applicant submits false or misleading information in the context of an
6 application, the courts have recognized that vesting provisions may be denied with respect to the
7 proposed action. *Lauer*, 173 Wn.2d at 263. The court stated:

8 Further, the Garrisons interpretation of RCW 36.70B.070(4)(a)
9 would yield a troubling result: building permit applicants could
10 misrepresent facts on their application, and the County would have
11 the daunting task of investigating every application to determine its
12 accuracy within a 28-day period. Failure on the part of the County
to do so would cause the dishonest applicants' rights to vest.

13 In this case, the County did identify the error and specifically the applicant of the mitigation
14 requirement. Applicant simply argues that the notification was a few days late. As noted in
15 *Lauer*, our courts have held "that statutes should receive a sensible construction to affect the
16 legislative intent and ... to avoid unjust ... consequences." It would be unjust to allow this
17 applicant to consciously misrepresent the status of prior environmental determinations; ignore
18 written directives regarding application requirements; sit on an application for nearly six years;
19 and claim vested rights.

20 The requirement for TIA submission is a SEPA mitigation measure specifically
21 applicable to this property and application. When there are gaps in relevant information
22 regarding significant impacts, agencies shall make clear that such information is lacking and is
23 necessary for environmental review. WAC 197-11-080(2). Kittitas County specifically
24 identified the traffic impact analysis as an essential component of environmental review.
25 Agencies may rely upon applicants to provide the information. WAC 1979-11-080(4). The
26 SEPA Environmental Checklist contained no reference or information required with respect to
27 potential traffic impacts or traffic impact analysis. It was incomplete by definition and directive
28 contained in the rezone ordinance. Environmental Checklist A.3. also requires a listing of
29 environmental information that has been or will be prepared with respect to the proposal. *Exhibit*
30 4. Applicant failed to disclose or reference the TIA required by the rezone ordinance.

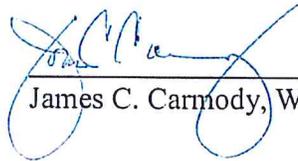
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CONCLUSIONS

Hearing Examiner is responsible for legal determinations related to a project permit application. A fundamental and critical determination relates to application of the statutory vesting doctrine premised upon a *fully completed application*. The application in this proceeding was clearly deficient – it failed to include the required traffic impact analysis, critical area application and demonstrable facts related to the density bonus. The application components were set forth in applicable ordinances and binding on the parties. The application was not fully completed until at least February 20, 2015. The applicable law at that time precludes this development.

Dated this 22nd day of May, 2015.

MEYER, FLUEGGE & TENNEY, P.S.
Attorneys for Cle Elum Ridge Association



James C. Carmody, WSBA 5205

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CERTIFICATE OF SERVICE

I hereby declare under penalty of perjury under the laws of the State of Washington that on the date stated below I served a copy of this document in the manner indicated:

Andrew L. Kottkamp, Hearing Examiner Kottkamp & Yedinak PLLC 435 Orondo Avem Wenatchee, WA 98801	<input type="checkbox"/> First Class U.S. Mail <input type="checkbox"/> E-Mail andy@wenatcheelaw.com <input type="checkbox"/> Hand Delivery <input type="checkbox"/> UPS Next Day Air
Jeff Slothower Lathrop, Winbauer, Harrell, Slothower & Dennison L.L.P. PO Box 1088/201 West 7 th Avenue Ellensburg, WA 98926	<input type="checkbox"/> First Class U.S. Mail <input type="checkbox"/> E-Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> UPS Next Day Air
Jeff Watson, Staff Planner Kittitas County Community Development Services 411 N. Ruby Street, Suite 2 Ellensburg, WA 98926	<input type="checkbox"/> First Class U.S. Mail <input type="checkbox"/> E-Mail jeff.watson@co.kittitas.wa.us <input type="checkbox"/> Hand Delivery [2 copies] <input type="checkbox"/> UPS Next Day Air

DATED at Yakima, Washington, this 22 day of May, 2015.

Deborah Girard, Legal Assistant

U:\DebbieG\Cle Elum Ridge Properties - Don Owens\Post-Hearing Memorandum.doc

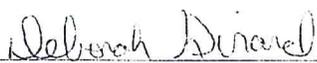
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Andrew L. Kottkamp, Hearing Examiner Kottkamp & Yedinak PLLC 435 Orondo Avem Wenatchee, WA 98801	<input type="checkbox"/> First Class U.S. Mail <input checked="" type="checkbox"/> E-Mail andy@wenatcheelaw.com <input type="checkbox"/> Hand Delivery <input type="checkbox"/> UPS Next Day Air
Jeff Slothower Lathrop, Winbauer, Harrell, Slothower & Dennison L.L.P. PO Box 1088/201 West 7 th Avenue Ellensburg, WA 98926	<input type="checkbox"/> First Class U.S. Mail <input checked="" type="checkbox"/> E-Mail jslothower@lwhsd.com <input type="checkbox"/> Hand Delivery <input type="checkbox"/> UPS Next Day Air
Jeff Watson, Staff Planner Kittitas County Community Development Services 411 N. Ruby Street, Suite 2 Ellensburg, WA 98926	<input checked="" type="checkbox"/> First Class U.S. Mail [2 copies] <input checked="" type="checkbox"/> E-Mail jeff.watson@co.kittitas.wa.us <input type="checkbox"/> Hand Delivery <input type="checkbox"/> UPS Next Day Air

DATED at Yakima, Washington, this 22nd day of May, 2015.



Deborah Girard, Legal Assistant

U:\DebbieG\Cle Elum Ridge Properties - Don Owens\Post-Hearing Memorandum.doc

February 16, 2010

Jan Ollivier
Kittitas County Community Development Services
411 N. Ruby Street, Suite 2
Ellensburg, WA 98926

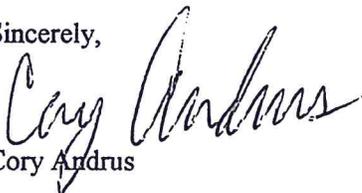
Re: Big Buck Ridge Cluster Plat P-07-40

Dear Ms. Ollivier:

This letter is provided in response to your request of February 9, 2010 regarding the above referenced performance based cluster subdivision. Please be aware that it has been and remains our desire and intent to proceed with the subdivision. Unfortunately, due to extenuating circumstances beyond our control (i.e. market conditions and the Upper Kittitas County Emergency Ground Water Rule), it has not been feasible to invest further in the project. It is our understanding that the emergency rule is set to expire March 25, 2010 and at that time DOE will be required to take further action. Until we know with certainty what that action may be, we simply cannot secure the funding necessary to accommodate the new deadline you have set.

Therefore, please accept this letter as a formal request for additional time to provide a traffic impact analysis. If you have any questions or would like to discuss this further, please do not hesitate to contact me.

Sincerely,



Cory Andrus

93

Jeff Watson

From: Andrew Kottkamp <andy@wenatcheelaw.com>
Sent: Tuesday, May 26, 2015 9:37 AM
To: 'Heather Hazlett'; Jeff Watson; Doc Hansen; carmody@mftlaw.com
Cc: 'Jeff Slothower'
Subject: RE: Andrus, LP-07-00040 - Applicant's Supplemental Memorandum of Authorities in Support of Cluster Plat Application

Follow Up Flag: Follow up
Flag Status: Flagged

Received.

Jeff, now that the record is closed, could you provide me with what you have as an index/exhibit list. I want to make sure that we are on the same page. Make sure to include these last two submissions by Mr. Carmody and Mr. Slothower.

Andy

Andrew Kottkamp

Kottkamp & Yedinak P.L.L.C.
435 Orondo Ave.
P.O. Box 1667
Wenatchee, WA 98801
(509) 667-8667
www.wenatcheelaw.com

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From: Heather Hazlett [<mailto:HHazlett@lwhsd.com>]
Sent: Friday, May 22, 2015 3:16 PM
To: andy@wenatcheelaw.com; jeff.watson@co.kittitas.wa.us; doc.hansen@co.kittitas.wa.us; carmody@mftlaw.com
Cc: Jeff Slothower
Subject: Andrus, LP-07-00040 - Applicant's Supplemental Memorandum of Authorities in Support of Cluster Plat Application

Attached is a PDF file containing a copy of Applicant's Supplemental Memorandum of Authorities in Support of Cluster Plat Application.

Heather L. Hazlett

Legal Assistant to Jeff Slothower
Lathrop, Winbauer, Harrel, Slothower & Denison L.L.P.
P.O. Box 1088
Ellensburg, WA 98926

Phone 509.925.6916
Fax 509.343.3206

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Version: 2014.0.4800 / Virus Database: 4311/9817 - Release Date: 05/19/15

No virus found in this message.

Checked by AVG - www.avg.com

Version: 2014.0.4800 / Virus Database: 4311/9817 - Release Date: 05/19/15

Internal Virus Database is out of date.



This email has been checked for viruses by Avast antivirus software.

www.avast.com

Jeff Watson

From: Heather Hazlett <HHazlett@lwhsd.com>
Sent: Friday, May 22, 2015 3:16 PM
To: andy@wenatcheelaw.com; Jeff Watson; Doc Hansen; carmody@mftlaw.com
Cc: Jeff Slothower
Subject: Andrus, LP-07-00040 - Applicant's Supplemental Memorandum of Authorities in Support of Cluster Plat Application
Attachments: 20150522151017.pdf
Follow Up Flag: Follow up
Flag Status: Flagged

Attached is a PDF file containing a copy of Applicant's Supplemental Memorandum of Authorities in Support of Cluster Plat Application.

Heather L. Hazlett

Legal Assistant to Jeff Slothower
Lathrop, Winbauer, Harrel, Slothower & Denison L.L.P.
P.O. Box 1088
Ellensburg, WA 98926

Phone 509.925.6916
Fax 509.343.3206

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Jeff Watson

From: Andrew Kottkamp <andy@wenatcheelaw.com>
Sent: Friday, May 22, 2015 9:03 AM
To: 'Reception'; jslothower@lwhsd.com; Jeff Watson
Cc: 'Deborah Girard'; 'James Carmody'
Subject: RE: Cle Elum Ridge

Received

Andrew Kottkamp

Kottkamp & Yedinak P.L.L.C.
435 Orondo Ave.
P.O. Box 1667
Wenatchee, WA 98801
(509) 667-8667
www.wenatcheelaw.com

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From: Reception [<mailto:reception@mftlaw.com>]
Sent: Friday, May 22, 2015 9:00 AM
To: andy@wenatcheelaw.com; jslothower@lwhsd.com; jeff.watson@co.kittitas.wa.us
Cc: Deborah Girard; James Carmody
Subject: Cle Elum Ridge

Sending on behalf of James Carmody.

Thank You,

Leather Walker
Meyer, Fluegge & Tenney, P.S.
230 S. 2nd Street
Yakima, WA 98901
Phone: 509/575-8500
Fax: 509/575-4676

No virus found in this message.
Checked by AVG - www.avg.com
Version: 2014.0.4800 / Virus Database: 4311/9817 - Release Date: 05/19/15

Jeff Watson

From: Andrew Kottkamp <andy@wenatcheelaw.com>
Sent: Thursday, May 14, 2015 11:14 AM
To: 'James Carmody'; 'Jeff Slothower'; Jeff Watson; 'Heather Hazlett'; Doc Hansen
Cc: Doc Hansen
Subject: RE: LP-07-00040 (Plat App. - Andrus): Motion to Supplement the Record

Please consider this email my order granting Applicant's motion to reopen the record for the specific purpose of admitting the 3 proposed documents into the record. It is also my order that the Applicant, the County and Mr. Carmody on behalf of his clients will have until Friday, May 22 to submit your briefing on the issues I have identified. Given the May 25 holiday, I will have my written decision issued by Tuesday, June 9. I would ask that Mr. Watson prepare a new exhibit index chart reflecting this order and the inclusion of this email string.

Andrew Kottkamp

Kottkamp & Yedinak P.L.L.C.
435 Orondo Ave.
P.O. Box 1667
Wenatchee, WA 98801
(509) 667-8667
www.wenatcheelaw.com

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From: James Carmody [mailto:Carmody@mftlaw.com]
Sent: Thursday, May 14, 2015 10:11 AM
To: Andrew Kottkamp; 'Jeff Slothower'; 'Jeff Watson'; 'Heather Hazlett'; 'Doc Hansen'
Cc: 'Doc Hansen'
Subject: RE: LP-07-00040 (Plat App. - Andrus): Motion to Supplement the Record

Mr. Kottkamp:

I have spoken with both Jeff Slothower and Jeff Weston regarding the document (Exhibit 2) and the state of the county records. It appears to me that the proposed exhibit is authentic and I would stipulate to its entry into the record. I would like to add, however, that I am quite concerned about the incomplete and uncertain status of the record as a whole. While we appreciate the County's efforts to search its files, it is clear that there is no assurance that all correspondence, emails and documents are included in the record. We can present our arguments and positions only with respect to the partial record and do not have the benefit of being a participant in the apparent discussions that took place over the years between the applicant and various staff members. This certainly limits our ability to argue issues such as vesting.

I simply wanted to express our concerns while trying to be practical with respect to the proposed document.

Jamie

Jeff Watson

From: Jeff Slothower <Jslothower@lwhsd.com>
Sent: Wednesday, May 13, 2015 4:22 PM
To: Andrew Kottkamp; Jeff Watson; 'James Carmody'; Heather Hazlett; Doc Hansen
Cc: Doc Hansen
Subject: RE: LP-07-00040 (Plat App. - Andrus): Motion to Supplement the Record

Jamie

I can have Mr. and Mrs. Andrus and Wayne Nelson submit sworn declarations that Exhibit 2 is a true and correct copy of the letter they received from the county.

Jeff Slothower, Attorney at Law
Lathrop, Winbauer, Harrel, Slothower & Denison L.L.P.
P.O. Box 1088
Ellensburg, WA 98926

P. 509.925.6916
F. 509.343.3206
Email: jslothower@lwhsd.com
Web: www.lwhsd.com

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From: Andrew Kottkamp [<mailto:andy@wenatcheelaw.com>]
Sent: Wednesday, May 13, 2015 3:36 PM
To: Jeff Slothower; 'Jeff Watson'; 'James Carmody'; Heather Hazlett; 'Doc Hansen'
Cc: 'Doc Hansen'
Subject: RE: LP-07-00040 (Plat App. - Andrus): Motion to Supplement the Record

I will be gone next Monday. If there is no stipulation as to the record by this Friday at noon, then I will decide on proposed Exhibit 2. I think that the issue raised by Mr. Carmody seems to be authentication. If all of you can't stipulate then I will make a decision Friday afternoon.

Andy

Andrew Kottkamp
Kottkamp & Yedinak P.L.L.C.
435 Orondo Ave.
P.O. Box 1667
Wenatchee, WA 98801
(509) 667-8667
www.wenatcheelaw.com

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James C. Carmody
Meyer, Fluegge & Tenney, P.S.
230 S. 2nd Street
Yakima, WA 98901
Phone: 509/575-8500
Fax: 509/575-4676

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From: Andrew Kottkamp [mailto:andy@wenatcheelaw.com]
Sent: Wednesday, May 13, 2015 3:36 PM
To: 'Jeff Slothower'; 'Jeff Watson'; James Carmody; 'Heather Hazlett'; 'Doc Hansen'
Cc: 'Doc Hansen'
Subject: RE: LP-07-00040 (Plat App. - Andrus): Motion to Supplement the Record

I will be gone next Monday. If there is no stipulation as to the record by this Friday at noon, then I will decide on proposed Exhibit 2. I think that the issue raised by Mr. Carmody seems to be authentication. If all of you can't stipulate then I will make a decision Friday afternoon.

Andy

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From: Jeff Slothower [mailto:jslothower@lwhsd.com]
Sent: Wednesday, May 13, 2015 3:09 PM
To: Andrew Kottkamp; 'Jeff Watson'; 'James Carmody'; Heather Hazlett; 'Doc Hansen'
Cc: 'Doc Hansen'
Subject: RE: LP-07-00040 (Plat App. - Andrus): Motion to Supplement the Record

I read Jamie's email as saying he still objects to Exhibit 2 which is a letter from Kittitas County on Kittitas County letterhead to the applicants. It is obvious that this letter was either lost or misfiled by prior county employees. The fact

that prior county employees may have lost this letter and thus it is not in the record should not work to the disadvantage of the applicants particularly given the critical nature of the letter.

Jeff Slothower

Jeff Slothower, Attorney at Law
Lathrop, Winbauer, Harrel, Slothower & Denison L.L.P.
P.O. Box 1088
Ellensburg, WA 98926

P. 509.925.6916
F. 509.343.3206
Email: jslothower@lwbsd.com
Web: www.lwbsd.com

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From: Andrew Kottkamp [<mailto:andy@wenatcheelaw.com>]
Sent: Wednesday, May 13, 2015 3:03 PM
To: Jeff Slothower; 'Jeff Watson'; 'James Carmody'; Heather Hazlett; 'Doc Hansen'
Cc: 'Doc Hansen'
Subject: RE: LP-07-00040 (Plat App. - Andrus): Motion to Supplement the Record

Hello all

I am trying to decipher if we have a stipulated record or if I still have a decision to make. I would, of course, prefer a stipulated record if that can be achieved. Please let me know.

Second, I will extend the date that the record will remain open to May 22, 2015 at 5pm for the purposes previously stated.

Andy

Andrew Kottkamp
Kottkamp & Yedinak P.L.L.C.
435 Orondo Ave.
P.O. Box 1667
Wenatchee, WA 98801
(509) 667-8667
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Jeff Watson

From: James Carmody <Carmody@mftlaw.com>
Sent: Wednesday, May 13, 2015 2:59 PM
To: andy@wenatcheelaw.com; Jeff Slothower; Heather Hazlett
Cc: Doc Hansen; Jeff Watson
Subject: RE: LP-07-00040 (Plat App. - Andrus): Motion to Supplement the Record

Mr. Kottkamp:

At this point, Kittitas County was able to verify Exhibit 1 and 3 as presented by Mr. Slothower. They have been unable to locate or confirm the existence of Exhibits 2. We would object to the inclusion of Exhibit 2. It is our understanding that the County is still looking for Exhibit 2.

In light of the additional documents and the continued search, we would request that the filing date for the post-hearing brief be extended to May 22. You indicated that the extension would be granted if the parties agreed. Both Mr. Slothower and I have confirmed our agreement to the extension.

Thank you for your consideration.

Jamie

*James C. Carmody
Meyer, Fluegge & Tenney, P.S.
230 S. 2nd Street
Yakima, WA 98901
Phone: 509/575-8500
Fax: 509/575-4676*

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From: Jeff Watson [mailto:jeff.watson@co.kittitas.wa.us]
Sent: Tuesday, May 12, 2015 10:17 AM
To: James Carmody; Jeff Slothower; Heather Hazlett; Doc Hansen
Cc: Andrew Kottkamp; Doc Hansen
Subject: RE: LP-07-00040 (Plat App. - Andrus): Motion to Supplement the Record

Good Morning All,

From: Jeff Slothower [<mailto:Jslothower@lwhsd.com>]
Sent: Tuesday, May 12, 2015 11:21 AM
To: Jeff Watson; 'James Carmody'; Heather Hazlett; Doc Hansen
Cc: Andrew Kottkamp; Doc Hansen
Subject: RE: LP-07-00040 (Plat App. - Andrus): Motion to Supplement the Record

If as in Mr. and Mrs. Andrus possession

Jeff Slothower, Attorney at Law
Lathrop, Winbauer, Harrel, Slothower & Denison L.L.P.
P.O. Box 1088
Ellensburg, WA 98926

P. 509.925.6916
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From: Jeff Watson [<mailto:jeff.watson@co.kittitas.wa.us>]
Sent: Tuesday, May 12, 2015 10:17 AM
To: 'James Carmody'; Jeff Slothower; Heather Hazlett; Doc Hansen
Cc: Andrew Kottkamp; Doc Hansen
Subject: RE: LP-07-00040 (Plat App. - Andrus): Motion to Supplement the Record

Good Morning All,

I have attached the signed version of Mr. Slothower's Exhibit one; the copy in the file is the signed original. I still have not been able to find the letter from Ms. Ollivier (Exhibit 2); she is looking for a copy. Was that something you found in the on-line file, or something that was in the possession of the Andrus'? Again my apologies, this file, like so many from that time frame, was not maintained to the highest standards. Documents were created in a variety of formats, assembled in a variety of ways, placed in a variety of places, by a variety of people over the course of its eight year life span. I am CC-ing Mr. Hansen in this as well. In my last conversation with him the County had no interest in adding anything to the record by Wednesday the 13th at 4 p.m., but I will double check. **As a record management footnote it would be helpful if we all utilized the most recent addition to the email chains.** I will sift through this last batch to insure that all correspondence makes it in to the record.

Thanks,

Jeffrey A. Watson
Planner II
[Kittitas County Public Works/Community Development Services](#)
411 North Ruby
Ellensburg WA 98926

Jeff Watson

From: Jeff Watson
Sent: Monday, May 11, 2015 4:23 PM
To: 'Jeff Slothower'; 'James Carmody'; 'Heather Hazlett'; Doc Hansen
Cc: 'Andrew Kottkamp'
Subject: RE: LP-07-00040 (Plat App. - Andrus): Motion to Supplement the Record

Sorry... page 193 of 270 below

Jeffrey A. Watson
Planner II
[Kittitas County Public Works/Community Development Services](#)
411 North Ruby
Ellensburg WA 98926
jeff.watson@co.kittitas.wa.us
509-933-8274

From: Jeff Watson
Sent: Monday, May 11, 2015 4:09 PM
To: 'Jeff Slothower'; James Carmody; Heather Hazlett; Doc Hansen
Cc: Andrew Kottkamp
Subject: RE: LP-07-00040 (Plat App. - Andrus): Motion to Supplement the Record

Am pouring over the electronic and paper file now; initially it looks to me like:

1. Exhibit 1 – Appears to be the **signed** version in the paper file
2. Exhibit 2 – No paper copy; no digital copy on the county server file; checking county website file now.
3. Exhibit 3 – In the record; item #31 (page 193 of 170)

Still looking at things...

Jeffrey A. Watson
Planner II
[Kittitas County Public Works/Community Development Services](#)
411 North Ruby
Ellensburg WA 98926
jeff.watson@co.kittitas.wa.us
509-933-8274

From: Jeff Slothower [mailto:Jslothower@lwhsd.com]
Sent: Monday, May 11, 2015 4:00 PM
To: James Carmody; Heather Hazlett; Jeff Watson; Doc Hansen

230 S. 2nd Street
Yakima, WA 98901
Phone: 509/575-8500
Fax: 509/575-4676

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From: Jeff Slothower [mailto:Jslothower@lwbsd.com]
Sent: Monday, May 11, 2015 4:00 PM
To: James Carmody; Heather Hazlett; jeff.watson@co.kittitas.wa.us; doc.hansen@co.kittitas.wa.us
Cc: Andrew Kottkamp
Subject: RE: LP-07-00040 (Plat App. - Andrus): Motion to Supplement the Record

Jamie

There are actually three documents we seek to add. All three are attached to my declaration. I would agree to the extension of time (I assume we would not need more than a week's extension) and perhaps you and I should both get on the phone with Jeff Watson to sort the record issues out.

Jeff

Jeff Slothower, Attorney at Law
Lathrop, Winbauer, Harrel, Slothower & Denison L.L.P.
P.O. Box 1088
Ellensburg, WA 98926

P. 509.925.6916
F. 509.343.3206
Email: jslothower@lwbsd.com
Web: www.lwbsd.com

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From: James Carmody [mailto:Carmody@mftlaw.com]
Sent: Monday, May 11, 2015 3:39 PM
To: Andrew Kottkamp; Heather Hazlett; jeff.watson@co.kittitas.wa.us; doc.hansen@co.kittitas.wa.us
Cc: Jeff Slothower
Subject: RE: LP-07-00040 (Plat App. - Andrus): Motion to Supplement the Record

Thank you for the direction regarding the motion to supplement the record. I was out of town last week when this motion was filed. I did speak with Mr. Slothower regarding the motion and indicated that I would need to see the motion before I could respond. I can provide comments by May 13, 2015.

I would request, however, that the filing date for the post-hearing brief be extended in order to resolve and clarify the record. The documents submitted go to a specific issue upon which you requested briefing. The documents submitted

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From: James Carmody [<mailto:Carmody@mftlaw.com>]
Sent: Monday, May 11, 2015 3:39 PM
To: Andrew Kottkamp; Heather Hazlett; jeff.watson@co.kittitas.wa.us; doc.hansen@co.kittitas.wa.us
Cc: Jeff Slothower
Subject: RE: LP-07-00040 (Plat App. - Andrus): Motion to Supplement the Record

Thank you for the direction regarding the motion to supplement the record. I was out of town last week when this motion was filed. I did speak with Mr. Slothower regarding the motion and indicated that I would need to see the motion before I could respond. I can provide comments by May 13, 2015.

I would request, however, that the filing date for the post-hearing brief be extended in order to resolve and clarify the record. The documents submitted go to a specific issue upon which you requested briefing. The documents submitted include only two new documents (1) an unsigned letter dated February 16, 2010, and (2) an email dated February 20, 2013. Neither document was in the record prepared by Kittitas County and there are references to other documents that I have not seen and are not in the record. There is also no explanation from the County that correspondence was received or why the documents were not part of the record. It would be helpful to clearly establish the record before submitting the post-hearing briefs.

I would agree to an extension of time for filing of post-hearing briefs in order to establish the record. It would also be helpful if I could speak directly to staff regarding the file and the proposed documents. I just don't know if there was anything else left out of the record.

Thank you for your consideration.

James C. Carmody
Meyer, Fluegge & Tenney, P.S.
230 S. 2nd Street
Yakima, WA 98901
Phone: 509/575-8500
Fax: 509/575-4676

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From: Andrew Kottkamp [<mailto:andy@wenatcheelaw.com>]
Sent: Monday, May 11, 2015 3:17 PM
To: 'Heather Hazlett'; jeff.watson@co.kittitas.wa.us; doc.hansen@co.kittitas.wa.us; James Carmody
Cc: 'Jeff Slothower'
Subject: RE: LP-07-00040 (Plat App. - Andrus): Motion to Supplement the Record

To all

I am ordering that if Mr. Carmody or the County wish to respond to this motion, that the response be submitted to me by 4pm Wednesday May 13. I do not intend to extend the time period that the record remain open for briefing purposes unless this is stipulated to by the parties.

Andrew Kottkamp
Kittitas County Hearing Examiner

Andrew Kottkamp

Kottkamp & Yedinak P.L.L.C.
435 Orondo Ave.
P.O. Box 1667
Wenatchee, WA 98801
(509) 667-8667
www.wenatcheelaw.com

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From: Heather Hazlett [<mailto:HHazlett@lwhsd.com>]

Sent: Friday, May 08, 2015 1:45 PM

To: andy@wenatcheelaw.com; jeff.watson@co.kittitas.wa.us; doc.hansen@co.kittitas.wa.us; carmody@mftlaw.com

Cc: Jeff Slothower

Subject: LP-07-00040 (Plat App. - Andrus): Motion to Supplement the Record

Attached is a PDF file containing the following documents:

- *Applicants' Motion to Supplement the Record;*
- *Declaration of Jeff Slothower in Support of Applicants' Motion to Supplement the Record;* and
- *Certificate of Service*

Heather L. Hazlett

Legal Assistant to Jeff Slothower
Lathrop, Winbauer, Harrel, Slothower & Denison L.L.P.
P.O. Box 1088
Ellensburg, WA 98926

Phone 509.925.6916
Fax 509.343.3206

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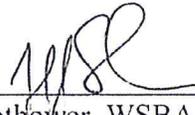
KITTITAS COUNTY HEARINGS EXAMINER

Plat Application of: Becky Andrus	LP-07-00040 APPLICANTS' MOTION TO SUPPLEMENT THE RECORD
------------------------------------------	-------------------------------------------------------------------

COMES NOW the Applicants, Cory and Becky Andrus, through their attorney, Jeff Slothower of Lathrop, Winbauer, Harrel, Slothower & Denison and respectfully move the Hearings Examiner for leave to supplement the record with the following documents, which are attached to the annexed declaration of counsel as Exhibits 1-3. This motion is based upon the Declaration of Jeff Slothower.

Respectfully submitted this 8th day of May, 2015.

LATHROP, WINBAUER, HARREL,
SLOTHOWER & DENISON L.L.P.



 Jeff Slothower, WSBA #14526
 Attorney for Applicants

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KITTITAS COUNTY HEARINGS EXAMINER

Plat Application of: Becky Andrus	LP-07-00040 DECLARATION OF JEFF SLOTHOWER IN SUPPORT OF APPLICANTS' MOTION TO SUPPLEMENT THE RECORD
------------------------------------------	---------------------------------------------------------------------------------------------------------------------

COMES NOW, JEFF SLOTHOWER, and states and declares:

1. My name is Jeff Slothower. I am over the age of 18 and I am competent to testify herein. I testify herein in my capacity as attorney of record for the Applicants, Cory and Becky Andrus.

2. The record does not contain the documents identified in the shaded rows of the table below as Exhibits 1, 2 and 3, true and correct copies of which are attached hereto, which documents are part of the correspondence between the County and the Applicants chronicled as follows:

//
//
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Record Index No.	JS Decl. Exh. No.	Description of Document	Linked on website? (y/n)
	1	February 26, 2010 letter to Jan Ollivier from Cory Andrus	n
	2	March 15, 2010 letter to Cory and Becky Andrus from Jan Ollivier	n
15		June 15, 2010 letter to Jan Ollivier from Becky Andrus	n
16		June 25, 2010 letter to Cory and Becky Andrus from Jan Ollivier	n
17		October 19, 2010 letter to KCCDS from Becky Andrus	n
18		October 17, 2010 letter to Cory and Becky Andrus from Jan Ollivier	n
19		June 27, 2011 email from Wayne Nelsen to Dan Valoff	n
20		June 27, 2011 letter to Cory and Becky Andrus from Dan Valoff	y
21		September 29, 2011 email from Wayne Nelsen to Dan Valoff	n
22		September 30, 2011 letter to Cory and Becky Andrus from Dan Valoff	y
23		January 11, 2012 email from Wayne Nelsen to Dan Valoff	n
24		January 11, 2012 letter to Cory and Becky Andrus from Dan Valoff	y
27		June 26, 2012 letter to Dan Valoff from Cory Andrus	n
28		June 26, 2012 letter to Cory and Becky Andrus from Dan Valoff	y
29		October 9, 2012 email from Wayne Nelsen to Jeff Watson	n
30		October 23, 2012 letter to Cory and Becky Andrus from Robert "Doc" Hansen	y
	3	February 10, 2013 email to Christina Wollman and Jan Olliver from Cory Andrus	y

The documents identified in the last column with a notation of "n" were not separately posted on the County website as part of the public record. The documents with a notation of "n" appear for the first time publicly in the record before the Hearings Examiner.

3. The Applicants respectfully request that the Hearings Examiner allow the record to be reopened for the specific purpose of supplementing the record by inserting Exhibits 1-3 hereto into the record in chronological order.

4. At the conclusion of the public testimony, the Hearings Examiner left the record open for the purpose of accepting additional briefing on specific questions the Hearings

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1 Examiner had and to allow the Applicants to comment on late comments by the Kittitas County
2 Fire Marshall.

3 5. The Hearings Examiner's request for additional briefing centered around vesting
4 issues, what effect, if any, a February 9, 2010 letter by Jan Ollivier, Interim Planning Manager,
5 to the Applicants had, and in particular whether the application was still viable as a result of Ms.
6 Ollivier's letter, which reads as follows:

7 Please note that either a written request to withdraw this
8 application or submittal of information requested in this letter is
9 required within 60 days of this letter (April 10, 2010). Failure to
respond to this letter will result in the withdrawal of your plat.

10 In particular the Hearings Examiner was concerned that letter appeared to be unresponded to and
11 as a result had questions as to whether the application was even properly before the Hearings
12 Examiner.

13 6. After the Hearings Examiner hearing, your declarant went back and reviewed the
14 record, particularly in light of the February 9, 2010 letter and subsequent correspondence
15 between the County and the Applicants. It became clear to your declarant that there had to be
16 information that should have been in the record that was missing. Based upon that, your
17 declarant asked both Mr. Nelsen, the Applicants' authorized agent, and Mr. and Mrs. Andrus to
18 review their records to determine if the County had all of the relevant correspondence in the
19 record.

20 7. The documents include an unsigned February 16, 2010 letter from Mr. Andrus to
21 Ms. Ollivier requesting additional time (Exhibit 1), Ms. Ollivier's March 15, 2010 letter
22 acknowledging Mr. Andrus's request for more time and granting the Applicants more time to
23 finalize the Traffic Impact Analysis ("TIA") and submit it (Exhibit 2) and a February 20, 2013
24 email from Mr. Andrus to Christina Wollman and Jan Ollivier informing them that the TIA was
25 complete and asking them if any additional changes were necessary to the TIA (Exhibit 3).
26 These documents do not appear to be in the record and the documents should be in the record

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1 because they are correspondence between the Applicants and the County that directly relate to
2 issues the Hearings Examiner had about the viability of the application given the delay. It would
3 be a manifest injustice for the Hearings Examiner to exclude these documents and then conclude
4 that the application was not properly before the Hearings Examiner because it had been
5 withdrawn as a result of the County's February 9, 2010 letter.

6 8. Upon learning the information was missing from the record, I contacted Mr.
7 Carmody and advised him of the missing information and my desire to bring a motion to
8 supplement the record. Mr. Carmody indicated he was not in a position to agree to supplement
9 the record without seeing the documents and then consulting with his clients. Mr. Carmody also
10 indicated that because of his required attendance at the environmental and land use law section
11 mid-year meeting he is not available for any kind of telephone conference on this request until
12 the week of May 11, 2015.

13 9. The Applicants understand the Hearings Examiner's decision to grant this motion
14 may result in a modification of the briefing schedule.

15 I HEREBY CERTIFY OR DECLARE UNDER PENALTY OF PERJURY UNDER THE
16 LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND
17 CORRECT.

18 SIGNED this 9th day of May, 2015, at Ellensburg, Washington

19
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21 
22 _____
23 Jeff Slothower – WSBA #14526
24 Attorney for Applicants
25
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F:\Slothower\Andrus, Cory and Becky\Decl of JS - Applicant's Motion to Supplement the Record 5-7-15 DRAFT.doc

DECLARATION OF JEFF SLOTHOWER
IN SUPPORT OF APPLICANTS' MOTION
TO SUPPLEMENT THE RECORD

4 of 4

Jeff Slothower
Lathrop, Winbauer, Harrel, Slothower & Denison L.L.P.
Attorneys at Law
PO Box 1088/201 West 7th Avenue
Ellensburg, WA 98926
Direct Fax No. (509) 343-3206
Tel (509) 925-6916

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EXHIBIT 1

February 16, 2010

Jan Ollivier
Kittitas County Community Development Services
411 N. Ruby Street, Suite 2
Ellensburg, WA 98926

Re: Big Buck Ridge Cluster Plat P-07-40

Dear Ms. Ollivier:

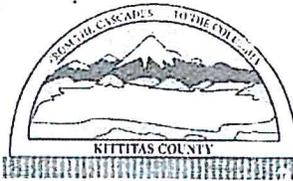
This letter is provided in response to your request of February 9, 2010 regarding the above referenced performance based cluster subdivision. Please be aware that it has been and remains our desire and intent to proceed with the subdivision. Unfortunately, due to extenuating circumstances beyond our control (i.e. market conditions and the Upper Kittitas County Emergency Ground Water Rule), it has not been feasible to invest further in the project. It is our understanding that the emergency rule is set to expire March 25, 2010 and at that time DOE will be required to take further action. Until we know with certainty what that action may be, we simply cannot secure the funding necessary to accommodate the new deadline you have set.

Therefore, please accept this letter as a formal request for additional time to provide a traffic impact analysis. If you have any questions or would like to discuss this further, please do not hesitate to contact me.

Sincerely,

Cory Andrus

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KITTITAS COUNTY COMMUNITY DEVELOPMENT SERVICES

411 N. Ruby St., Suite 2, Ellensburg, WA 98926
CDS@CO.KITTITAS.WA.US
Office (509) 962-7506
Fax (509) 962-7682

"Building Partnerships – Building Communities"

March 15, 2010

Cory and Becky Andrus
PO Box 785
Cle Elum, WA 98922

Dear Cory and Becky Andrus,

The Community Development Services Department is granting your request for an extension for the Big Buck Ridge Cluster Plat P-07-40. The new deadline for providing the requested traffic impact analysis will be June 15, 2010

Kittitas County had requested a traffic impact analysis (TIA) two and a half years ago in order to process this development application. Since it has not been evident that progress was being made toward this requested information, a deadline was established for providing it by April 10, 2010 or an indication that the application be withdrawn.

Recently, Kittitas County Public Works received a letter from you indicating your intent to proceed with the subdivision and a request for additional time to submit your TIA. Copies of two TIA's for neighboring properties were submitted with the letter. The TIA's for the neighboring properties may be referenced, but cannot be used for your project. A TIA specifically addressing your project and the access onto Montgomery Avenue is required.

If you have any questions regarding this matter, please feel free to contact me at:

Phone: 509-962-7523
Email: jan.ollivier@co.kittitas.wa.us

Sincerely,

Jan Ollivier
Interim Planning Manager

cc: Kirk Holmes, Interim Planning Director
Dan Valoff, Planner II
Christina Wollman, Planner II

EXHIBIT 3

From: [Cory Andrus](#)
To: [Christina Wollman](#); [Jan Ollivier](#)
Cc: wayne@lqh-inc.com; "[Cory Andrus](#)"
Subject: FW: Big Buck Ridge Cluster Plat
Date: Wednesday, February 20, 2013 3:55:39 PM
Attachments: [Big Buck Cluster Plat - TIA.pdf](#)

Hi Christina and Jan

We can make changes to the TIA at this point please inform me of any changes needed
Otherwise we will assume this will complete all items needed to get entitlement to build Andrus
Cluster Plat

Thanks Cory

From: Michelle Brown [<mailto:michelle@hefftrans.com>]
Sent: Tuesday, February 19, 2013 3:20 PM
To: cory@pro-vac.com
Cc: 'Marni Heffron'
Subject: Big Buck Ridge Cluster Plat

Hello Cory,

Attached is the transportation impact analysis for your plat. Please let me know if there is anything
that needs to be changed. If not, this document can be sent to Kittitas County for review.

Thank you, and best of luck with your plans.

~Michelle~

Michelle M. Brown
Senior Transportation Engineer
Heffron Transportation, Inc. | www.hefftrans.com
(425) 379-5689 | michelle@hefftrans.com

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KITTITAS COUNTY HEARINGS EXAMINER

Plat Application of: LP-07-00040
Becky Andrus CERTIFICATE OF SERVICE

I certify that I have this day caused copies of the following documents:

- Applicants' Motion to Supplement the Record;
- Declaration of Jeff Slothower in Support of Applicants' Motion to Supplement the Record; and
- this Certificate of Service

to be served on the individual(s) listed below and in the manner noted below:

Andrew L. Kottkamp, Hearings Examiner
Kottkamp & Yedinak PLLC
435 Orondo Ave
Wenatchee, WA 98801
 BY U.S. MAIL
 BY HAND DELIVERY
 BY OVERNIGHT DELIVERY
 BY EMAIL: andy@wenatcheelaw.com

Jeff Watson, Staff Planner
Kittitas County Community Development
Services
411 N. Ruby Street, Suite 2
Ellensburg, WA 98926
 BY U.S. MAIL
 BY HAND DELIVERY [original and 1 copy]
 BY OVERNIGHT DELIVERY
 BY EMAIL: jeff.watson@co.kittitas.wa.us

Robert "Doc" Hansen, Planning Official
Kittitas County Community Development
Services
411 N. Ruby Street, Suite 2
Ellensburg, WA 98926
 BY U.S. MAIL
 BY HAND DELIVERY [1 copy]
 BY OVERNIGHT DELIVERY
 BY EMAIL: doc.hansen@co.kittitas.wa.us

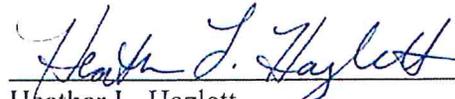
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1 James Carmody
2 Meyer, Fluegge & Tenney, P.S.
3 230 S. Second Street
4 P.O. Box 22680
5 Yakima, WA 98907

- BY U.S. MAIL [1 copy]
- BY HAND DELIVERY
- BY OVERNIGHT DELIVERY
- BY EMAIL: carmody@mftlaw.com

6 I certify, or declare, under penalty of perjury under the laws of the State of Washington that
7 the foregoing is true and correct.

8 Signed at Ellensburg, Washington this 8th day of May, 2015.

9 
10 _____
11 Heather L. Hazlett
12 Legal Assistant to Jeff Slothower

Jeff Watson

From: Andrew Kottkamp <andy@wenatcheelaw.com>
Sent: Wednesday, April 29, 2015 11:12 AM
To: Jeff Watson
Cc: 'James Carmody'; 'Jeff Slothower'; Doc Hansen
Subject: RE: LP-07-00040 Big Buck Ridge Plat

Jeff

Preparation of the record and preservation of the record is for your department. I will identify the record in my recommended decision.

Andrew Kottkamp

Kottkamp & Yedinak P.L.L.C.
435 Orondo Ave.
P.O. Box 1667
Wenatchee, WA 98801
(509) 667-8667
www.wenatcheelaw.com

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From: Jeff Watson [mailto:jeff.watson@co.kittitas.wa.us]
Sent: Wednesday, April 29, 2015 11:01 AM
To: 'Andrew Kottkamp'
Cc: 'James Carmody'; 'Jeff Slothower'; Doc Hansen
Subject: RE: LP-07-00040 Big Buck Ridge Plat

Thank you; I will .pdf this and add it to the on-line file. I have added the Planning Official to this correspondence. Mr. Slothower was inquiring as to the status of the "record" at this point (should that correspondence be added as well?). As this is only my 2nd or 3rd project before you I am not sure of protocol for this extended process. Should I assemble the record to this point (re-index, add exhibits, sign in sheets and the like...) or is that part of your territory? Happy to do it; just not sure what needs to be done when, and by who.

Jeffrey A. Watson
Planner II
[Kittitas County Public Works/Community Development Services](http://www.kittitascountywa.gov/CommunityDevelopmentServices)
411 North Ruby
Ellensburg WA 98926
jeff.watson@co.kittitas.wa.us

Jeff Watson

From: James Carmody <Carmody@mftlaw.com>
Sent: Thursday, April 30, 2015 4:02 AM
To: Andrew Kottkamp; Jeff Watson
Cc: 'Jeff Slothower'
Subject: RE: LP-07-00040 Big Buck Ridge Plat

Follow Up Flag: Follow up
Flag Status: Flagged

Thank you for the confirmation regarding post-hearing issues. I also appreciate the clarification of the record. Will the County be preparing an updated exhibit list so we have correct exhibit numbers to reference in the post-hearing brief. That would be helpful. Jamie

*James C. Carmody
Meyer, Fluegge & Tenney, P.S.
230 S. 2nd Street
Yakima, WA 98901
Phone: 509/575-8500
Fax: 509/575-4676*

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From: Andrew Kottkamp [mailto:andy@wenatcheelaw.com]
Sent: Wednesday, April 29, 2015 10:42 AM
To: 'Jeff Watson'
Cc: James Carmody; 'Jeff Slothower'
Subject: RE: LP-07-00040 Big Buck Ridge Plat

Jeff

I don't talk to the media about a specific case while a decision is pending (or even after for that matter).

Briefs are due by the 15th and my recommended decision will be made by the 29th.

The record is open only for legal briefing by the County, the Applicant and Mr. Carmody on behalf of his clients on the general issue of vesting. I was a big long winded in talking about what I would like to see. But it is not just limited to the question of what is a project action. It also includes what constitutes "vesting" as a matter of law (or what constitutes a complete application as a matter of law) when no letter of complete application is issued. I indicated I was interested in the legal effect of the lack of a letter of complete application in 2007, and the impact of it being issued in 2015. I indicated I was interested in the legal effect of the February 9, 2010 letter from the county to the applicant advising that the application would be deemed withdrawn if the TIA was not submitted April 10, 2010, and then the TIA was not submitted by that date but the application continued to be processed by the County. I also expressed an interest in the legal impact of the original SEPA checklist submitted 6-19-2007 that

509-933-8274

From: Andrew Kottkamp [mailto:andy@wenatcheelaw.com]
Sent: Wednesday, April 29, 2015 10:42 AM
To: Jeff Watson
Cc: 'James Carmody'; 'Jeff Slothower'
Subject: RE: LP-07-00040 Big Buck Ridge Plat

Jeff

I don't talk to the media about a specific case while a decision is pending (or even after for that matter).

Briefs are due by the 15th and my recommended decision will be made by the 29th.

The record is open only for legal briefing by the County, the Applicant and Mr. Carmody on behalf of his clients on the general issue of vesting. I was a bit long winded in talking about what I would like to see. But it is not just limited to the question of what is a project action. It also includes what constitutes "vesting" as a matter of law (or what constitutes a complete application as a matter of law) when no letter of complete application is issued. I indicated I was interested in the legal effect of the lack of a letter of complete application in 2007, and the impact of it being issued in 2015. I indicated I was interested in the legal effect of the February 9, 2010 letter from the county to the applicant advising that the application would be deemed withdrawn if the TIA was not submitted April 10, 2010, and then the TIA was not submitted by that date but the application continued to be processed by the County. I also expressed an interest in the legal impact of the original SEPA checklist submitted 6-19-2007 that mentions nothing of potential traffic impacts although the rezone ordinance applying to this property made note of traffic impacts supporting the requirement of a TIA at time of project action. And then the related legal impact of the optional DNS process noticed 2-9-2015 and the MDNS issued 3-25-2015. Finally I was interested in the legal authority of the County to set a "de facto" date of complete application almost 9 years before the date the application was noticed to the public.

See, once again I was a bit long winded but I hope this helps everyone. This letter should be made a part of the record as exhibit 86.

Andy

Andrew Kottkamp

Kottkamp & Yedinak P.L.L.C.
435 Orondo Ave.
P.O. Box 1667
Wenatchee, WA 98801
(509) 667-8667
www.wenatcheelaw.com

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From: Jeff Watson [mailto:jeff.watson@co.kittitas.wa.us]
Sent: Wednesday, April 29, 2015 10:11 AM

To: Andrew Kottkamp (andy@wenatcheelaw.com) (andy@wenatcheelaw.com)

Subject: LP-07-00040 Big Buck Ridge Plat

LP-07-00040 Big Buck Ridge Plat

Just wanted to confirm a couple of things from my notes for the newspaper RE above:

Briefs are due on May 15th; and
Only the County, the Applicant, and Mr. Carmody may submit; and
They must be specific to this question of what a “project action” is and how it relates to a complete application/SEPA for vesting; and
You render a recommendation on the 29th; and
The record is closed for general comments; and
There will not be another hearing/meeting

Thanks... side note; would you prefer we work with press/media types or...?

Jeffrey A. Watson
Planner II
[Community Development Services](#)
411 North Ruby
Ellensburg WA 98926
jeff.watson@co.kittitas.wa.us
509-933-8274

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Jeff Watson

From: Jeff Watson <jeff.watson@co.kittitas.wa.us>
Sent: Wednesday, April 29, 2015 8:58 AM
To: Jeff Slothower
Subject: RE: LP-07-00040 Big Buck Ridge

This is the record that was submitted to the HE a week prior to the hearing as part of the packet for his review. I have not assembled the documentation submitted since that time. I am not aware of any missing documents, but I like you, was not involved with the application until recently. I have done my best to amalgamate the substantive hard copy and digital records related to the file from a variety of sources. If something was inadvertently overlooked I will do my best to rectify and clarify.

Jeffrey A. Watson
Planner II
[Kittitas County Public Works/Community Development Services](#)
411 North Ruby
Ellensburg WA 98926
jeff.watson@co.kittitas.wa.us
509-933-8274

From: Jeff Slothower [mailto:jslothower@lwhsd.com]
Sent: Wednesday, April 29, 2015 7:22 AM
To: Jeff Watson
Cc: Doc Hansen
Subject: RE: LP-07-00040 Big Buck Ridge

Jeff

I am confused by this file. There were items admitted into the hearings examiner record that are not here including my letter with exhibits. It also appears that some documents that are on the CDS website for this application are not included in the pdf referred to below. Can you clarify what this is and whether it is the entire record.

Jeff

Jeff Slothower, Attorney at Law
Lathrop, Winbauer, Harrel, Slothower & Denison L.L.P.
P.O. Box 1088
Ellensburg, WA 98926

P. 509.925.6916
F. 509.343.3206
Email: jslothower@lwhsd.com
Web: www.lwhsd.com

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89

From: Jeff Watson [mailto:jeff.watson@co.kittitas.wa.us]
Sent: Tuesday, April 28, 2015 1:35 PM
To: Jeff Slothower
Cc: Doc Hansen
Subject: LP-07-00040 Big Buck Ridge

LP-07-00040 Big Buck Ridge

1. The following files will be available until 5/5/2015:
 1. [LP-07-00040 Big Buck Ridge HE Record.pdf](#)

The above link will pull down the record as submitted to the Hearings Examiner; which contains, to the best of my knowledge, all substantive communication RE: the application. Attached are items 14 & 15 as requested.

Jeffrey A. Watson
Planner II
[Kittitas County Public Works/Community Development Services](#)
411 North Ruby
Ellensburg WA 98926
jeff.watson@co.kittitas.wa.us
509-933-8274

From: Jeff Slothower [mailto:jslothower@lwhsd.com]
Sent: Tuesday, April 28, 2015 12:21 PM
To: Jeff Watson
Cc: 'Wayne Nelsen'
Subject: RE: Andrus

Jeff

I haven't seen a response to this email yet. Can you please provide the two documents referenced below

Thanks

Jeff

Jeff Slothower, Attorney at Law
Lathrop, Winbauer, Harrel, Slothower & Denison L.L.P.
P.O. Box 1088
Ellensburg, WA 98926

P. 509.925.6916
F. 509.343.3206
Email: jslothower@lwhsd.com
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From: Jeff Slothower
Sent: Friday, April 24, 2015 3:18 PM
To: Jeff Watson (jeff.watson@co.kittitas.wa.us)
Cc: Wayne Nelsen
Subject: Andrus

Jeff

Can you send me the letters/documents that are identified as index numbers 14 and 15?

Also I note that it isn't until the comment letters from this spring that you have included emails in the record. My understanding is that Ms. Andrus and Mr. Nelson communicated with Mr. Valoff and other members of KCDS by email. Where are those emails?

Thanks

Jeff

Jeff Slothower, Attorney at Law
Lathrop, Winbauer, Harrel, Slothower & Denison L.L.P.
P.O. Box 1088
Ellensburg, WA 98926

P. 509.925.6916
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State of Washington, County of Kittitas, ss: Pam Shuart being first duly sworn on oath, deposes and says: That she is the Advertising Manager of The Daily Record, a daily newspaper. That said newspaper is a legal newspaper and has been approved as a legal newspaper by order of the superior court in the County in which it is published and it is now and has been for more than six months prior to the date of the publications hereinafter referred to, published in the English language continually as a newspaper in Ellensburg, Kittitas County, Washington, and it is now and during all of said time printed in an true copy of

KC COMMUNITY DEVELOPMENT SERVICES

NOTICE OF PUBLIC HEARING

is published in regular issues (and not in supplement form) of said newspaper once a week for a period of 1 consecutive week(s), commencing on the following days.

04/16/2015

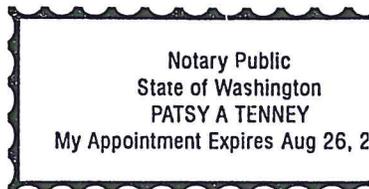
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Pam Shuart

Subscribed to me this 17th day of April in the year of 2015

Patsy A Tenney

PATSY A TENNEY
Notary Public in and for
The State of Washington
Residing at Ellensburg,
Washington (SEAL)



Notice of Public Hearing
Big Buck Ridge Plat
(LP-07-00040)

NOTICE IS HEREBY given that a hearing on the above application before the Kittitas County Hearing Examiner has been scheduled for **April 23, 2015 at 6:00 p.m.** in the Kittitas County Courthouse Auditorium, Room 108, 205 W 5th Avenue, Ellensburg, WA. 98926. Anyone with an interest in this matter is urged to attend said hearing where testimony and written comments will be taken. The project application and related documents may be viewed at the address below prior to the hearing. Interested persons are encouraged to verify prior to attending.

Wayne Nelson, agent for property owner Becky Andrus, landowner, submitted a preliminary plat application to subdivide approximately 25 acres into 14 single-family residential lots. Final plat approval and building permits will be required. The subject property is comprised of two tax parcels, located approximately 1/2 mile north of the Yakima Avenue in the City of Cle Elum, (outside the city limits) at 140 Big Buck Ridge Road, Cle Elum WA, in a portion of Section 26, Township 20N, Range 15E, WM in Kittitas County, bearing Assessor's map numbers 20 15 26010 0010 and 20 15 26010 0009. The complete application file may be viewed at Kittitas County Community Development Services, 411 N. Ruby St. Suite 2, Ellensburg, WA 98926 or on line at:

[http://www.co.kittitas.wa.us/cds/land-use/current-planning.aspx?title=Long Plats](http://www.co.kittitas.wa.us/cds/land-use/current-planning.aspx?title=Long%20Plats)

Staff Planner: Jeff Watson.

Publish Daily Record: April 16, 2015
Publish NKC Tribune: April 16, 2015

88

Kittitas County Hearing Examiner

SIGN IN SHEET - Date: 4/23/15

Project Name & File Number(s):

This public hearing is an opportunity for citizens to express their views to the Hearing Examiner for consideration in his decision-making process. If you wish to speak, please PRINT your name and address clearly below. When you approach the podium:

- Step to the microphone and give your name and address.
- State if you are representing yourself or someone else.
- If other speakers have made the same point, simply indicate your support or disagreement unless you have new information.

PLEASE PRINT CLEARLY

NAME

ADDRESS

Kay Muhlbeier 21403 SE 16th Pl Sammamish WA

Roiann - Kevin Daly 57026 126th AVE SE Bellevue, WA 98006

Shirley J. Person 680 Lambert Rd Cle Elum WA 98922

BRUCE J. HIGGS 24915-183RD SE, COVINGTON, WA 98042

JOE SKVARLA 5026 42ND Ave SW, Seattle, WA 98136

KENNETH D. MCKIM 5046 42nd Ave S.W. SEATTLE WA 98136

MIKE GLAIN 8040 S. 117TH ST. SEATTLE, WA. 98178

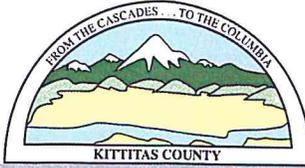
Wayne Nelson 16706 19th Pl NE Woodinville, WA 98072

Don Owens 2275 Lower Peck Pt Cle Elum, Wa 98922

Dana Owens 203 N. PECK AVE Cle Elum, WA 98922

Doug Owens 203 N Peck ave Cle Elum Wa 98922

Deidre Link 1001 S Chestnut St #423 Eburg 98926



KITTITAS COUNTY HEARING EXAMINER
Andrew L. Kottkamp, Hearing Examiner

REGULAR SCHEDULED MEETING AGENDA

Thursday, April 23, 2015 @ 6:00PM

KITTITAS COUNTY COURTHOUSE, COMMISSIONERS' AUDITORIUM ROOM 109
205 WEST 5TH AVENUE, ELLENSBURG, WA 98926

Procedure for Participation – Please Sign in Legibly – When Recognized:

- State your name, address and whether you are representing only yourself or others. All remarks/comments should be addressed to the Hearing Examiner and not to the audience. Questions should be addressed to the Hearing Examiner.
- Please limit Applicant Presentation to fifteen (15) minutes; Public Testimony to three (3) minutes.
- Submit all written comments or other media to the Hearing Examiner as an exhibit for the permanent record.

I. CALL TO ORDER

II. ADMINISTRATIVE MATTERS

III. OLD BUSINESS - None

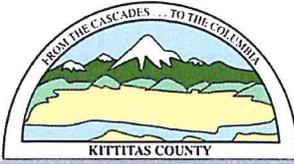
IV. NEW BUSINESS –

a. Big Buck Ridge Performance Based Cluster Plat LP-07-00040

Wayne Nelson authorized agent for Becky Andrus, landowner, has submitted a performance based cluster plat application to create 14 one acre parcels and approximately eleven acres of open space. The subject property's zoning is vested as Residential 3. The proposed plat is on 2 parcels, located approximately 1/2 mile north of the Yakima Avenue in the City of Cle Elum at 140 Big Buck Ridge Road, Cle Elum WA, in a portion of Section 26, Township 20N, Range 15E, WM in Kittitas County, bearing Assessor's map numbers 20 15 26010 0010 and 20 15 26010 0009.

V. OTHER BUSINESS – None

VI. ADJOURN



KITTITAS COUNTY COMMUNITY DEVELOPMENT SERVICES

411 N. Ruby St., Suite 2, Ellensburg, WA 98926

CDS@CO.KITTITAS.WA.US

Office (509) 962-7506

Fax (509) 962-7682

"Building Partnerships - Building Communities"

STAFF REPORT BIG BUCK RIDGE PRELIMINARY PLAT LP-07-00040

TO: Kittitas County Hearing Examiner
FROM: Kittitas County Community Development Services Staff
RE: Big Buck Ridge Preliminary Performance Based Cluster Plat (LP-07-00040) **REVISED**
CONDITIONS OF APPROVAL
DATE: April 23, 2013

Suggested Conditions of Approval:

- 1) The project shall proceed in substantial conformance with the plans and application materials on file dated June 20, 2007 except as amended by the conditions herein.
- 2) A certificate of title of the property proposed to be platted shall be submitted with the final plat.
- 3) A note shall be placed on the final plat stating that any construction within areas of 33% or greater slope will require geotechnical engineering per IRC R403.7.7 and/or IRC 1805.3.1 or current adopted code.
- 4) The applicant is responsible for compliance with all applicable local, state and federal rules and regulations, and must obtain all appropriate permits and approvals.
- 5) All current and future landowners must comply with the International Fire Code.
- 6) 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.
- 7) Computer sheets shall be submitted with the final plat showing the closure of plat boundaries, blocks, lots or any tract. It is the responsibility of the Professional Licensed Surveyor (PLS) to ensure the lot closures are correct and accurate.
- 8) Individual onsite sewage systems will need to meet Kittitas County code requirements.
- 9) According to the Public Health Department, final plat approval will be conditioned upon:
 - a) written findings of adequacy of potable water supplies;
 - b) a well site inspection performed by KCPHD staff and the well drilled;
 - c) completion and submission of a Group B Public water system to the Washington State Department of Health (WSDOH);
 - d) a contract with an approved Kittitas County Satellite Management Agency;
 - e) the construction or bonding of all infrastructure including the well house and storage tanks;
 - f) issuance of a public water system ID number from WSDOH;
- 10) The Final Plat shall meet all requirements as listed in Chapter 16.20 of the Subdivision Code, as follows:
 - a) The final plat shall be drawn on polyester film in a neat and legible manner.
 - b) The final plat shall be drawn to such a scale as to make a sheet eighteen inches by twenty-four inches. Should this size sheet unduly congest the drawing, the plat may be submitted on two or more sheets of the above dimensions. The perimeter of the subdivision shall be depicted with heavier lines than appear elsewhere on the plat. A marginal line shall be drawn completely around each sheet, leaving an entirely

blank margin of one inch on the sides. The scale shall be one (1) inch equals two hundred (200) feet, or greater, unless otherwise approved by the director.

- c) All lettering shall be printed with permanent ink.
- d) Each sheet of the final plat shall contain the subdivisions name at the top of the sheet in large letters followed underneath with the section, township, range, county and state. The space for recording the receiving number is in the upper right hand corner, sheet numbers at the bottom of the sheets.
- e) It shall show all courses and distances necessary to re-stake any portion of said plat.
- f) Required monuments shall be shown together with a legend of monuments on the face of each plat sheet. (Ord. 2005-31, 2005)

(a)

16.20.040 Plat Drawing

- g) Section Data. All section, township, municipal and county lines lying within or adjacent to the subdivision;
- h) Tie Monuments. The location of all monuments or other evidence used as ties to establish the subdivision's boundaries;
- i) Plat Monuments. The location of all permanent control monuments found or established within the subdivision;
- j) Boundaries. The boundary of the subdivision, with complete bearings and lineal dimensions in heavier lines;
- k) Bearing and Distances. The length and bearings of all straight lines, the radii, arcs, and central angles of all curves;
- l) Lot Dimensions. The length of each lot line, together with bearings and other data necessary for the location of any lot line in the field;
- m) Road Names. The location, width, centerline, and name or names or number of all streets within and adjoining the subdivision;
- n) Easements. The location and width, shown with broken lines, and description of all easements. Easements may be described in the plat restrictions in lieu of being shown on the plat drawings;
- o) Lot Numbers. Numbers assigned to all lots and blocks within the subdivision;
- p) Adjacent Owners. Names of owners of land adjacent to the subdivision, and the names of any adjacent subdivisions;
- q) 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;
- r) Vicinity Maps. A vicinity map showing the boundary of the plat in relation to the surrounding area such as adjacent subdivisions, rivers, creeks, roads or highways, canals, etc. Minimum area shown would be the section or sections containing the platted area with a scale of approximately 4" = 1 mile;
- s) Contours. Contour lines are not shown on a final plat as required on the preliminary plat;
- t) Miscellaneous Items. North arrow, scale and legend of monuments to be shown on open area of sheets;
- u) Grid Coordinates. A tie shall be made and shown on the plat if plat is within one mile of any such monument.
- v) Well location. The drawings shall be marked with a "w" indicating location of the well and a broken line showing the one hundred foot radius around such.
- w) Ditches. Location of existing ditches apparent or of record. (Ord. 2005-31, 2005)

11) Timing of Improvements: This application is subject to 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 structures 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.

12) 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.

- 13) Stormwater: 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.
- 14) Grading Permit: A grading permit shall be required prior to beginning any site work. See KCC 14.05 for more information.
- 15) Second Access: A second access will be required 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 Marshal; 2) If the second access is to be used for ingress and egress, it must meet the same standards of the first access.
- a) Documentation of a legal easement across the route of the second access will be required prior to final approval. The second access must be constructed and certified by an engineer licensed in the State of Washington prior to issuance of a building permit.
- 16) Private Road Improvements: Access shall be constructed to meet or exceed the conditions of a **Low-Density**. 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 20', with 1' shoulders, for a total width of 22'.
 - b) Minimum centerline radius shall 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 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.
- 17) 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 2009 International Fire Code. Contact the Fire Marshal regarding any additional cul-de-sac requirements.
- 18) Joint-Use Driveway: A joint-used 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.
- 19) Single-Use Driveway: 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.
- 20) Plat Notes: Plat notes shall reflect the following:
- a) Entire private road shall achieve 95% compaction and shall be inspected and certified by a licensed engineer in the State of Washington specifying that the road meets current Kittitas County Road Standards prior to the issuance of building permit for this plat.
 - b) Entire private road shall be inspected and certified by a civil engineer licensed in the State of Washington specifying that the road meets Kittitas County Road Standards as adopted September 6, 2005, prior to the issuance of a building permit. Any future subdivision or land use action will be reviewed under the most current road standards.
 - c) 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.
 - d) Maintenance of the access is the responsibility of the property owners who benefit from its use.
 - e) An approved access permit will 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.
 - f) Any further subdivision or lots to be served by proposed access may result in further access requirements. See Kittitas County Road Standards.
 - g) A public utility easement 10 feet in width is reserved along all lot lines. The 10 foot easement shall abut the exterior plat boundary and shall be divided 5 feet on each side of interior lot lines. Said easement shall also be used for irrigation.
- 21) Plat Approvals: All plats must show the acceptance signature of the County Engineer. The acceptance block shall be as follows (per KCC 16.24.170):
- i) EXAMINED AND APPROVED
 - ii) This ____ day of _____, A.D., 20__.
 - iii) _____
 - iv) Kittitas County Engineer
- 22) Private Road Maintenance Agreement: The applicant shall meet all applicable conditions of any pre-established or required Private Road Maintenance Agreements.
- 23) Lot Closure: It is the responsibility of the Professional Licensed Surveyor (PLS) to ensure the lot closures are correct and accurate.
- 24) 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.

- 25) Fire Protection: Contact the Kittitas County Fire Marshal regarding any additional access requirements for Emergency Response.
- 26) 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.
- 27) 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.
- 28) Washington Administrative Code (WAC) 173-400-040 requires that reasonable precaution be taken to prevent dust from leaving the site. Also, dust is prohibited from interfering unreasonable with the use and enjoyment of property, causing health impacts, or damaging property or business.
- 29) 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."
- 30) All applicable survey data and dedications shall be reflected pursuant to KCC 16.24: Survey Data-Dedications.
- 31) Both sheets shall reflect the Plat number: LP-07-00040.
- 32) An NPDES Construction Stormwater General Permit from the Washington State Department of Ecology is required for this project. 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.
- 33) 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.
- 34) No water right records associated with this property were found in the Central Regional Office. In Washington State, prospective water users must obtain authorization from the Department of Ecology before diverting surface water or withdrawing ground water, with one exception. Ground water withdrawals of up to 5,000 gallons per day used for single or group domestic supply, industrial purposes, stock watering 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.
 - a) On March 28, 2002 the Washington State Supreme Court ruled that 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 because in combination, the withdrawal will exceed the exemption criteria.
- 35) An internal looped trail shall be bonded for or constructed in conjunction with the plat infrastructure. It shall run parallel with, but in addition to, the entire length of the private road servicing the plat to the 10 foot easement depicted on the west lot line of lot 8; then north across the .41 acre open space tract where it will connect with the 10 foot trail easement along the north and west lot lines of lot 1 to the 1.50 acre open space tract; then north and east back to the private road easement. This active recreation trail shall be constructed of an approved hard surface to accommodate wheeled traffic and utilize standards in conformance with the ICC



A 117.1-2009 manual for accessible and usable buildings and facilities.

- 36) Open space tracts shall be labeled with a unique identifier.
- 37) The face of the plat will depict accurate calculations for open space tracts which do not include areas covered by road easement or driveway, well head protection areas, utility right of way, critical area or region encumbered by other federal, state, or local jurisdiction (as per ordinance 2007-22).
- 38) The open space tracts shall be:
 - a) owned in a proportionate and un-severable manner as tenants in common by each lot owner; and
 - b) assessed, taxed, and foreclosed upon each building lot.
- 39) This property falls within the Wildland Urban Interface area classified as IR1. IR1 classification requires that all residences be provided with residential sprinkler systems. Additionally, the exterior building construction materials must be non-combustible, eaves and soffits must be enclosed, and defensible space must be provided around each structure a minimum of 150'.
- 40) Approved water storage of 15,000 gallons, with a private fire hydrant system shall be installed.
- 41) Water storage and hydrant spacing shall comply with the International Fire Code.
- 42) No fire apparatus access lane shall have a slope greater than 12%. A Variance Permit will be required for any slopes or grades greater than allowed by County Code.
- 43) "No Parking-Fire Lane" signs must be posted per Fire Marshal requirements on any cul-de-sacs.
- 44) All development, design and construction shall comply with Kittitas County Code, Kittitas County Zoning and the 2012 International Fire and Building Codes.
- 45) A separate permit is required for any private water storage or hydrant system. The tank and hydrant system shall be subject to plan review through the Fire Marshal's Office and shall be subject to an annual Operational Permit.
- 46) Based on comments received during the public comment period and other information submitted with this project permit application, A SEPA Mitigation Determination of Non-Significance (MDNS) was issued by Community Development Services on December 21, 2012. The following are the mitigation contained within the MDNS and shall be conditions of approval:

Water and Septic

1. The proposed plat is located within the upper county as defined in WAC 173-539A-090; the proposed group B water system shall be developed in complete compliance with the regulations and requirements of WAC 173-539A. The development will need to:
 - a. Have well site inspections.
 - b. Complete and submit a Group B water system workbook.
 - c. Contract with a Satellite Management Agency.
 - d. Complete or bond for infrastructure.
 - e. Obtain WSDOH approval and identification number.
 - f. Construct well(s) in accordance with the provisions of WAC 173-160. Wells must be located 100 feet from any known, suspected, or potential source of contamination.
 - g. File a well report with the Department of Ecology within thirty (30) days after the completion of the well.

2. On-site sewage systems shall be constructed in accordance with requirements and regulations in Kittitas County Code (KCC) 13.04 at the time of application (6/20/2007).

Transportation

3. KCC 12.12.010(6) requires private roads within the plat to be maintained by a legal entity made up of all benefitted property owners under the provisions of an acceptable and recorded Private Road Maintenance Agreement.
4. All parcels located within this project shall be required to join the existing Private Road Maintenance Agreement which is made up of all the benefitted property owners served by Deer Creek Road and other roadways within Section 23, Township 20 North, Range 15 East.

Stormwater

5. 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.
6. 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 for review to Public Works 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. Stormwater plans shall be submitted in accordance with KCC 12.06 and 12.08.

Cultural Resources and Historic Preservation

7. Should ground disturbing or other activities related to the proposed 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.

Light and Aesthetics

8. A plat note shall be affixed which states: All outdoor lighting shall be shielded and directed downward to minimize the effect to nearby residential properties.

Noise

9. Development and construction practices during building of 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.

Jeff Watson

From: Brenda Larsen
Sent: Thursday, April 23, 2015 3:38 PM
To: Jeff Watson
Subject: Big Buck Ridge comment letter
Attachments: Big Buck Ridge.doc

April 23, 2015

Jeff Watson
Staff Planner
Community Development Services
411 N. Ruby Street, Suite 2
Ellensburg, WA 98926

Re: Big Buck Ridge Cluster Plat (LP-07-00040)

Dear Mr. Watson:

Upon review of the above mentioned land use action, I have the following comments/requirements;

- This property falls within the Wildland Urban Interface area classified as IR1. IR1 classification requires that all residences be provided with residential sprinkler systems. Additionally, the exterior building construction materials must be non-combustible, eaves and soffits must be enclosed, and defensible space must be provided around each structure a minimum of 150'.
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- A separate permit is required for any private water storage or hydrant system. The tank and hydrant system shall be subject to plan review through the Fire Marshal's Office and shall be subject to an annual Operational Permit.

Any questions or concerns regarding fire service features may be directed to the Kittitas County Fire Marshal's Office at (509) 962-7000.

Sincerely,

Brenda Larsen

Fire Marshal
509-962-7000

Notice: All email sent to this address will be received by the Kittitas County email system and may be subject to public disclosure under Chapter 42.56 RCW and to archiving and review.

message id: 38eb45916c6dcedac24bb8719d004a14

84



KITTITAS COUNTY FIRE MARSHAL'S OFFICE

411 N. Ruby St., Suite 2, Ellensburg, WA 98926

Office (509) 962-7657 Fax (509) 962-7682

April 23, 2015

Jeff Watson
Staff Planner
Community Development Services
411 N. Ruby Street, Suite 2
Ellensburg, WA 98926

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Sincerely,

Brenda Larsen
Fire Marshal



Memo April 15, 2015

RE: MDNS for Big Buck Ridge LP-07-00040

Final approval of the Group B Public Water System including issuance of the public water system ID number from DOH is required prior to recommendation by KCPHD for final plat approval. Water mitigation must be acquired for each proposed lot per Kittitas County Code Chapter 13. Current Public Health records do not indicate any steps taken by the applicant toward gaining approval for a Group B water system; as is required prior to final plat approval. If a well site inspection and Group B Workbook has been submitted under a different name, please provide Kittitas County Public Health Department with this information.

There is also concern over the existence of an access road within 100 foot radius of the existing well. Public water systems must maintain a 100 foot well protection zone. This concern will be addressed during a well site inspection.

Below are the initial plat comments provided to the applicant by Kittitas County Public Health in February of 2015.

To: Kaycee Hathaway, CDS

From: Holly Myers, Environmental Health Supervisor

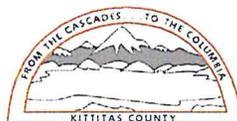
Date: 2/10/2015

RE: LP-07-00040 Big Buck Ridge

Thank you for the opportunity to comment on the abovementioned long plat.

The submittal indicates the applicant intends to set up a Group B water system to serve 14 lots. Individual onsite sewage systems will need to meet Kittitas County code requirements.

Prior to receiving **final approval** for long plats in Kittitas County, applicants shall be required to show written findings of the adequacy of potable water supplies. Kittitas County Public Health Department (KCPHD) requires the following as evidence of written findings of a potable water supply:



507 N. Nanum Street, St. 102 · Ellensburg, WA 98926

T: 509.962.7515 · F: 509.962.7581

www.co.kittitas.wa.us/health/

83

1. **GROUP B PUBLIC WATER SYSTEM:** Applicants shall provide the following for Group B Public Water Systems:
 - a. A well site inspection performed by KCPHD staff and the well(s) drilled
 - b. Complete and submit a Group B Public Water System Workbook to either KCPHD for water systems with 3-9 connections or Washington State Department of Health (DOH) for water systems with 10-14 connections;
 - c. Contract with an approved Kittitas County Satellite Management Agency.

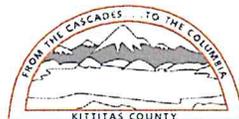
All infrastructure for the Group B water system including the well house and storage tanks must be completed or the developer/owner can bond for completion. Final approval of the Group B Public Water System including issuance of the public water system ID number from DOH is required prior to recommendation by KCPHD for final plat approval.



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23 April, 2015
To Mr. Andrew Kottcamp,
Re: Big Buck Ridge Cluster Plat P-07-40
Comments from Melissa Bates

Please accept these comments on the Big Buck Ridge Cluster Plat,

At the time this project was introduced, 14 home Performance Based Cluster Plats were proliferating in this county but not one of them was, in fact, legal. Not only were these often used to illegally circumvent a water right (2002 Campbell-Gwinn), they were also in violation of the JPO between Kittitas County and the WA Dept. of Health regarding Group B systems authorizations.

The 2011 KCCC & Futurewise vs. Kittitas County Supreme Court decision affirmed that these projects were indeed a clear violation of the GMA and Campbell-Gwinn, and not just as applied to 'future' development. Therefore, this project cannot be "grandfathered" under the illegal Kittitas County 2007 regulations.

Fast forward to 1015 -

WATER AVAILABILITY:

As the Hearings Examiner is aware, there are no new appropriations of water anywhere in Kittitas County without mitigation. While mitigation water is currently available for individual homeowners in Kittitas County, there is no water available with which to mitigate larger developments in this particular location:

Yakima Basin Water Banks in Upper Kittitas County:

***Kittitas County Water Bank:** The water bank operated by Kittitas County is available only individual homes and is *specifically prohibited from use in subdivisions*. Likewise, cisterns, while allowed in some locations in Kittitas County, are also prohibited for use in developments.

Suncadia (Lamb and Anderson) Trust Water Right -

"Surface water drainage areas where reduction to stream flows due to impacts of water budget neutral determinations have been deemed by Water Transfer Working Group (WTWG) as not constituting a harmful change in stream flow for fish life or fish habitat. ****(NOTE: Hydrogeologic analysis is needed to confirm that impact due to a proposed withdrawal in the area would be to the local surface water feature(s)).****"

However, even IF there is a professional determination of no impact to local tributaries, the executor of this water bank, Joe Mentor, has been abundantly clear that Suncadia water is available ONLY on a case by case basis for individual residences, and NOT as a mechanism for larger developments outside of Suncadia. Not only would Suncadia oppose their water use, they are actively working on water bills (HB1187 & SB5014) that would also prevent any use of leased water for future development.

Yakima Mitigation Services – Subdivision is not located in a green area of this map. Location of the proposed development would be directly competing with the developer that owns this water bank.

Other water banks on the Ecology Exchange:

The remaining 5 water banks located within Upper Kittitas County only have water available as mitigation below Thorp.

ADDITIONALLY:

The City Heights development, located immediately downslope from the Big Buck Ridge project and adjacent to the City of Cle Elum, will be mitigating their water usage via a private water right transaction*

*DOE Report of Examination Iron Shoeshoe LLC (Forest Ridge) G4-35248 6/5/2009.

This specific water allocation was approved for up to 171 residential unit connections, although 190 connections were requested (Sky Ridge property was added to the place of use). All proposed water use is to be offset by the Northland Water Exchange (not a currently listed Water Bank on the Ecology exchange).

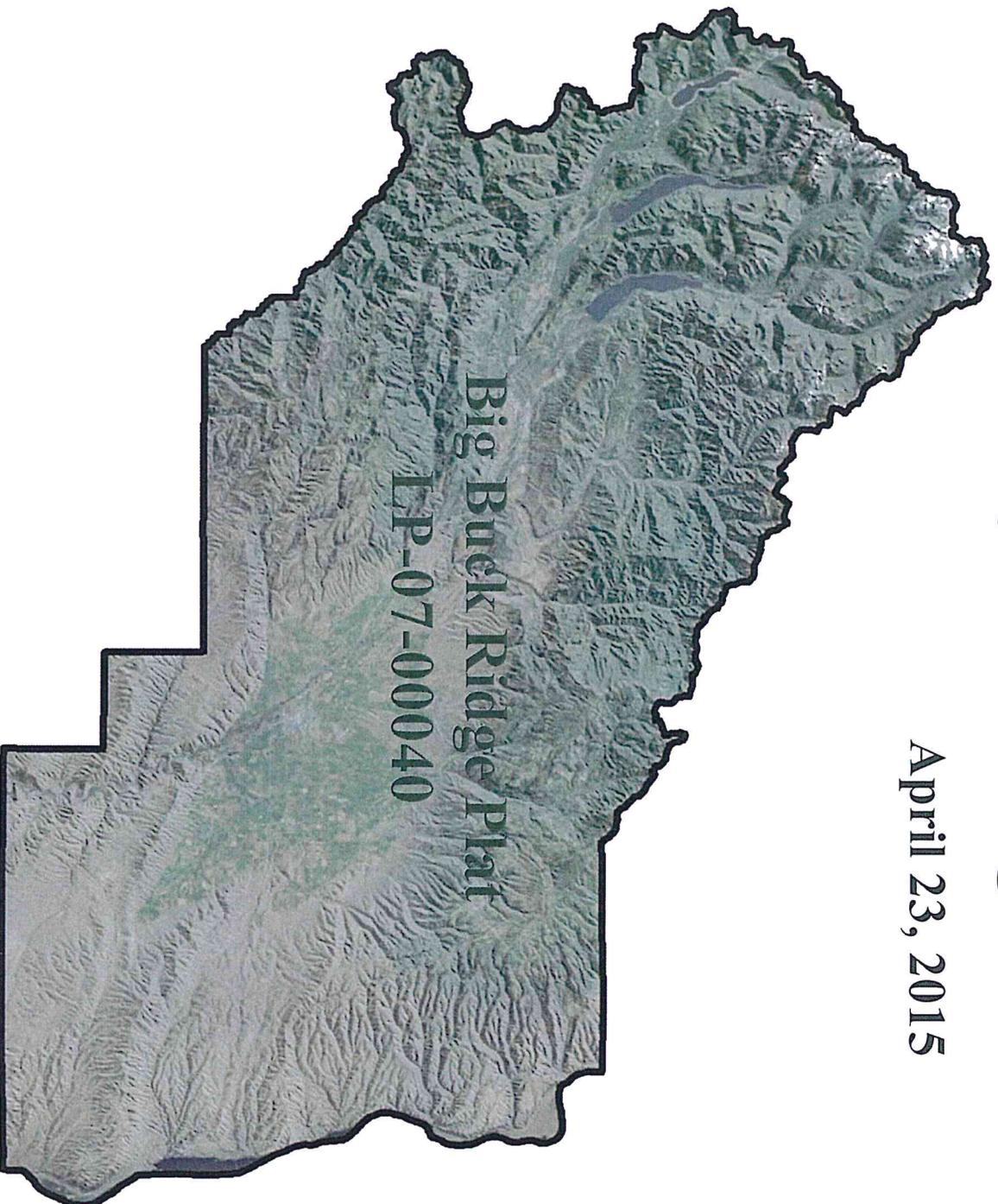
Based on the fact that this proposed development is located in the vicinity of the Steiner and Balmer Canyons, and would be competing for water with the City Heights project (which has not yet created a fully water budget neutral allocation), this project would be intercepting water that does not appear to have mitigation available. Please deny the 2007 project and require any development to satisfactorily address these issues.

Thank you for the opportunity to comment,
Melissa Bates
120 Elk Haven Rd.
Cle Elum, WA 98922

Cc: James Carmody
Jeff Watson, Kittitas County Planner

Kititas County Hearing Examiner

April 23, 2015

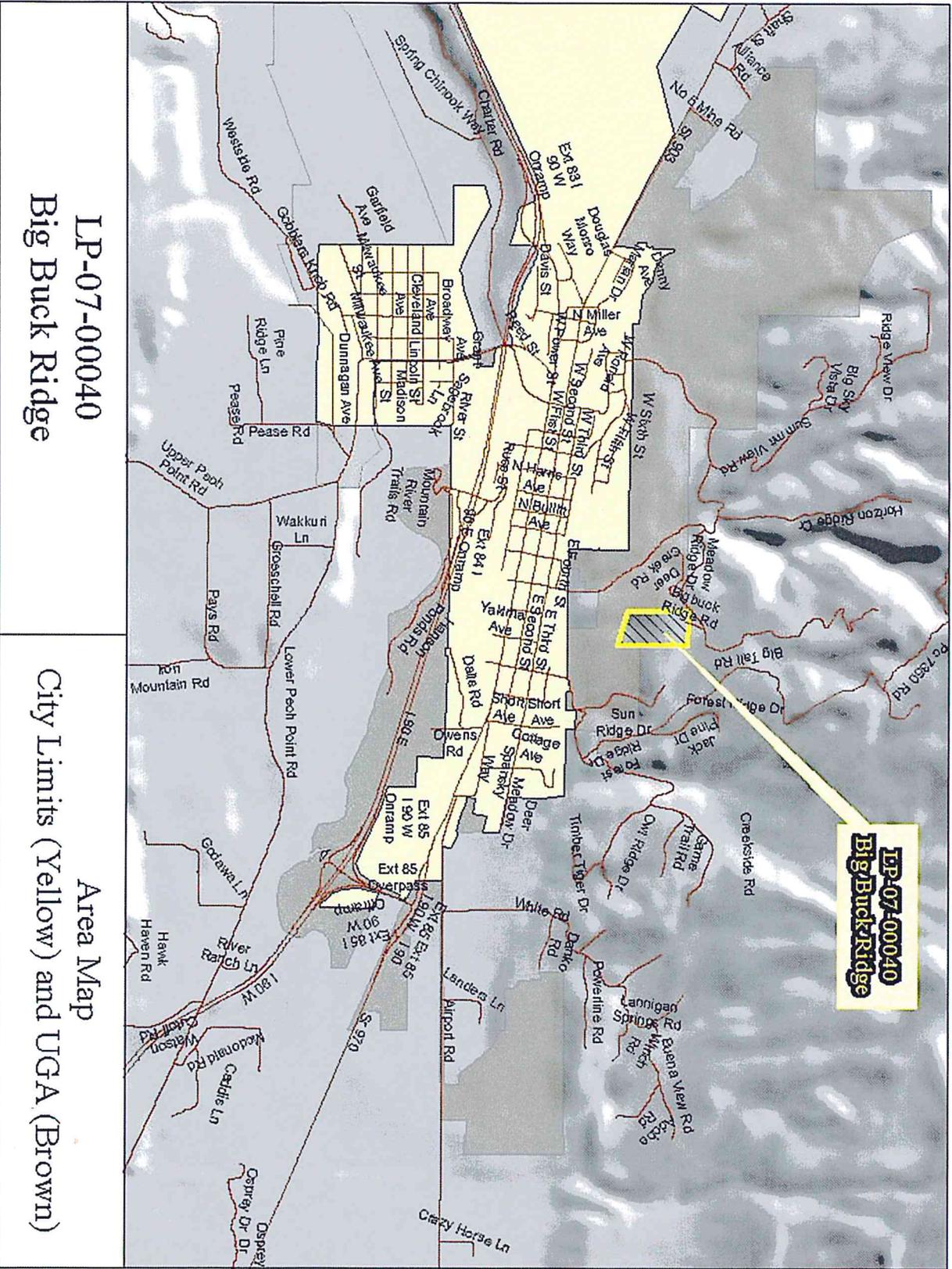


Overview of Proposal

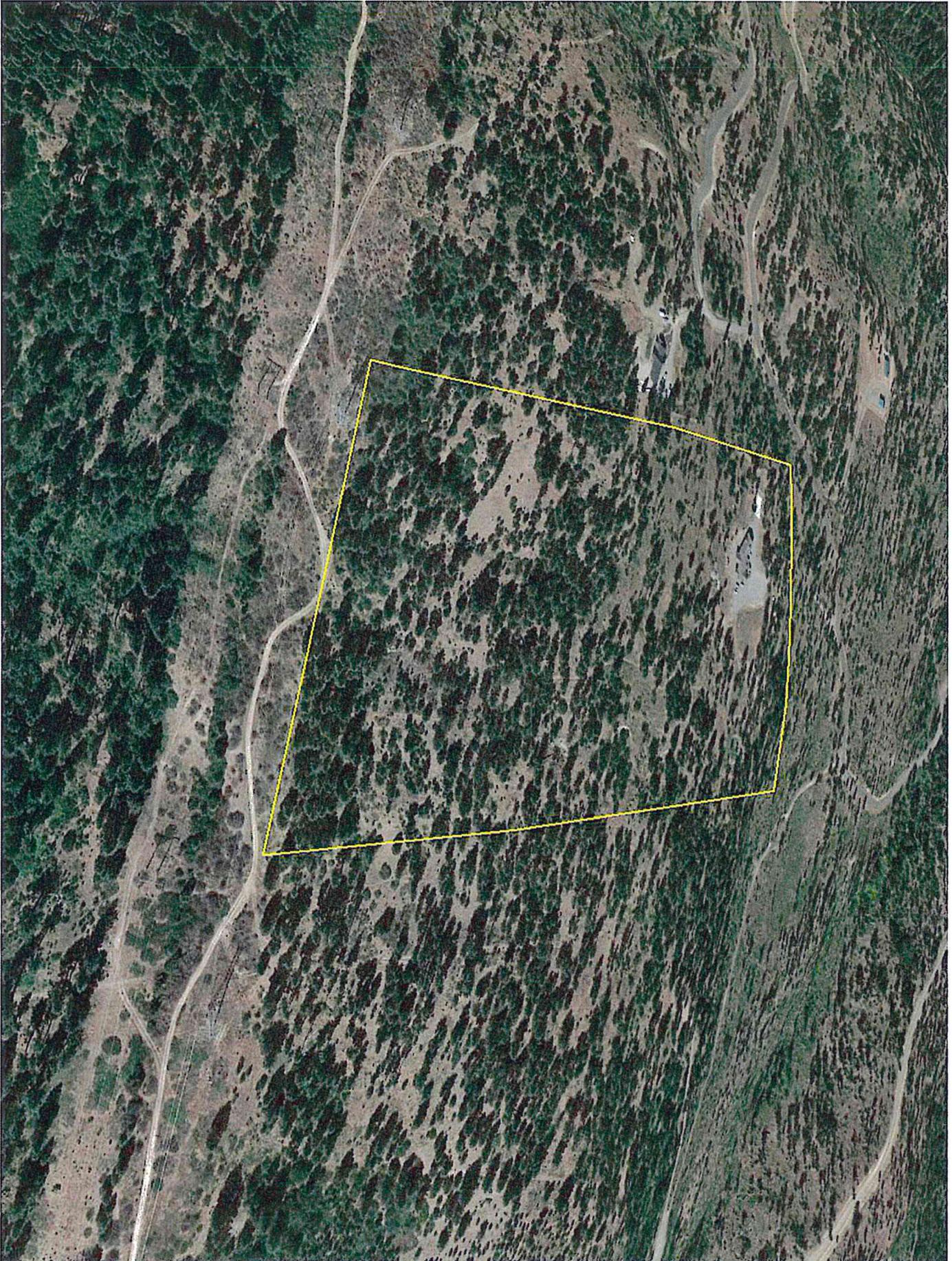
- 14 Lot proposed performance based Cluster Plat
- Application submitted June 20, 2007
- Deemed incomplete July 18, 2007
- Additional information submitted July 23, 2007
- TIA required as part of prior Rezone on August 16, 2007
- TIA submitted February 20, 2013
- Notice of Application issued February 9, 2015
- Comment Period Closed February 24, 2015

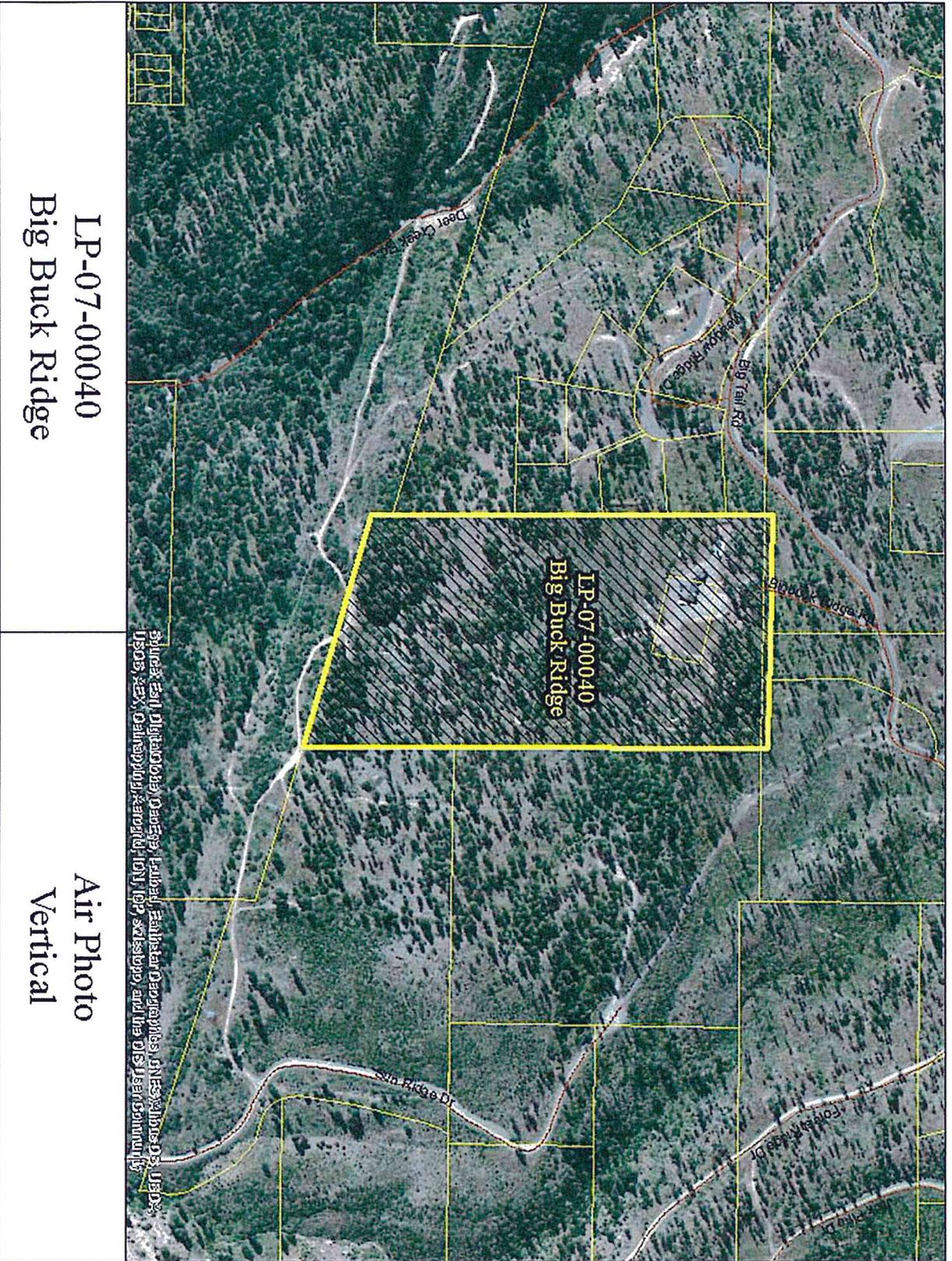
Overview of Proposal

- Land Use vested to Rural
- Zoning Vested to Rural 3
- Deemed incomplete July 18, 2007
- Additional information submitted July 23, 2007
- TIA required as part of prior Rezone on August 16, 2007
- TIA submitted February 20, 2013
- Notice of Application issued February 9, 2015
- Comment Period Closed February 24, 2015



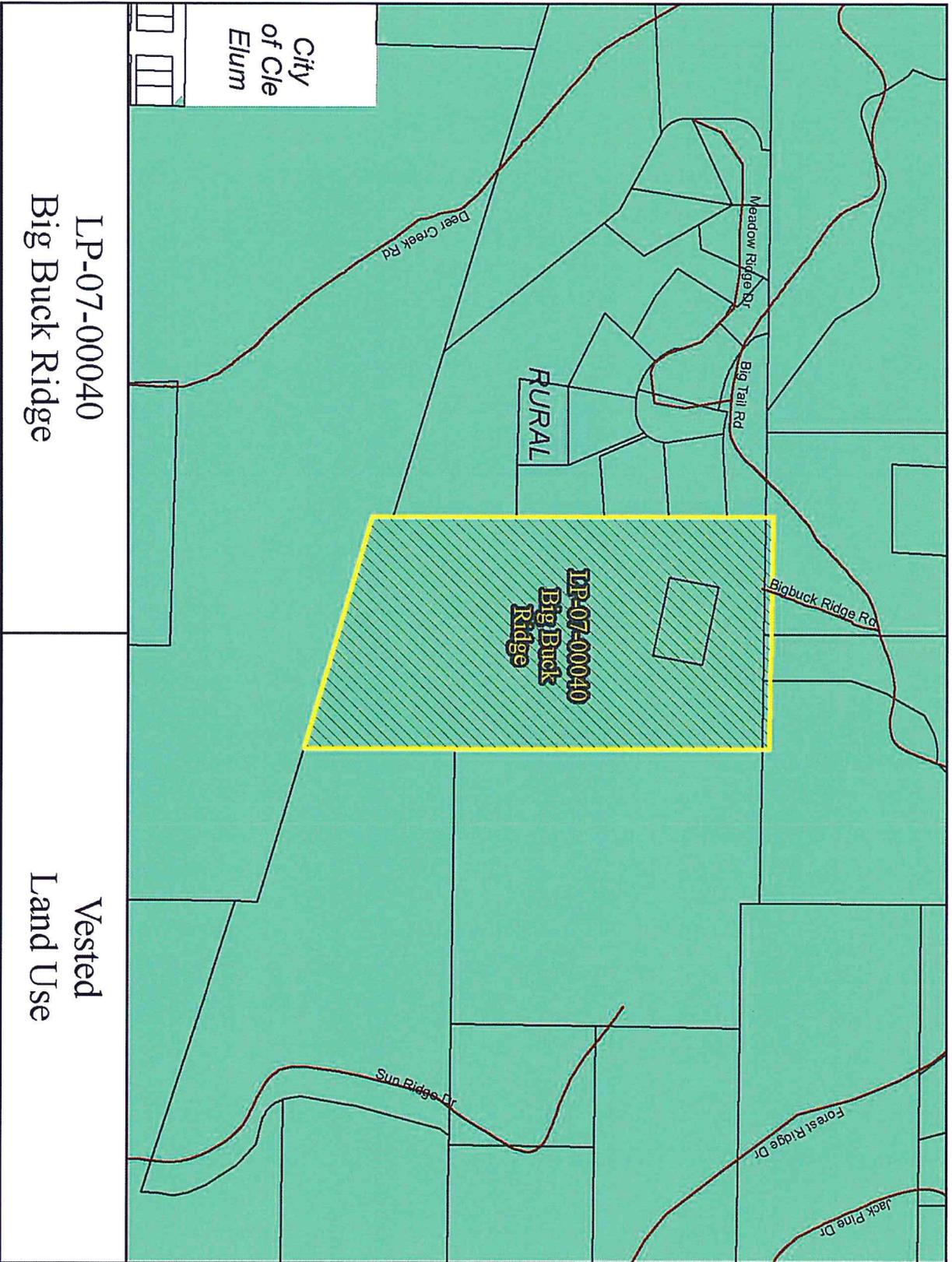


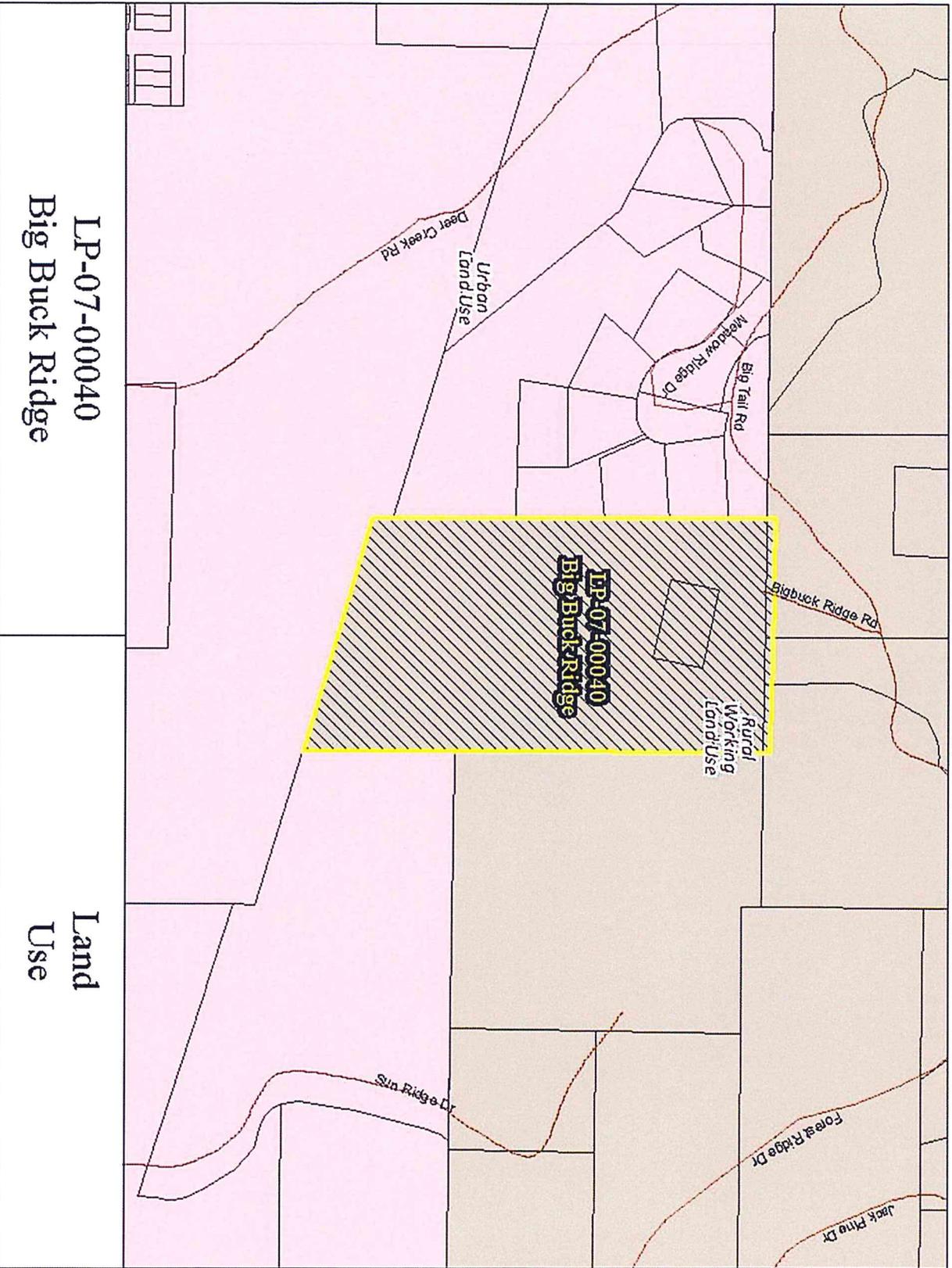


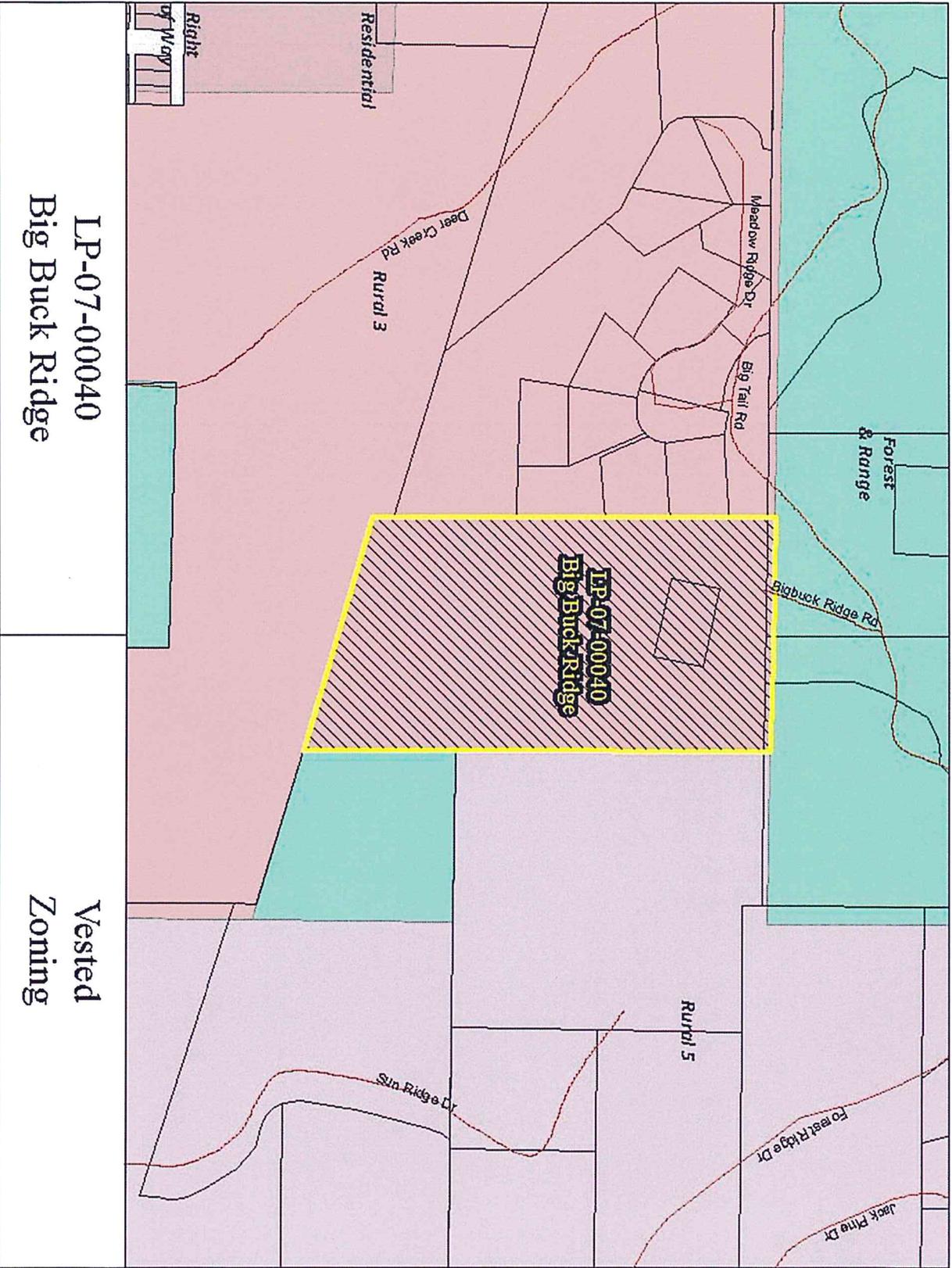


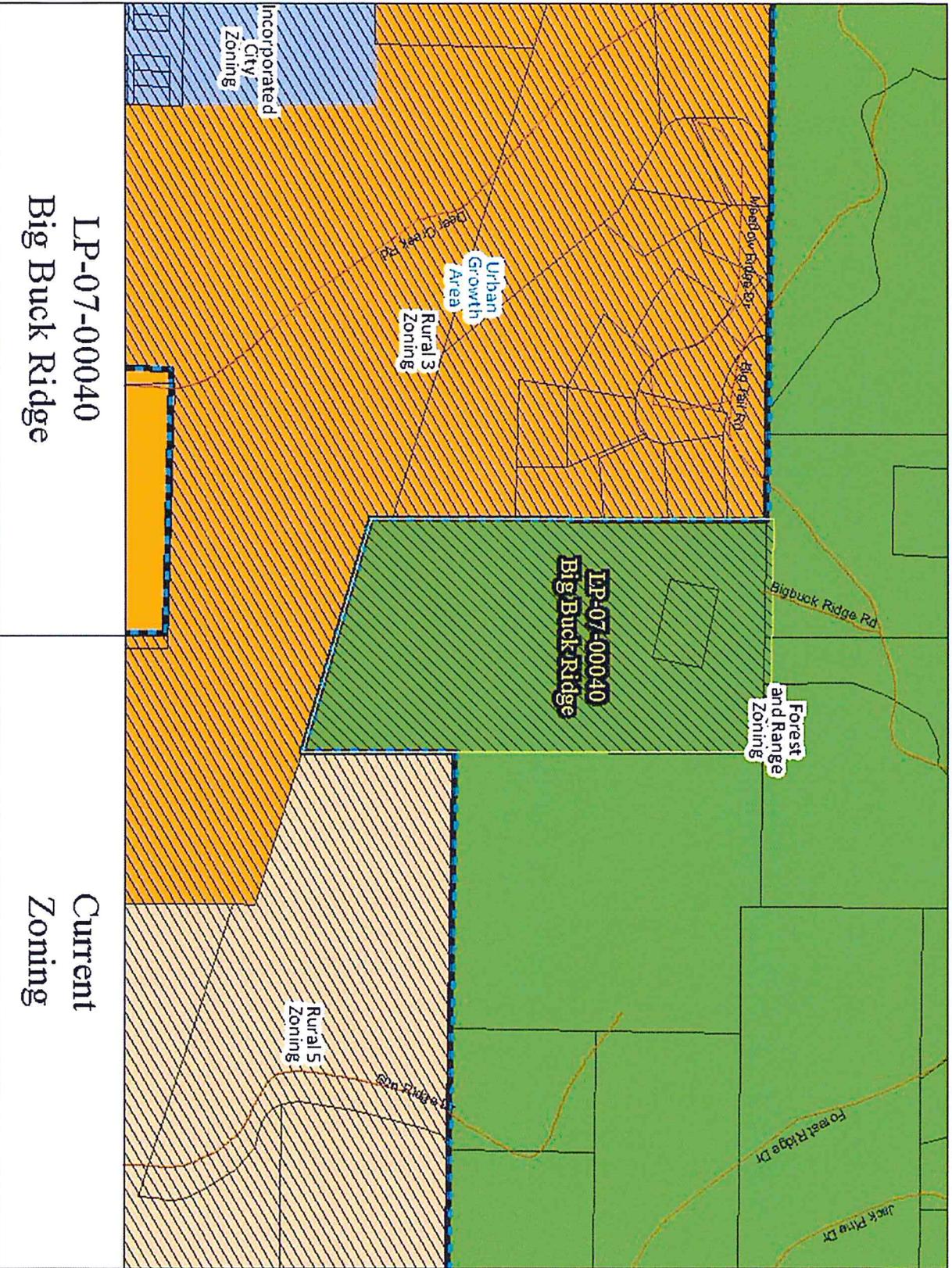
LP-07-00040
Big Buck Ridge

Air Photo
Vertical



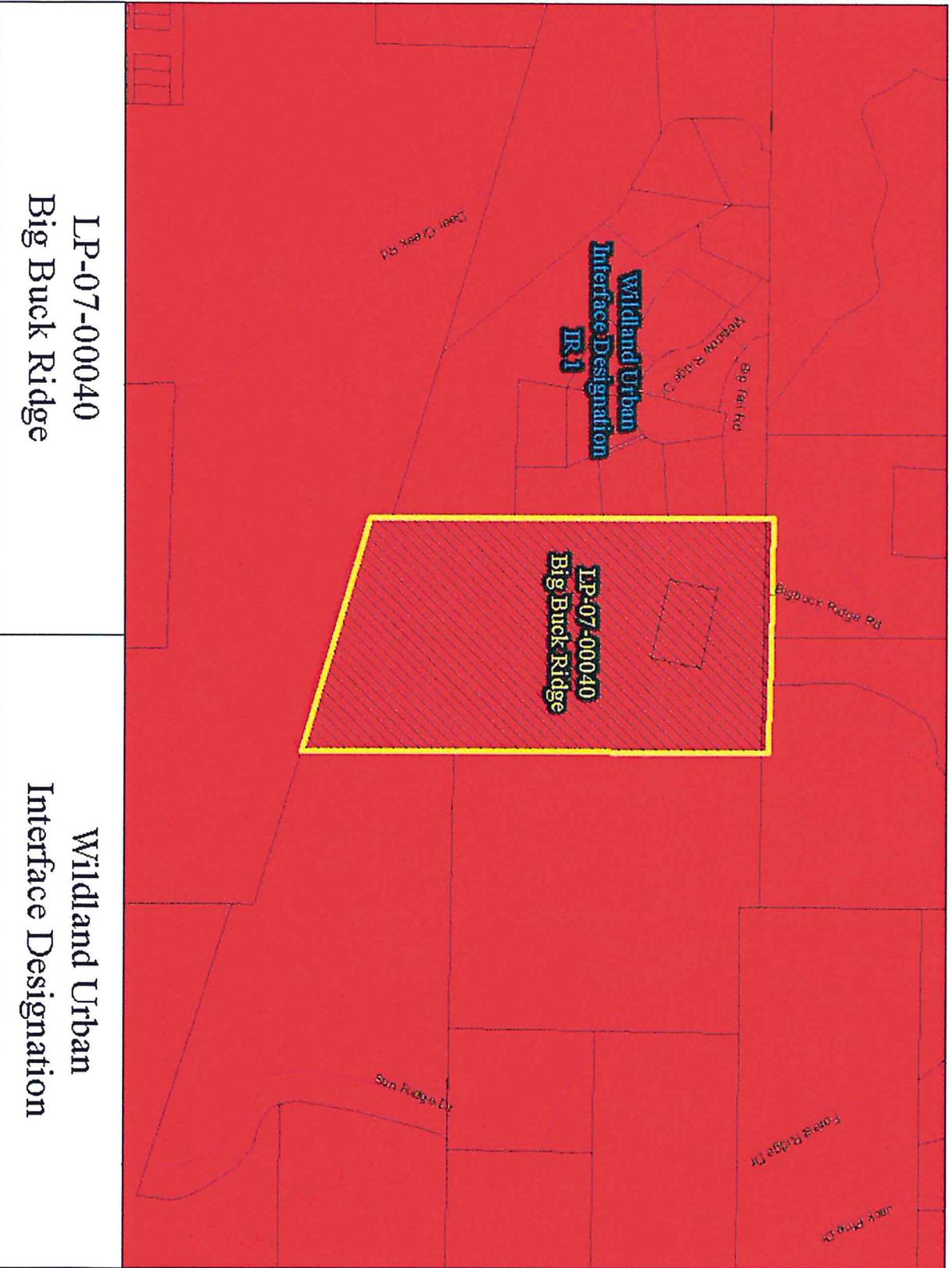


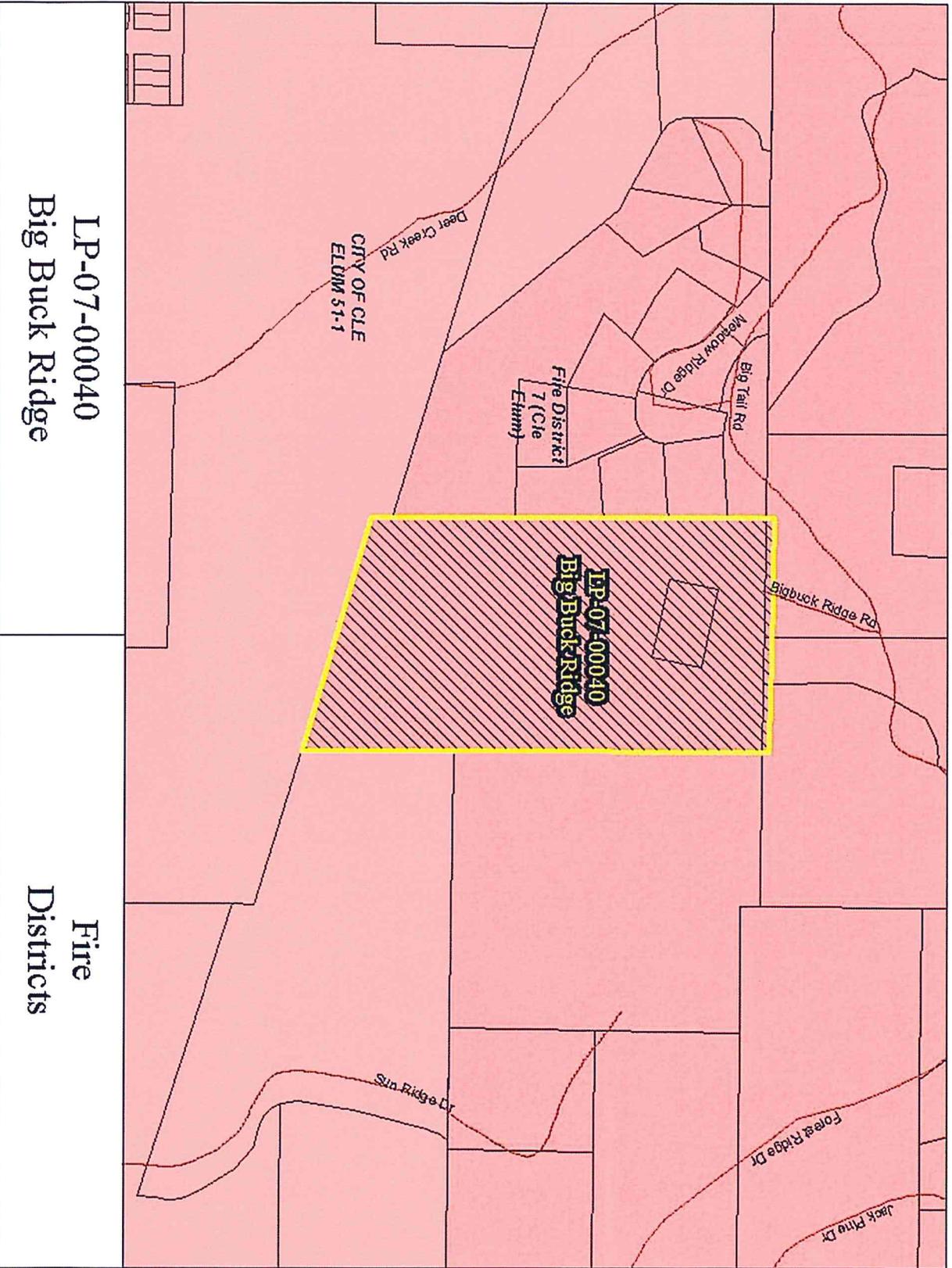




LP-07-00040
Big Buck Ridge

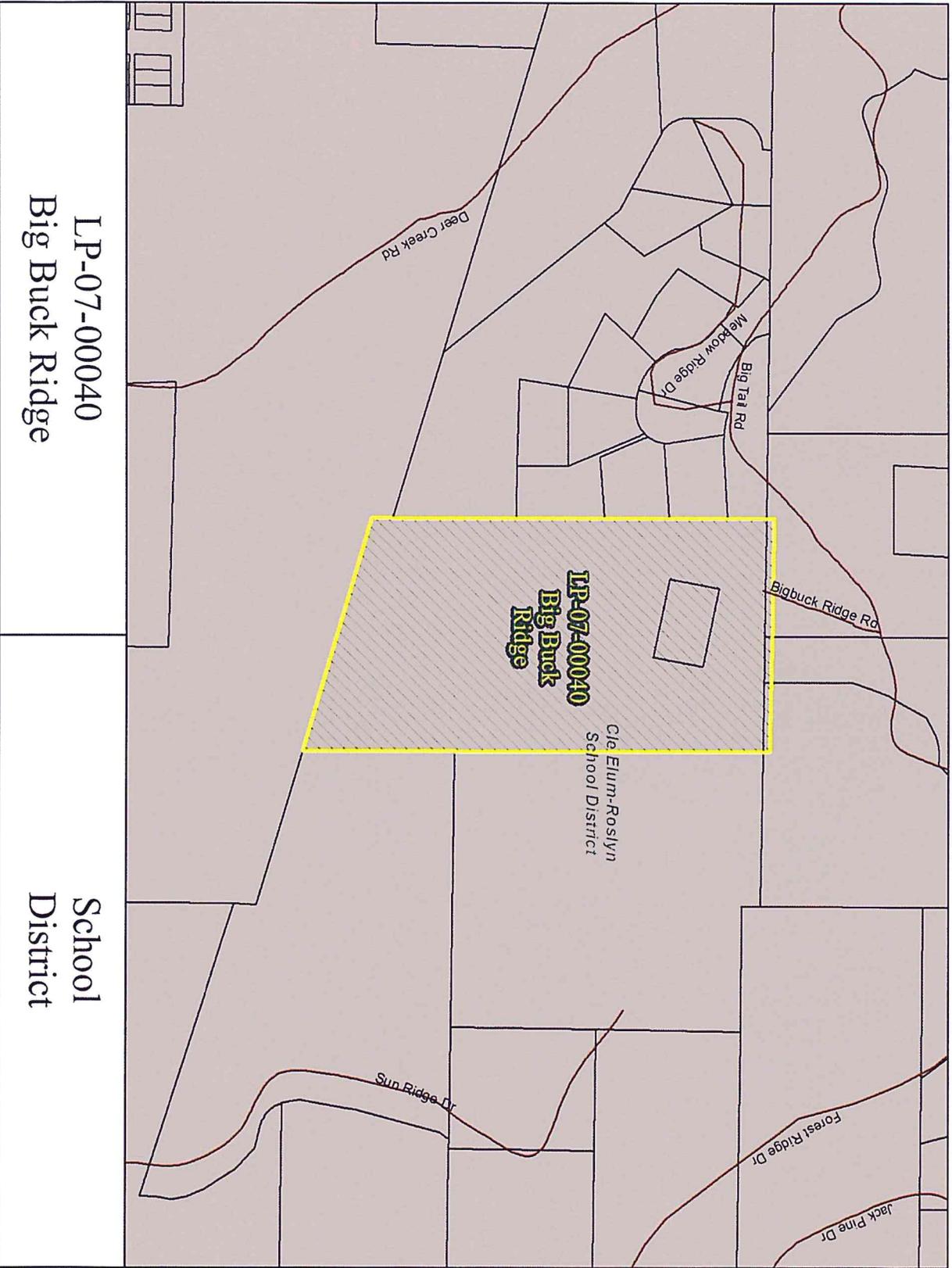
Current
Zoning





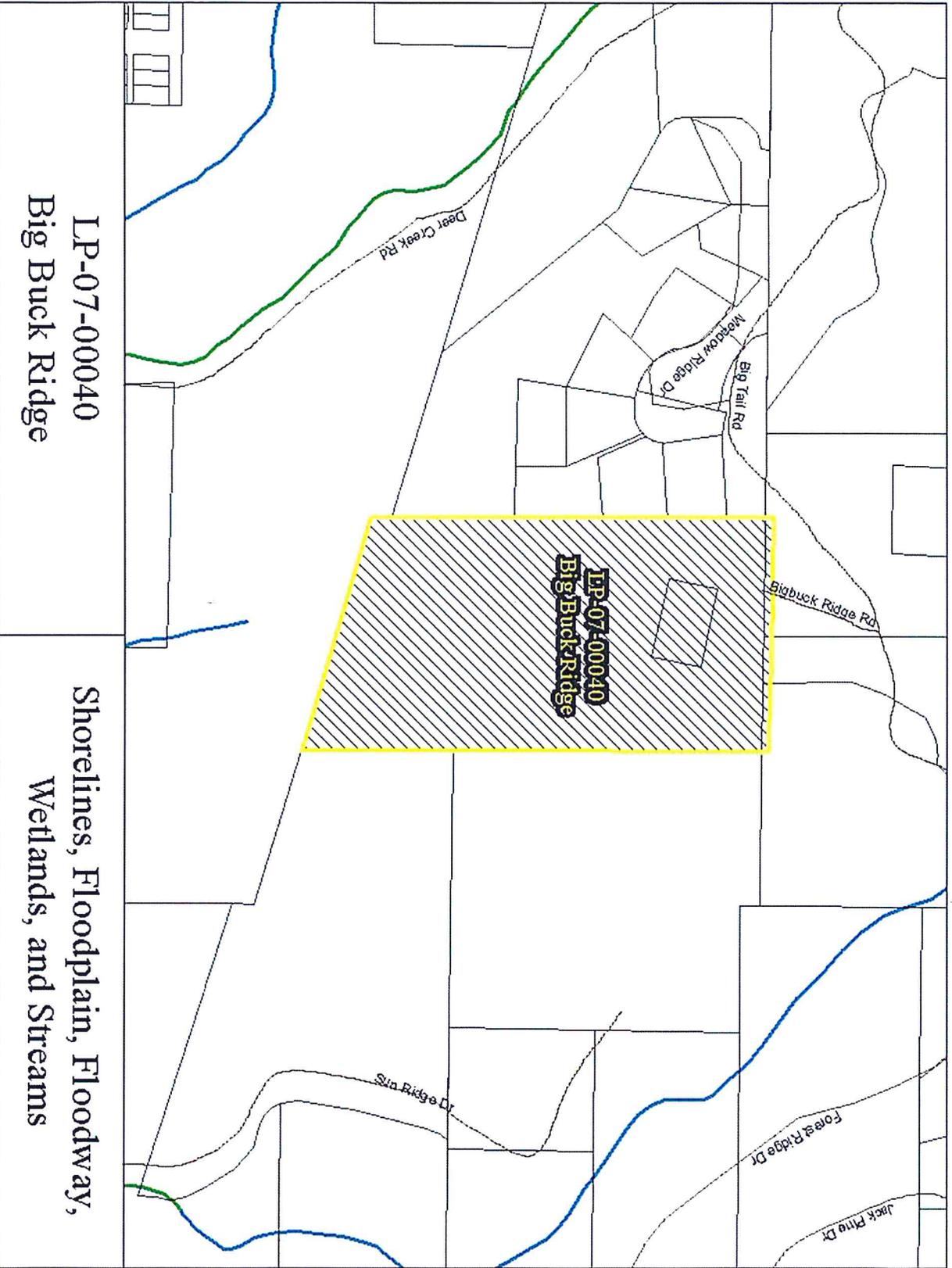
LP-07-00040
Big Buck Ridge

Fire
Districts



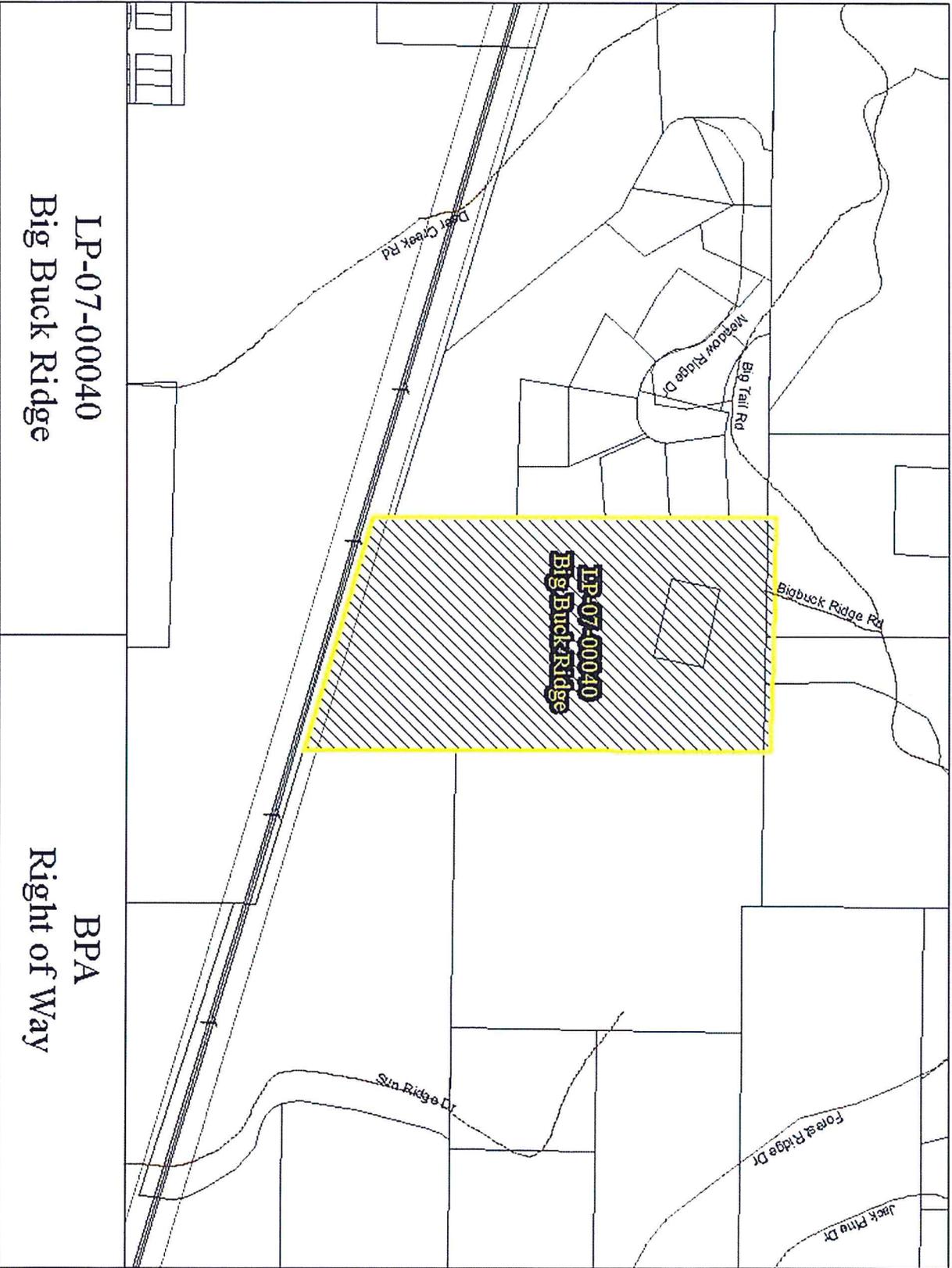
LP-07-00040
Big Buck Ridge

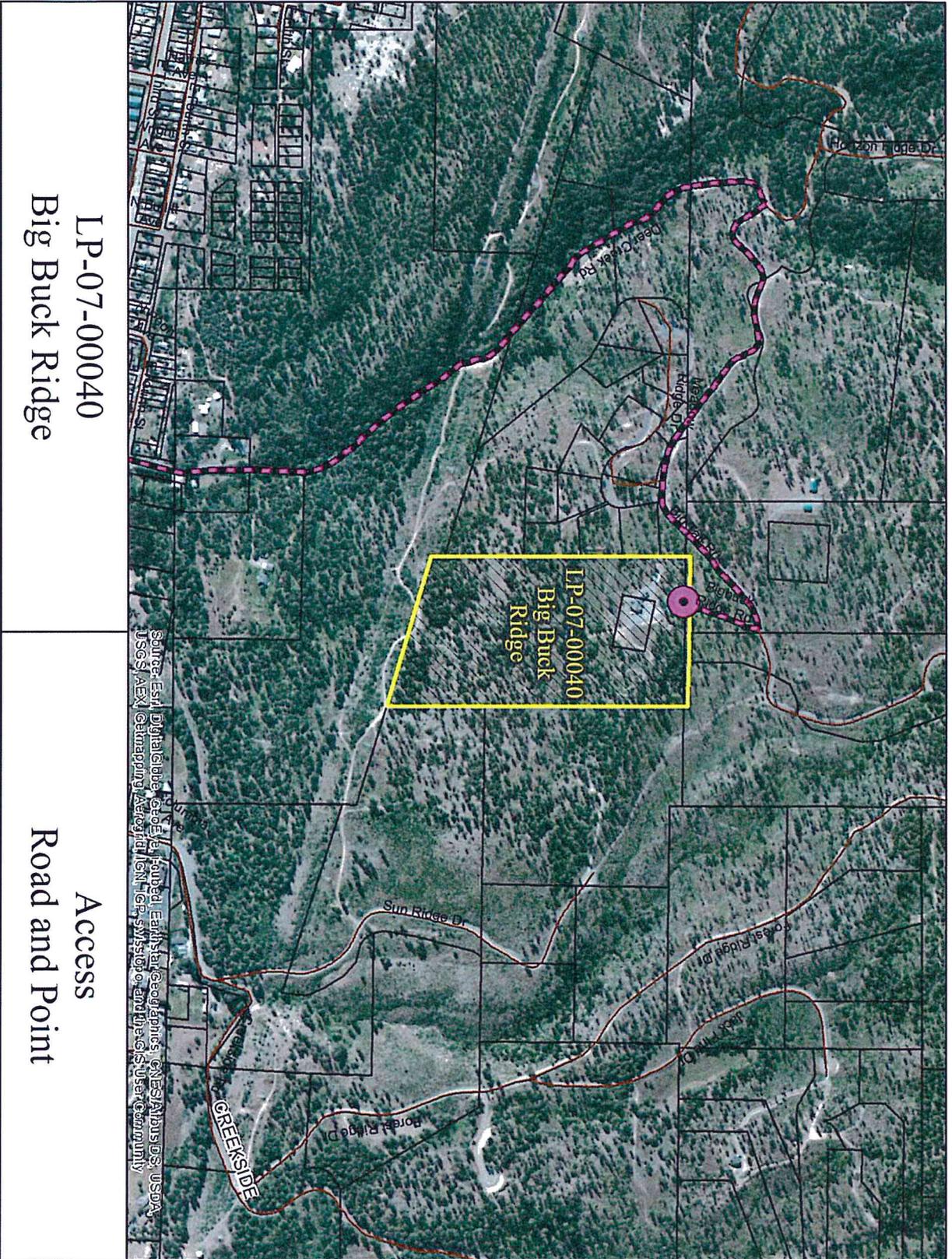
School
District



LP-07-00040
Big Buck Ridge

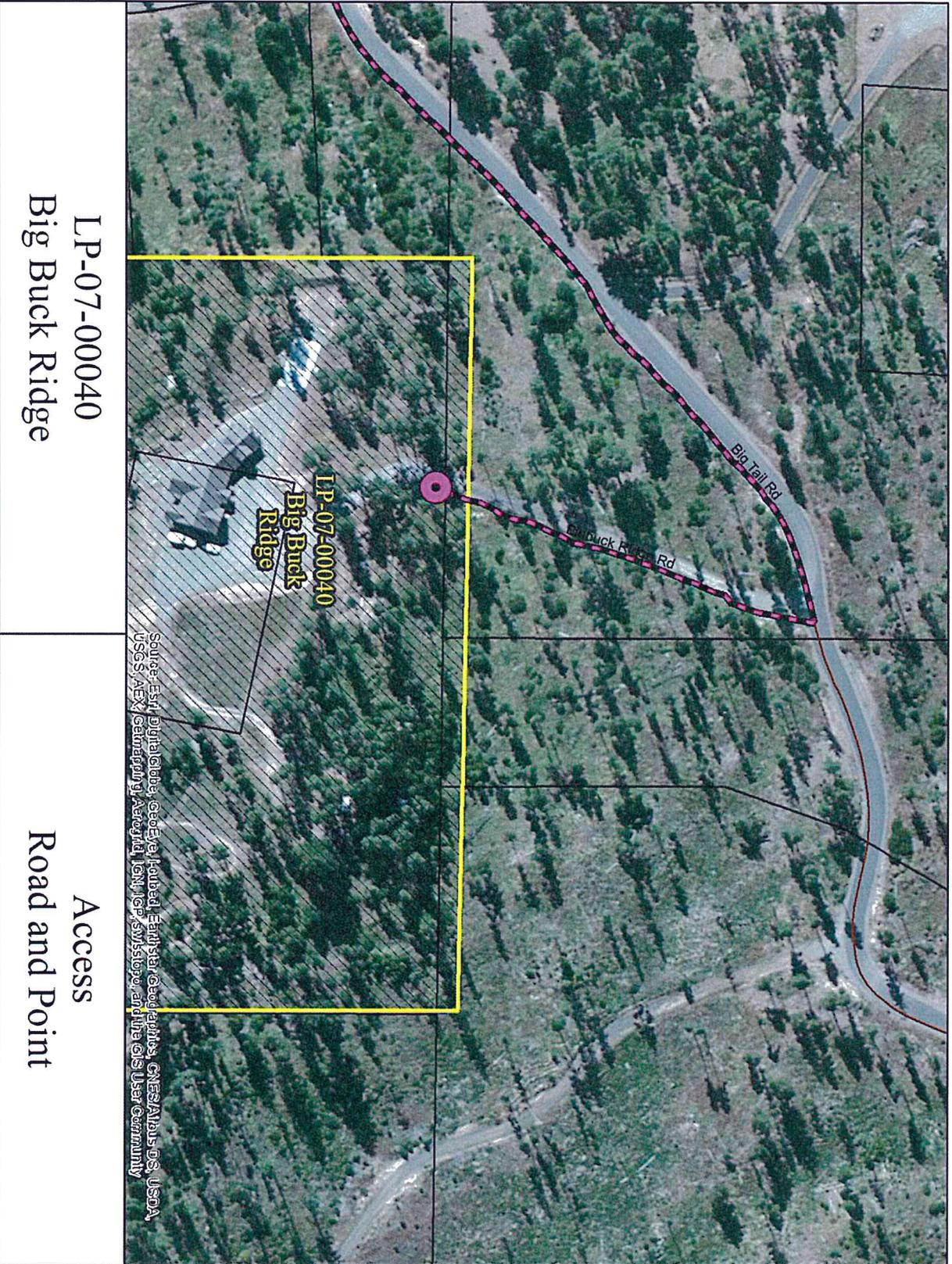
Shorelines, Floodplain, Floodway,
Wetlands, and Streams





LP-07-00040
Big Buck Ridge

Access
Road and Point

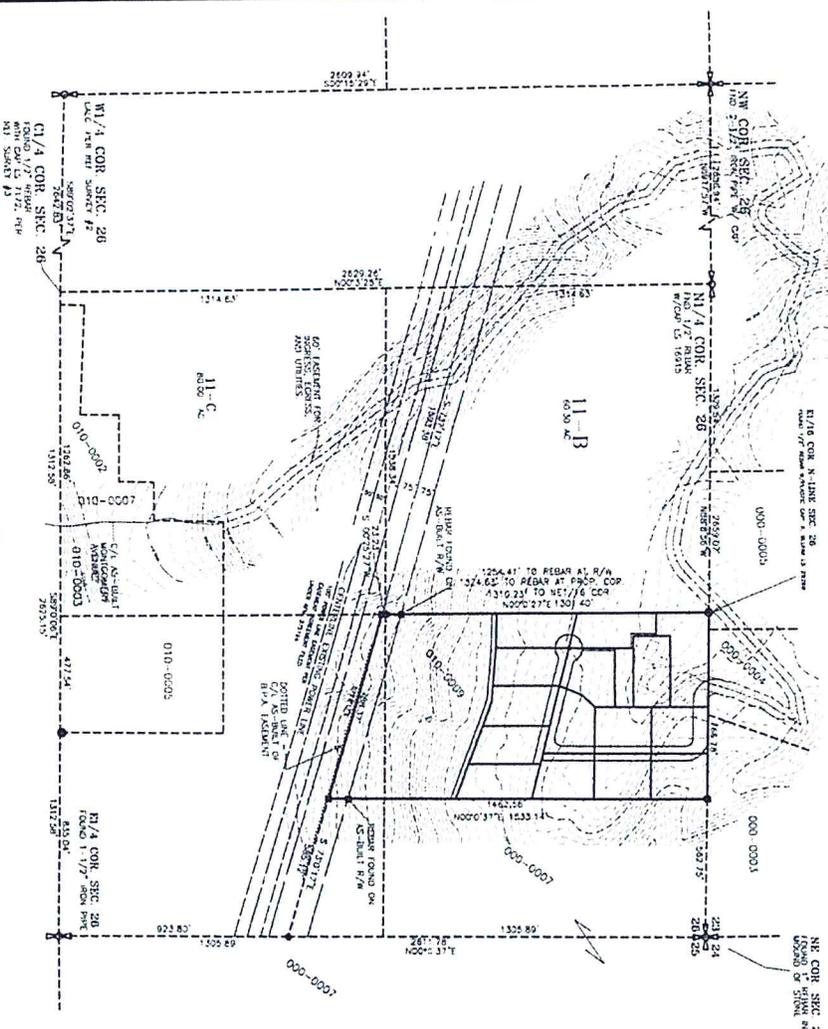


LP-07-00040
Big Buck Ridge

Access
Road and Point

Source: Esri, DigitalGlobe, GeoEye, IGN, Aerifi, Earthstar, AeroGRID, IGN, Sway, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, Sway, and the GIS User Community

KITTITAS COUNTY
WASHINGTON
PLAT
P-07-XX



BASIS OF HEARINGS
 BASIS OF HEARINGS
 RECORDS OF KITTITAS COUNTY, WASHINGTON
 RECORDS OF KITTITAS COUNTY, WASHINGTON

REFERENCE SURVEYS
 REFERENCE SURVEYS
 1) SURVEY FIELD NO. 11, P. 11, P. 15, P. 20, P. 25
 2) SURVEY FIELD NO. 11, P. 11, P. 15, P. 20, P. 25
 3) SURVEY FIELD NO. 11, P. 11, P. 15, P. 20, P. 25
 4) SURVEY FIELD NO. 11, P. 11, P. 15, P. 20, P. 25

LEGEND
 LEGEND
 ■ - 1/4 COR. SEC. 26
 * - 1/4 COR. SEC. 26
 ○ - 1/4 COR. SEC. 26
 □ - 1/4 COR. SEC. 26



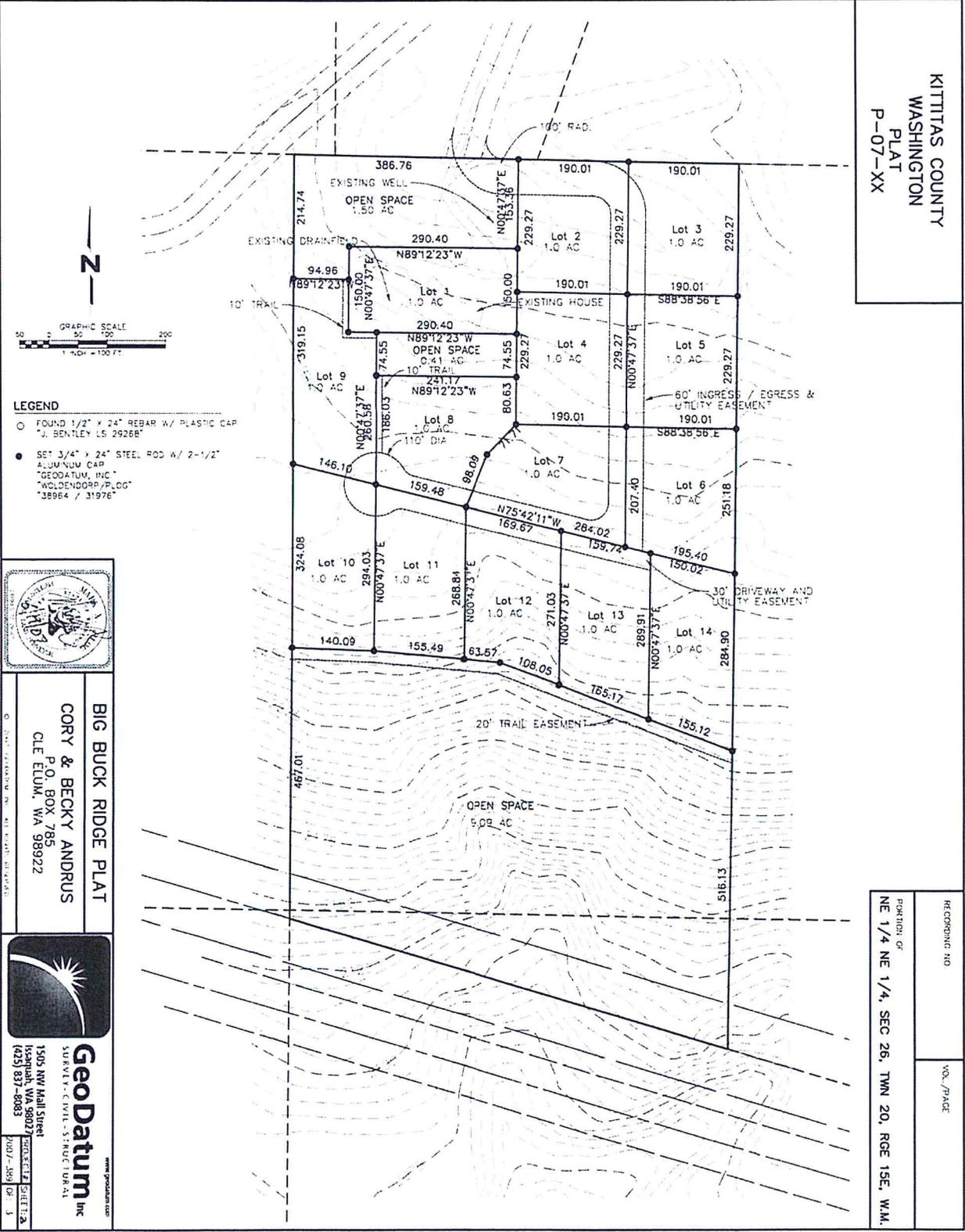
BIG BUCK RIDGE PLAT
CORY & BECKY ANDRUS
 P.O. BOX 785
 CLE ELUM, WA 98922

GeoDatum inc
 1505 AM Hill Street
 SUITE 101 - CIVIL - 5' ROAD DESIGN
 (425) 837-8893
 2007 1896 OF 3

- NOTES**
1. THIS SURVEY IS BASED ON THE CHICAGO TITLE INSURANCE COMPANY COMMITMENT FOR THE INSURANCE PROJECT NO. 72030-4368 DATED JANUARY 31, 2008 AT 9:00 A.M.
 2. ASHUMENTATION FOR THIS SURVEY WAS A 3-SECOND NIKON DTM 521 TOTAL STATION. PROCEDURES USED IN THIS SURVEY MET OR EXCEED STANDARDS SET BY WAC 522-100-020
 3. THE TOPOGRAPHY SHOWN IS BASED UPON CONTOURS PROVIDED BY DEGISS, AERIAL MAPPING AND ARE NOT BASED ON AN ON THE GROUND SURVEY.
 4. ENTIRE PLAT ROAD SHALL ACHIEVE 92% COMPACTION AND SHALL BE INSPECTED AND CERTIFIED BY A LICENSED ENGINEER IN THE STATE OF WASHINGTON. ROAD STANDARDS PRIOR TO THE ISSUANCE OF OCCUPANCY PERMITS FOR THIS PLAT.
 5. KITTITAS COUNTY WILL NOT ACCEPT PRIVATE ROADS FOR MAINTENANCE AS PUBLIC STREETS OR ROADS. UNTIL SUCH SHEETLS OR ROADS ARE BROUGHT INTO CONFORMANCE WITH CURRENT COUNTY ROAD STANDARDS. THIS REQUIREMENT WILL BE ENFORCED BY THE COUNTY ENGINEER. ANY SHEETL OR ROAD SURFACED OTHERWISE WILL BE GRAVEL.
 6. MAINTENANCE OF THE ACCESS IS THE RESPONSIBILITY OF THE PROPERTY OWNER FROM HIS USE. THE COUNTY WILL NOT MAINTAIN THE ACCESS.
 7. ANY FURTHER SUBDIVISION OF LOTS TO BE SERVED BY PROPOSED ACCESS SHALL BE SUBJECT TO THE STANDARDS SET BY KITTITAS COUNTY ROAD STANDARDS.
 8. MAINTENANCE SHALL BE THE AN-ANAT DESIGN AND BE APPROVED BY THE U.S. FOREST SERVICE. DRAWINGS 11-172, SHEET 1-3.
 9. KITTITAS COUNTY RULES ON ITS RECORD THAT A SUPPLY OF PORTABLE WATER EXISTS. THE APPROVAL OF THIS DIVISION OF KITTITAS COUNTY IS REQUIRED FOR THE INSTALLATION OF A WATER DIVISION TO PROVIDE GROUNDWATER WITHIN THE LAND DIVISION.
 10. ALL PARCELS WITHIN THIS SUBDIVISION ARE CURRENTLY ZONED RURAL-S.
 11. ACRE AGE IS COMPUTED TO THE CENTERLINE OF THE ROADS EXCEPT WHERE SHOWN OTHERWISE.
 12. EACH LOT TO BE SERVED BY ON-SITE SEPTIC SYSTEM.
 13. NO KNOWN CRITICAL AREAS EXIST ON SITE.

81

KITTITAS COUNTY
WASHINGTON
PLAT
P-07-XX



RECORDING NO	VOL./PAGE
PARTITION OF NE 1/4 NE 1/4, SEC 26, T14N 20R, RGE 15E, W.M.	

BIG BUCK RIDGE PLAT
CORY & BECKY ANDRUS
P.O. BOX 785
CLE ELUM, WA 98922

GeoDatum Inc
1505 NW 44th Street
Issaquah, WA 98027
(206) 837-8083

ENGINEER
SHEET 2
OF 3

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18



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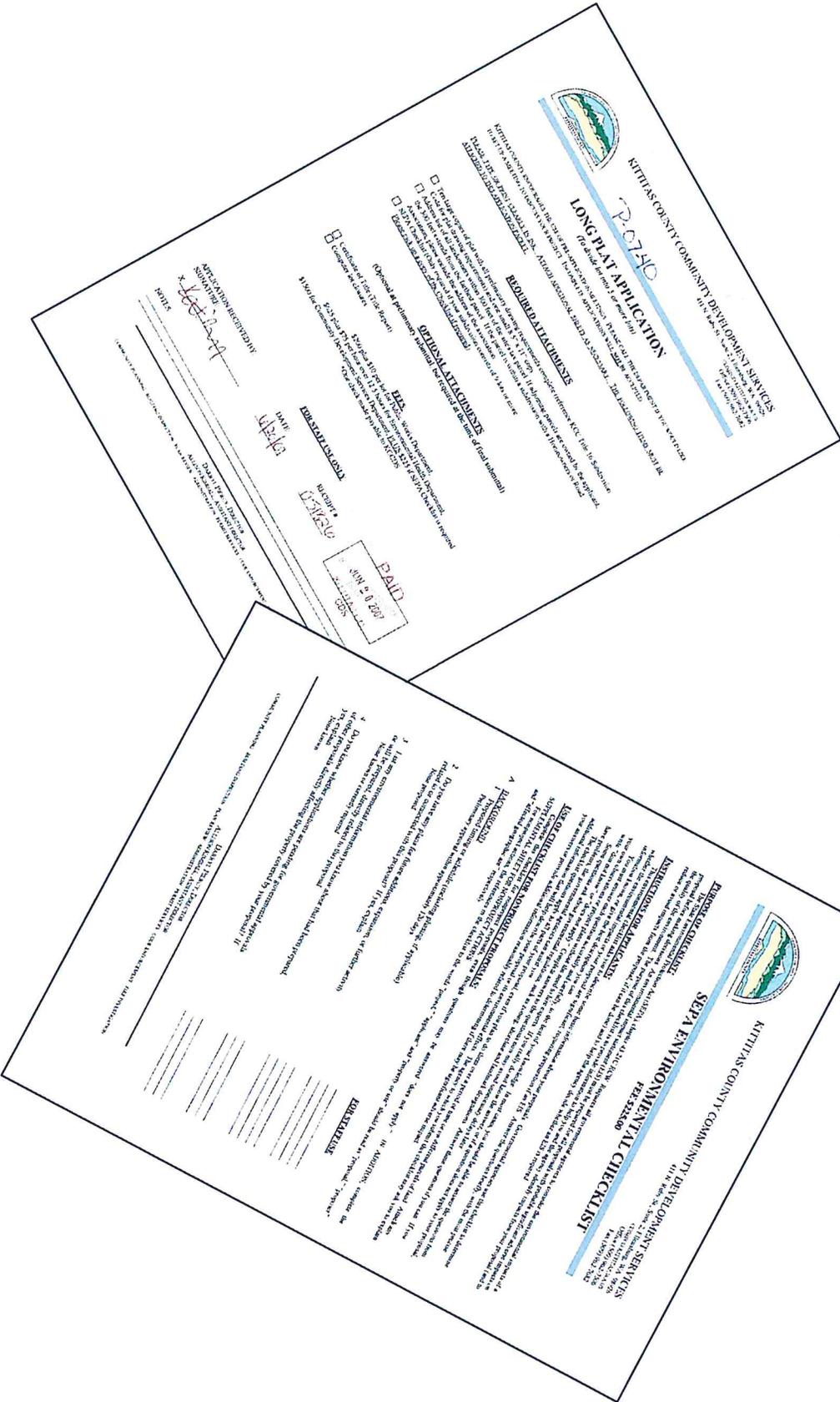


186



Application Timeline

The SEPA Environmental Checklist and Conditional Use Permit Applications were submitted to CDS on June 20, 2007



Application Timeline

Deem Incomplete and Request for Additional Information was sent to Applicant July 18, 2007.



KITAP COUNTY COMMUNITY DEVELOPMENT SERVICES
411 N. Bay St., Ste 211, Bremerton, WA 98310
CROSSCUTTING SALES
Office (360) 962-7366
Fax (360) 962-7362

July 18, 2007

Becky Andrus,
P.O. Box 785
Cle Elum, WA 98922

RE: Big Buck Ridge Cluster Plat, File number P-07-40

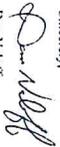
Dear Ms. Andrus:

Community Development Services is in receipt of the referenced application. The application is deemed incomplete and the following additional information is required:

1. The address list of all landowners within 300-foot of the site's tax parcel was not submitted as part of the required attachments to your Long Plat Application.

When the additional information is received and the application is deemed complete, our review of the application will continue. If you have any questions or need assistance, please contact our office at (360) 962-7637.

Sincerely,


Dan Valoff
Planner I

No adjacent
prop owners
submitted

DARREY PERRY, DIRECTOR
ALISON KOSKAL, ASSISTANT DIRECTOR
COMMUNITY PLANNING • BUILDING PERMITS • PUBLIC WORKS • ADMINISTRATION • TRAFFIC SERVICES • TREE INSPECTIONS • FISH INVESTIGATION

Application Timeline

Newspaper Article Published on February 12, 2015

Daily Record - www.dailyrecordnews.com

LOCAL

Rural subdivision planned near Cle Elum

Would have 14 one-acre lots under old zoning

By MIKE JOHNSTON
senior writer

A property owner has revived a rural subdivision proposal called Big Buck Ridge north of Cle Elum city limits.

Landowner Becky Andrus has restarted the permit review process with the county Community Development Services Department for preliminary long-plat approval for the development that was first filed in June 2007, according to a county notice.

The rural subdivision comes under the jurisdiction of county zoning and development rules as they existed in 2007, according

to county planner Jeff Watson. The subdivision would have 14 one-acre lots, with 11 acres preserved as natural open space.

Major changes in the county's rural land-use regulations were adopted last year.

The subdivision application was deemed complete as of Aug. 16, 2007, and county officials then called on the landowner to undertake a traffic impact analysis.

The analysis was submitted later, in February 2014, Watson said.

The site is a 1/2 mile north of the city limits of Cle Elum, directly north of where Yakima Avenue ends at the city's

boundary.

The former zoning of the site, in 2007, was residential-3, allowing minimum lot sizes of three acres. Changes in county land-use rules and zoning last year made the minimum lot size 5 acres in rural-residential zones.

Use former rules

The cluster planning rules at that time gave rural housing developers "bonus densities" for added features.

In this case, the owner plans to create a recreational trail system, set aside 11 acres of wooded ridge land that would stay in its natural state and also have recreational trails, and have a group domestic water sys-

tem serving each one-acre lot.

These features allowed the developer to go from eight lots under the zoning to 14 one-acre lots.

The public can submit comments on the proposal and its possible impacts on the environment before a 5 p.m. Feb. 24 deadline.

Comments can be emailed to jeff.watson@co.kittitas.wa.us or mailed or dropped off to county CDS offices, 411 N. Ruby St., Ellensburg. This may be the only time the public can submit comments on the project's possible environmental impacts, the county notice said.

CDS staff will review public comments, then make a decision on the project's

probable level of environmental impact, and call for any measures to lessen impacts.

County staff, at this time, is considering issuing a declaration that the project will not have a probable significant impact on the environment.

After the project's level of impact is declared, a public hearing will be set with the county's land-use hearings examiner who will review the project and take public testimony.

The hearings examiner will make a recommendation to county commissioners who will, in turn, make the final decision.

More information about the project is available on the county's website.

Thursday, Feb. 12, 2015 - A

CORRECTION

Recipe correction

An incorrect recipe for soft caramels appeared on Page B8 of Wednesday's Daily Record. A corrected recipe appears in full on Page A6 today.

EVENTS CALENDAR

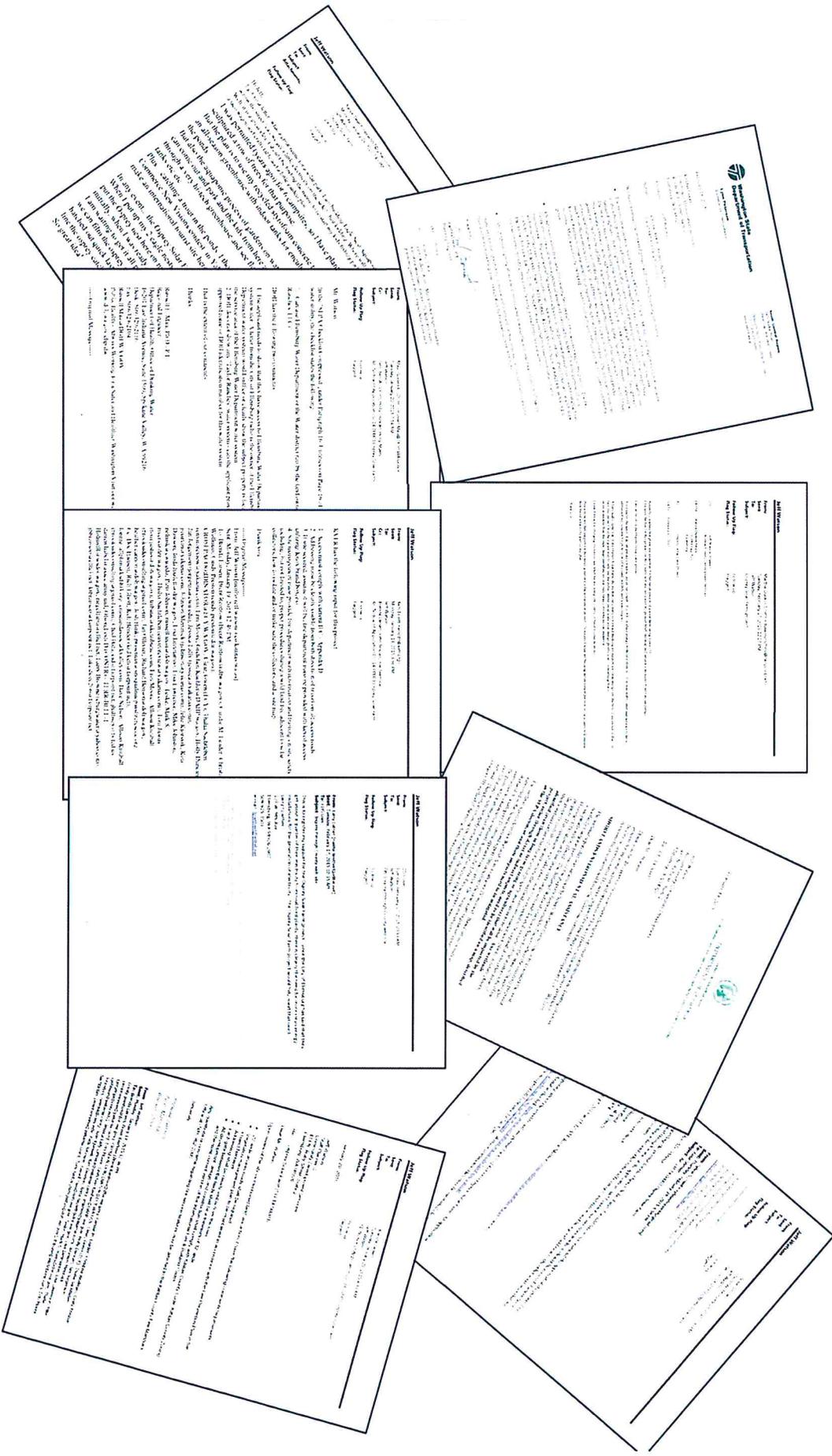
Today, Feb. 12

- Free tax assistance 9:30 a.m. to 3 p.m., Ellensburg Activity Center, appointment required call 962-7242
- KITTCOM Administrative Board meeting, noon, 700 Elmview Road Ellensburg
- Mardi Gras party, 6 p.m., Michaelson Hall room 126, CWU
- Al Anon literature for Progress meeting 6:30 p.m., 1st Presbyterian, 1307 E. Third Ave., Ellensburg

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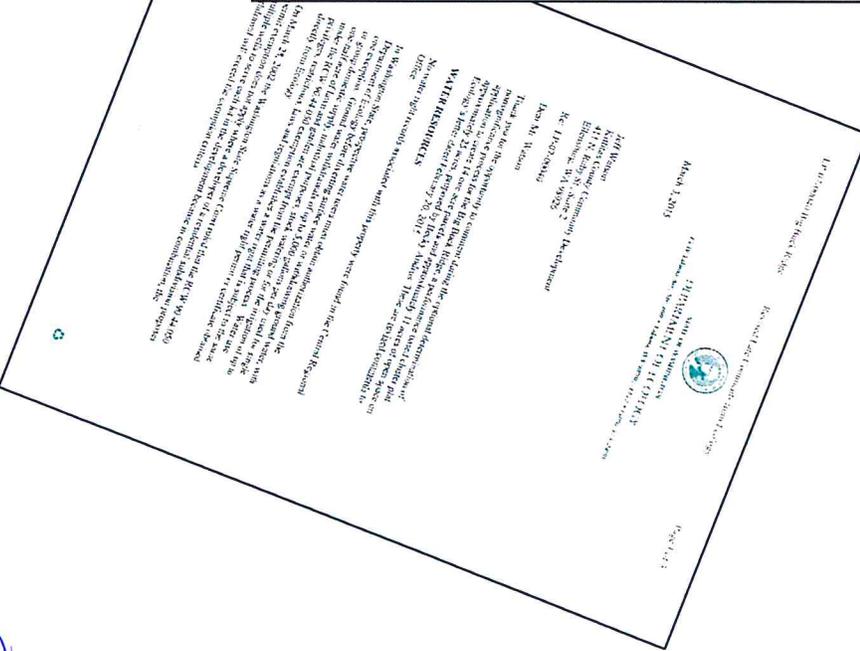
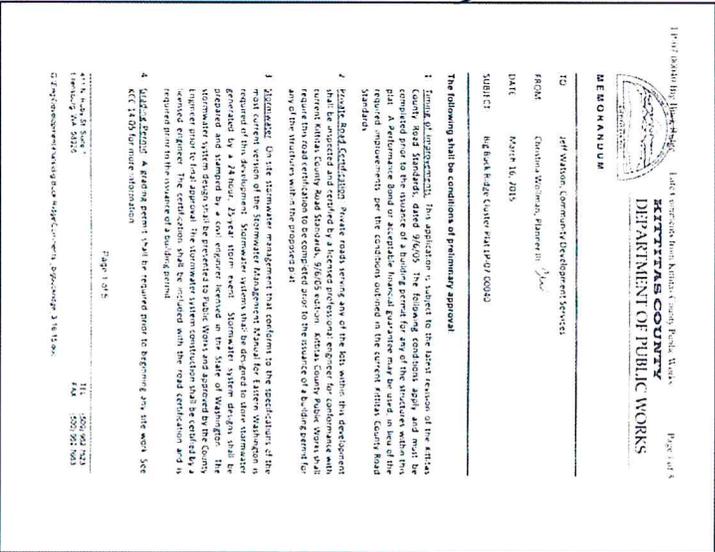
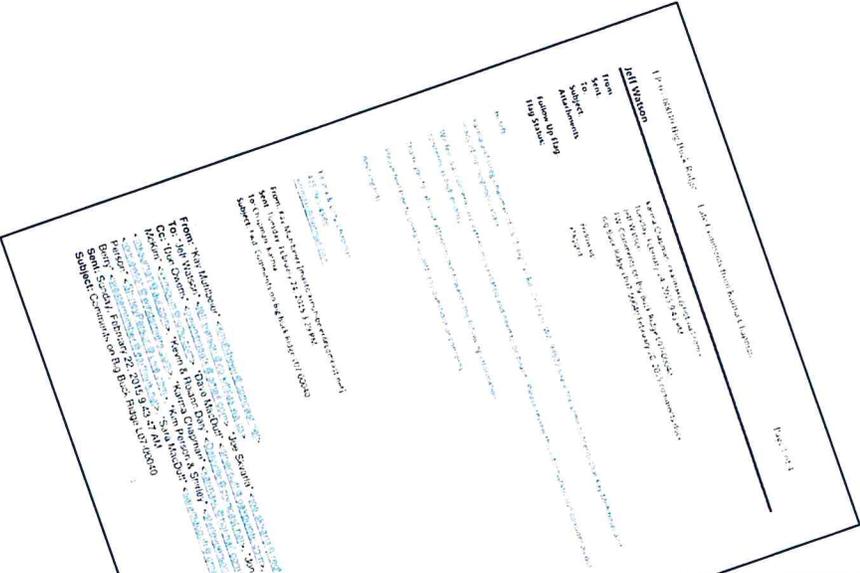
Application Timeline

The Comment Period ran from February 9th through February 24th as required by KCC 15A. Comments were received by Four agencies and Nineteen individuals.



Application Timeline

Late submittals for entry into the Hearings Examiner Record were submitted by Kittitas County Public Works, a revision by the Washington State Department of Ecology, and Karma Chapman. These letters were given consideration in the MDNS and Conditions of Approval.



81

Staff Revised Recommendations for Conditions of Approval

- 16) Private Road Improvements: Access shall be constructed to meet or exceed the conditions of a **Low-Density** 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 20', with 1' shoulders, for a total width of 22'.
 - b) Minimum centerline radius shall 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 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.
- 39) This property falls within the Wildland Urban Interface area classified as IRI 1. IRI 1 classification requires that all residences be provided with residential sprinkler systems. Additionally, the exterior building construction materials must be non-combustible, eaves and soffits must be enclosed, and defensible space must be provided around each structure a minimum of 150'.
- 40) Approved water storage of 15,000 gallons, with a private fire hydrant system shall be installed.
- 41) Water storage and hydrant spacing shall comply with the International Fire Code.
- 42) No fire apparatus access lane shall have a slope greater than 12%. A Variance Permit will be required for any slopes or grades greater than allowed by County Code.
- 43) *No Parking-Fire Lane* signs must be posted per Fire Marshal requirements on any cul-de-sacs.
- 44) All development, design and construction shall comply with Kittitas County Code, Kittitas County Zoning and the 2012 International Fire and Building Codes.
- 45) A separate permit is required for any private water storage or hydrant system. The tank and hydrant system shall be subject to plan review through the Fire Marshal's Office and shall be subject to an annual Operational Permit.
- 46) Based on comments received during the public comment period and other information submitted with this project permit application, A SEPA Mitigation Determination of Non-Significance (MDNS) was issued by Community Development Services on December 21, 2012. The following are the mitigation contained within the MDNS and shall be conditions of approval:

Project Analysis

As Conditioned the Project is Consistent with:

Comprehensive Plan.

KCC 17A Critical Areas

Chapter 17.61 Utilities

KCC 14.04 Building Code as conditioned.

KCC 12 Roads and Bridges as conditioned

Staff recommends approval of the Big Buck Ridge Performance Based Cluster Plat as conditioned.

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8
KITTITAS COUNTY HEARINGS EXAMINER

9 Plat Application of:

LP-07-00040

10 Becky Andrus

11 APPLICANTS' MEMORANDUM
12 OF AUTHORITIES IN SUPPORT
OF PLAT APPLICATION

13 The Applicants, Cory and Becky Andrus (hereinafter "Andrus" or the "Applicants"), have
14 applied for approval of the Big Buck Ridge Performance Based Cluster Plat.

15 **I. BACKGROUND**

16 The Applicants, through their agent, Wayne Nelsen, have applied for preliminary approval
17 of a performance based cluster plat application. The effect of the application, if approved, would
18 be to create fourteen (14) one (1) acre home sites clustered around eleven (11) acres of open space.
19 The application was submitted in 2007, deemed complete in 2007 and was extended until now.

20 Kittitas County has filed a detailed staff report recommending approval of the performance
21 based cluster plat with 38 specific conditions.¹ Kittitas County has also submitted a document
22 index.² The Applicant has reviewed the 38 conditions and, except as discussed below, agrees with
23 the staff report and the proposed conditions.

24
25
26 ¹ See Exhibit 1, Staff Report.

² See Exhibit 2, document index.



1 **II. DISCUSSION**

2 Specific issues raised by the comments centered around two (2) primary issues. First, the
3 vesting of the plat to the 2007 development code in place when the application was filed. Second,
4 concern over road impacts and requirements that Mr. and Mrs. Andrus participate in the costs of
5 maintaining the many private roads in the area. Each of these issues will be discussed below.

6 **2.1 This application is vested to, and must be considered under, the land use**
7 **controls, ordinances and development standards in place on the date the**
8 **application was submitted.**

9 Neighbors who are opposed to this development asserted that they do not believe the
10 County is correct in its position the application is vested to the zoning and development standards
11 in effect in 2007. Mr. and Mrs. Andrus rezoned the property in 2006.³ As part of the approved
12 rezone, Kittitas County required a SEPA analysis on any additional development. The neighbors
13 incorrectly argue this was a requirement to submit a traffic analysis as part of a future development
14 application. Mr. and Mrs. Andrus submitted a Cluster Plat Application (File No. P-07-40) on June
15 19, 2007. Kittitas County issued a letter on July 18, 2007 informing Ms. Andrus that her
16 application was incomplete because she had failed to provide the address list of all landowners
17 within 300 feet of the site.⁴ Upon receipt of the letter, Ms. Andrus submitted a list of all
18 landowners within 300 feet on July 23, 2007.⁵

19 The neighbors assert that while Ms. Andrus submitted the list of adjoining property owners,
20 the application failed to include a transportation impact analysis (TIA), which they contend was
21 required as part of any future development activity when the property was rezoned. As a result
22 they argue the application is not vested and, further, because the application is not vested the
23 density is now prohibited because of GMA appeals made of Kittitas County development code and
24 Comprehensive Plan, which were ruled on by the Washington State Supreme Court in *Kittitas*
County v. Eastern Washington Growth Management Hearings Board, 172, Wn.2d 144 (2011).

25 ³ See Exhibit 3, Ordinance No. 2006-57.

26 ⁴ See Exhibit 4.

⁵ See Exhibit 1, Staff Report, and Exhibit 2, document index).



1 The neighbors' analysis is flawed. The application is vested to the zoning code, development
2 standards and road standards in place in 2007. A legal analysis of Washington vesting law
3 supports the County's conclusion that the application is vested to the 2007 rules.

4 2.2 Vesting Law

5 The vested rights doctrine was a common law doctrine under which a land use application,
6 under proper conditions, would be considered only under the land use statutes and ordinances in
7 effect at the time of the application's submission. *Friends of the Law v. King County*, 123 Wn.2d
8 518, 522, 869 P.2d 1056 (1994). "The purpose of vesting is to provide a measure of certainty to
9 developers, and to protect their expectations against fluctuating land use policy." *Id.*

10 The purpose of the vesting doctrine is to allow developers
11 to determine, or "fix," the rules that will govern their land
12 development. The doctrine is supported by notions of fundamental
13 fairness. As James Madison stressed, citizens should be protected
14 from the "fluctuating policy" of the legislature. Persons should be
15 able to plan their conduct with reasonable certainty of the legal
developments with reasonable certainty, and cannot carry out the
developments they begin. (Citations omitted).

16 *West Main Associates v. City of Bellevue*, 106 Wn.2d 47, 51, 720 P.2d 782 (1986). The
17 Vesting Doctrine was "rooted in concepts of fundamental fairness and due process." *Schneider*
18 *Homes, Inc., v. Kent*, 87 Wn. App. 774, 942 P.2d 1096 (1997), *review denied*, 134 Wn.2d 1021
19 (1998). The Washington common law did not restrict the application of the doctrine to particular
20 types of permits. Over time, the common law doctrine was applied to a number of different types
21 of land use permits. *Friends of the Law*, 123 Wn.2d at 522 (citing *Norco Constr., Inc. v. King*
22 *County*, 97 Wn.2d 680, 684, 649 P.2d 103 (1982)).

23 In 1987, the Legislature, codified the common law vested rights doctrine for building
24 permits and the subdivision of land. Laws of 1987, ch. 104. RCW 19.27.095 codified the
25 common law doctrine for building permits. *Noble Manor Co. v. Pierce County*, 133 Wn.2d 269,
26 275, 943 P.2d 1378 (1997). RCW 58.17.033 expressly applied the vested rights doctrine to the



1 subdivision of land. *Id.* As a result of the recent Court of Appeals case, common law vesting no
2 longer exists in Washington. In *Potala Village Kirkland LLC v. Kirkland*, 183 Wn.App. 191, 334
3 P.3d. 1143 (2014) the Washington Court of Appeals held that the statutory vested rights doctrine,
4 including building permits and plat applications, did not supplement common law vesting. *Id.* at
5 203. Instead, the court found statutory vesting replaced common law vesting. *Id.* at 203; see also,
6 *Town of Woodway v. Snohomish County*, 180 Wn.2d 165, 322 P.3d 1219 (2014). Under RCW
7 58.17.033, this application is vested to the zoning, subdivision rules and road standards in place on
8 the day the application was filed by Ms. Andrus.

9 In addition to vesting in RCW 58.17.033 and RCW 19.27.095, local governments may also
10 enact vesting ordinances. “Within the parameters of the doctrine established by statutory and case
11 law, municipalities are free to develop vesting schemes best suited to the needs of a particular
12 locality.” *Erickson & Associates, Inc. v. McLerran*, 123 Wn.2d 864, 872-73, 872 P.2d 1090
13 (1994). Kittitas County has enacted vesting statutes best suited to the needs of Kittitas County.

14 2.2 Vesting Discussion

15 At the time the application was submitted, Kittitas County had in effect KCC 15A.03.040.⁶
16 The essence of this statute is to set out the terms and conditions under which an application is
17 determined to be complete. KCC 15A.03.040(1) requires the County, within 28 days after
18 receiving a project permit application, to determine if it is complete or incomplete and provide the
19 applicant with a written determination of whether it is complete.⁷ In this case, Kittitas County did
20 that, sending Ms. Andrus a letter indicated she needed to submit the address list of the landowners.
21 Ms. Andrus then submitted the address list and the County proceeded forward with processing the
22 application. KCC 15A.03.040(3) provides as follows:

23 A project permit application is complete for the purposes of this
24 title when it meets the procedural submission requirements of
25 Kittitas County and is sufficient for continued processing even

26 ⁶ See Exhibit 5.

⁷ See also, Exhibit 1, Staff Report, § 111, pp. 2-3.



1 though additional information may be required or project
2 modifications may be undertaken subsequently. The determination
3 of completeness shall not preclude Kittitas County from requesting
4 additional information or studies either at the time of the notice of
 completeness or subsequently if new information is required or
 substantial changes in the proposed action occur.

5 The neighbors assert there was not a complete application because the TIA was not submitted as
6 they believe is required under the Andrus Rezone (Z-06-23).⁸ KCC 15A.03.040(4) provides that
7 within 14 days of the Applicants providing the additional information the County is required to
8 notify the application whether the application is complete or identify additional information
9 needed. The County did not respond to the submission and as a result the application was deemed
10 complete by the County.

11 The Andrus Property was rezoned in 2006. That rezone was approved by the Board of
12 County Commissioners and implemented through Ordinance No. 2006-57.⁹ The Ordinance, at
13 page 3, indicates the following at Condition 8:

14 8. Additional conditions are necessary to protect the public's
15 interest. The Condition is as follows:

16 a. SEPA review will be required for any future development
17 regardless of the exemption status at time of development.

18 **(See attached Exhibit B)**

19 The attached Exhibit B referenced in Ordinance No. 2006-57 is the rezone SEPA Mitigated
20 Determination of Non-Significance (MDNS). It provides under subsection I.c. the following
21 language:

22 At the time of a project action, the applicant shall submit a
23 stamped traffic analysis for a licensed engineer in the State of
24 Washington considering among other factors, intersection spacing,
25 sight distances, traffic volumes, load bearing capacity of soils,
26 pavement thickness design, etc. Reference Current Kittitas County
 Road Standards. (Emphasis added.)

 The rezone ordinance the neighbors reference did not make the TIA a required part of any
 subsequent development activity application. Ordinance No. 2006-57 does not suggest, nor can it

⁸ See February 24, 2015 comment letter from Jamie Carmody, Section A.

⁹ Attached as Exhibit 3.



1 be construed, that the Board of County Commissioners intended to alter the definition of a project
2 permit application under County Code. Project Permit Application is defined as follows:

3 "Project permit" or "project permit application" means any land
4 use or environmental permit or license required from a local
5 government for a project action, including but not limited to
6 building permits, subdivisions, binding site plans, planned unit
7 developments, conditional uses, shoreline substantial development
8 permits, site plan review, permits or approvals required by critical
9 areas ordinances, site-specific rezones authorized by a
10 comprehensive plan or subarea plan, but excluding the adoption or
11 amendment of a comprehensive plan, subarea plan, or development
12 regulations.

13 KCC 15A.02.080. Additionally, Kittitas County acted consistent with its statute. Once they
14 commenced processing the application on August 16, 2007, the TIA was required by the County
15 and in that August 16, 2007 letter the County put the applicant on notice that they had to prepare
16 and submit a TIA, which is "additional information" that may be required by the County under
17 KCC 15A.03.040(3).

18 **2.3 Transportation/Road Issues and the Private Road Conditions**

19 Access to the site is from Montgomery Avenue, a City of Cle Elum street.¹⁰ Once the Cle
20 Elum street ends, the access continues on a series of private roads. The vast majority of comments
21 against the application references the impact on private roads and the need for Andrus to join a
22 maintenance association and participate in road maintenance. As a SEPA condition, Kittitas
23 County required Andrus to join and/or participate in road maintenance associations and staff
24 suggested Condition 38, Transportation Number 4, which is somewhat different than suggested
25 Condition 21.

26 Mr. and Mrs. Andrus acquired their property on April 2, 2002.¹¹ When they purchased the
property they were one of the first individuals in the area. They received an easement in April of

¹⁰ See Exhibit 6, January 13, 2012 letter from the City of Cle Elum.

¹¹ See Exhibit 7.



1 2003.¹² The signatories to the Road Maintenance Agreement¹³ were developers who in turn
2 developed the lots into smaller lots and sold them. As a result, the individuals who now own those
3 lots are part of a road maintenance association and are complaining because Andrus is not part of
4 the association. A review of Exhibit B of the Road Maintenance Agreement shows the Andrus lot,
5 but Andrus was excluded from the road maintenance provisions of the agreement.

6 As an aid to the discussion below on Andrus's rights and obligations with respect to these
7 roads, Andrus has prepared a map to demonstrate where they are subject to road maintenance
8 agreements and where they are not.¹⁴

9 Andrus is instead subject to maintenance provisions, covenants, conditions and restrictions
10 of Brookside Trails (hereinafter the "Brookside Trails CC&Rs") for the private road from the end
11 of Montgomery Avenue up to the south boundary of Section 23 (see Articles 5 and 6¹⁵). The
12 only portion of the Andrus Easement road where they are not subject to maintenance provisions is
13 the short stretch within Section 23 and that portion of the road in Section 26, south of the BPA
14 transmission lines. Additionally, the Brookside Trails CC&Rs give Andrus the authority to use
15 roads in Section 24.

16 Andrus received a road variance for emergency access.¹⁶ Attached to the road variance is a
17 map that shows the Applicants' lot in relation to the roads in the area.

18 Andrus is willing to participate in the Road Maintenance Agreement and is willing to
19 require the future 14 lots owners to participate.

20 Andrus is concerned that, despite the fact they were excluded from this Road Maintenance
21 Agreement, some of the current owners may refuse Andrus's efforts to join as a means of stopping
22 the plat even though Andrus has an easement to access their land for all purposes.¹⁷ Andrus has
23

24 ¹² See Exhibit 8.

¹³ See Exhibit 9.

25 ¹⁴ See Exhibit 10.

¹⁵ See Exhibit 11.

26 ¹⁶ See Exhibit 12.

¹⁷ See Exhibit 8.

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1 the same legal right to use the road to their property as their neighbors. They will be required to
2 make improvements to the road and if they do fulfill those conditions and bind all 14 of the lot
3 owners to future contributions to the road association they should be deemed to have satisfied the
4 County's road maintenance conditions.

5 **1.4 Condition 16**

6 Condition 16 requires a private road to be constructed to higher density standards based on
7 the number of lots served. However, the 2005 standards Andrus is vested to also consider the
8 average lots size and as a result of the large lots in Section 23, Deer Creek Road should actually be
9 considered a "low density" road regardless of the number of lots served. Thus, the Applicant
10 requests clarification on Condition 16.

11 **II. CONCLUSION**

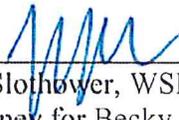
12 The neighbors' vesting argument fails. This application is vested to the rules and laws in
13 place on the date it was filed and the County and the applicant are not precluded from processing
14 the permit as a result of current ordinances and/or court decisions. The Hearings Examiner should
15 approve the application with the County Staff Report suggested conditions, except:

16 (1) The County private road conditions should require Andrus to pay for their impacts
17 but not deprive Andrus of the easement rights they have.

18 (2) Condition 16 should be modified so Andrus is required to construct to the density
19 standards in place in 2007.

20
21 Respectfully submitted this 21 day of April, 2015.

22 LATHROP, WINBAUER, HARREL,
23 SLOTHOWER & DENISON L.L.P.

24 
25 _____
26 Jeff Slothower, WSBA #14526
Attorney for Becky Andrus



CERTIFICATE OF SERVICE

I certify that I have this day caused a copy of the document to which this is attached to be served on the individual(s) listed below and in the manner noted below:

Andrew L. Kottkamp, Hearings Examiner
Kottkamp & Yedinak PLLC
435 Orondo Ave
Wenatchee, WA 98801

- BY U.S. MAIL
- BY HAND DELIVERY
- BY OVERNIGHT DELIVERY
- BY EMAIL: andy@wenatcheelaw.com

Jeff Watson, Staff Planner
Kittitas County Community Development
Services
411 N. Ruby Street, Suite 2
Ellensburg, WA 98926

- BY U.S. MAIL
- BY HAND DELIVERY [2 copies]
- BY OVERNIGHT DELIVERY
- BY EMAIL: jeff.watson@co.kittitas.wa.us

I certify, or declare, under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

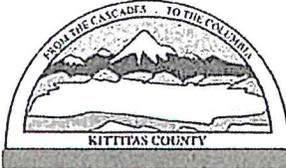
Signed at Ellensburg, Washington this 21st day of April, 2015.



Heather L. Hazlett
Legal Assistant to Jeff Slothower



EXHIBIT 1



KITTITAS COUNTY COMMUNITY DEVELOPMENT SERVICES

411 N. Ruby St., Suite 2, Ellensburg, WA 98926

CDS@CO.KITTITAS.WA.US

Office (509) 962-7506

Fax (509) 962-7682

"Building Partnerships – Building Communities"

STAFF REPORT

BIG BUCK RIDGE PRELIMINARY PLAT

LP-07-00040

TO: Kittitas County Hearing Examiner
FROM: Kittitas County Community Development Services Staff
RE: Big Buck Ridge Preliminary Performance Based Cluster Plat (LP-07-00040)
DATE: April 23, 2013

I. GENERAL INFORMATION

Requested Action: Wayne Nelson authorized agent for Becky Andrus, landowner, has submitted a performance based cluster plat application to create 14 one acre single family parcels and approximately eleven acres of open space. The plat proposes a group B water system and onsite individual septic systems. The subject property's zoning is vested as Residential 3.

Location: The subject property is 2 parcels, located approximately 1/2 mile north of the Yakima Avenue in the City of Cle Elum at 140 Big Buck Ridge Road (outside city limits), Cle Elum WA, in a portion of Section 26, Township 20N, Range 15E, WM in Kittitas County, bearing Assessor's map numbers 20-15-26010-0010 and 20-15-26010-0009.

II. SITE INFORMATION

Total Project Size: 25 acres
Number of Lots: 14
Domestic Water: Group B Community Water System
Sewage Disposal: Individual on-site septic systems
Power/Electricity: Puget Sound Energy
Fire Protection: Fire District 7
Irrigation District: None

Site Characteristics:

North: Light Development/Vacant

South: Power Lines; Undeveloped/Vacant

East: Undeveloped/Vacant

West: Subdivided Single Family under construction

The area is primarily covered in sparse forest; topography starts relatively flat on the north end of the parcels then steadily gains in slope (up to 33%) as it progresses to the south.

Access: The proposed project will have access from Bigbuck Ridge Road, a 60-foot private access easement. A second access route is required as conditioned by Kittitas County Public Works exhibit, number 5 (index document 65).

Zoning and Development Standards: The subject property is vested within the Rural-3 zoning district. The purpose and intent of the Rural-3 zone is to provide areas where residential development may occur on a low density basis. A primary goal and intent in siting R-3 zones will be to minimize adverse effects on adjacent natural resource lands. Applicable development standards set forth in KCC Chapter 17.30 include, but

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are not limited to the following:

Lot Size: The minimum residential lot size shall be three acres in the Rural-3 zone. The overall density of any residential development shall not exceed one dwelling for each three acres, except as provided for in Kittitas County Code 16.09, Performance Based Cluster Platting.

Setbacks: There shall be a minimum front yard setback of twenty-five feet. Side yard and rear yard setbacks shall be 15 feet.

Preliminary Plats: The requirements of KCC Chapter 16.08.200, "Subdivision" means the division or re-division of land into five or more lots, tracts, parcels, sites or divisions for the purpose of sale, lease or transfer of ownership any one of which is less than 20 acres.

Performance Based Cluster Plats (PBCPs; KCC 16.09): These types of subdivisions were originally integrated into County development regulations as an "innovative" planning technique to "protect critical areas, water resources, and resource lands" as well as "... foster appropriate densities while protecting the environment and maintaining the high quality of life in Kittitas County". Chapter 16.09 also mandated an annual review to "... check the effectiveness of the code in meeting the purpose and intent." PBCPs were integrated into County Code on November 1, 2005 (Ord. 2005-35); revised on August 16, 2006 (Ord. 2006-36) and again on July 19, 2007 (2007-22; the version applicable to this proposal). The chapter was modified again in 2010 (Ord. 2010-014) and the PBCPs were eliminated from code in 2013 (Ord. 2013-001) and replaced by "Cluster Plat" language which was accepted by the Growth Management Hearings Board as being compliant with the Growth Management Act (GMA).

III. ADMINISTRATIVE REVIEW

Deem Incomplete, Request for Additional Information, and Notice of Application: The application for the Big Buck Ridge Plat was submitted to Community Development Services (CDS) on June 20, 2007. On July 18, 2007, staff issued a letter of incomplete application, requiring an address list for all landowners within 300 feet of the proposal. The file indicates that the requested address list was submitted to CDS on July 23, 2007 (see index document 10, page 1 of the record) On August 16, 2007 staff sent a letter to the applicant indicating that a prior land use action (the Andrus rezone RZ-06-00023) mandated through a SEPA Mitigated Determination of Non-Significance that a Traffic Impact Analysis (TIA) be completed (as well as a road variance) before review of the application could continue. The letter did not indicate a precise determination as to the status of the application at that time. Current Staff has taken the position that the application was complete at that time based on the following:

KCC Chapter 15A.03.040(3): *"A project permit application is complete for the purposes of this title when it meets the procedural submission requirements of Kittitas County and is sufficient for continued processing even though additional information may be required or project modifications may be undertaken subsequently. The determination of completeness shall not preclude Kittitas County from requesting additional information or studies either at the time of the notice of completeness or subsequently if new information is required or substantial changes in the proposed action occur."*

The Plat Application Form (see index document 5, page 1) stipulates that a "Required Attachment" for a preliminary plat is an "Address list of all landowners within 300 feet of the site's tax parcel..." This "procedural submission requirement" as described above, was met by the applicant July 23rd, 2007 following Staff's Deem Incomplete and Request for Additional Information on July 18th, 2007.

KCC Chapter 15A.03.040(4): *"Within 14 days after an applicant has submitted to the permitting agency additional information identified by the permitting agency as being necessary for a complete application, the permitting agency shall notify the applicant whether the application is complete or what additional*



information is necessary..."

The letter from Staff requesting the TIA was written and sent on August 16th, 2007; 24 days after the submission of the address list requested in the original Deem Incomplete letter. Convention dictates that a failure to respond or clarify the completeness of an application within the timeframes provisioned in chapter 15A amounts to a de facto declaration of a complete application. The request for the TIA was not a "procedural submission requirement".

KCC Chapter 15A.03.045(1): *"Once an application has been deemed complete, the Director may request the applicant to submit additional corrections, studies or other information on the proposed project. The Director shall set a reasonable deadline for the submittal of corrections, studies or other information when requested, and shall provide written notification of such requests to the applicant."*

The requirement for the TIA was determined by Current Staff to be an "additional correction, study or other information." as described above. No parameters for a delivery date of the study were provisioned in the letter.

In the wake of sweeping changes to the structure and make up of CDS through 2009 an inventory was done in early 2010 to determine the status of, and make appropriate notifications to, the large cache of outstanding and pending land use applications on file. On February 9th, 2010 the Interim Planning Manager notified Mrs. Andrus that a request to withdraw application or the TIA would need to be submitted within 60 days (April 10th, 2010) for the application to remain active. On February 16th, 2010, Mr. Andrus requested an extension of the timeline because of uncertainty related to water withdrawal requirements in the Upper County; an extension was granted on June 25th, 2010. The record contains a series of extension over the course of the next several years; additional 120 day extensions were granted by CDS on:

October 17, 2010
June 27, 2011
September 30, 2011
January 11, 2012
June 26, 2012
October 23, 2012

On February 20th, 2013, the Transportation Impact Analysis was submitted to Kittitas County Public works and was declared to meet concurrency requirements.

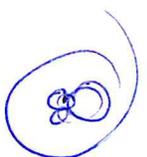
The Notice of Application for the preliminary plat application was issued on February 9th, 2015. This notice was published in the official county paper of record and was mailed to jurisdictional government agencies, adjacent property owners and other interested parties. The last day to submit written comments was on February 24th, 2015.

IV. COMPREHENSIVE PLAN

The Kittitas County Comprehensive Plan designates the subject property as Rural. Kittitas County has established the following goals and policies to guide future housing developments. These goals and policies were developed in response to existing housing conditions and identified needs within the county, and support the County Wide Planning Policies:

GPO 3.1 Provide a sufficient number of housing units for future populations in rural areas of Kittitas County.

GPO 3.6 Provide for future populations while protecting individual property rights.



GPO 3.17 Provide a sufficient number of housing units for future populations while maintaining the rural character of Kittitas County.

GPO 3.18 Provide sufficient housing units while maintaining environmental quality.

GPO 8.5 Kittitas County recognizes and agrees with the need for continued diversity in densities and uses on Rural Lands.

GPO 8.46 Residential development in rural lands must be in areas that can support adequate private water and sewer systems.

V. ENVIRONMENTAL REVIEW

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 March 25th, 2015. The appeal period ended on April 9, 2015 at 5:00 p.m. No appeals were filed.

VI. AGENCY AND PUBLIC COMMENTS

Applicable agencies, adjacent property owners, and interested parties have been given the opportunity to review this proposal. All comments have been included as Exhibits in the Hearing Examiner packet.

VII. PROJECT ANALYSIS

In review of this proposal it is important to consider the goals and policies of the comprehensive plan, applicable county code, public and agency comments, any identified environmental concerns and state and federal requirements. Identified below is planning staff's analysis and consistency review for the subject application.

Comprehensive Plan Consistency:

As conditioned the proposal is consistent with the goals and policies of the Kittitas County Comprehensive Plan at the time of submission. The proposed subdivision will be adequately served by rural levels of service. The lots will be served by a community water system and individual septic systems. Staff has conducted an administrative critical area review in accordance with KCC 17A and found critical areas which include possible steep slopes. Also of note for consideration is the existence of Bonneville Power Administration right of way on the south end of the parcel. No wetlands, classified streams or floodplain designations were identified in the proposal area. The proposal was identified as being within the designated coal mine area, but no mitigation measures are required by code.

Consistency with the provision of KCC 17.30, Rural 3 zoning (index document 78):

This proposal is consistent with the Kittitas County Zoning Code 17.30 at the time of submission. The purpose and intent of the R-3 zone at that time was to:

"... provide areas where residential development may occur on a low density basis. A primary goal and intent in siting R-3 zones will be to minimize adverse effects on adjacent natural resource lands."

The subject property is not at this time, nor was it at the time of application, near or adjacent to a resource land of any kind. Single family residences are permitted in both the current and the vested zones of these parcels. Cluster subdivisions were permitted outright in the R-3 zone at the time of application. Lot sizes of less than 3 acres were provisioned for under KCC 16.09 at the time of application.

Consistency with the provisions of KCC 16: Preliminary Plats and Performance Based Cluster Plats:

As conditioned, this proposal is consistent with the Kittitas County Subdivision Code for Preliminary Plats and Performance Based Cluster Plats. KCC Chapter 16.09 at the time of application (see index item 77) provided a means to increase densities beyond the maximum of what would normally be permitted for the R-3 zone based on public benefit rating system. The applicant in this case is using three public benefit categories to decrease the minimum lot size from three acres to one acre:

Designation of 11 acres of the 25 total acres as open space in perpetuity – In order to qualify for this provision found in the Public Benefit Rating System Chart (16.09.090) the applicant must dedicate a minimum of 40% of the base lot to perpetual open space. Open space, for the purposes of the chapter is defined as:

“...land used for outdoor active, passive and formal recreational purposes, land used for resource protection (including related structures such as barns on agriculturally productive land), land which is a common area for use by the public and/or residents of a cluster development, which is reserved for parks, walking paths or other natural uses, but not to include critical areas where development would otherwise be restricted, or dwellings or roadways surfaces, or building setbacks required by current codes, or areas otherwise encumbered by other federal, state, or local jurisdictions. In all cases, for purposes of this chapter, open space shall be of a functional nature and incorporate logical boundaries.”

Germane to the utilization of this criteria will be the amount of designated open space outside of areas restricted from development by other provisions of federal, state, and local codes, regulations, and ordinances; as conditioned the proposal will be consistent with public benefits associated with this criteria.

Use of a Group B water system – Utilization of a group B water system provides a density bonus because it minimizes the need for individual wells. For the purposes of this chapter the system will need to be a:

“.. DOH approved water system that meets the requirements of WAC 246-290 or 246-291, or any water system that meets the definition of “Municipal water supplier” under RCW 90.03.015.”

This water system will fall under the close scrutiny of the Washington State Department of Health and Kittitas County Public Health. As conditioned the proposal will be consistent with the public benefits associated with this criteria.

Development of active recreational facilities – The applicant has indicated in the proposal and the SEPA checklist that there will be private trails developed in conjunction with the plat connecting two of the three detached open space tracts to the internal private road. The south open space tract will also include a 20 foot trail easement; it is unclear where or how this trail will connect to adjacent properties or tracts either inside or outside the plat. For the purposes of this chapter active recreation is defined as including but not limited to:

“... ball fields, tennis courts, wheeled vehicle trails, outdoor riding arenas, etc.”

Consideration was given to the wide variety of “wheeled vehicles” which people must or choose to utilize in “active recreation.” As conditioned the trails proposed will provide increased opportunity for recreation to the eventual residents and guests of the plat and be consistent with public benefits associated with this criteria



Consistency with the provisions of KCC Title 12: Roads and Bridges:

As conditioned, the proposal is consistent with the provisions of KCC Title 12.

Agency Comments:

The following agencies provided comments during the comment period:

City of Cle Elum
Washington State Department of Health
Washington State Department of Ecology
Kittitas County Public Health Department.

These comments have been included in the record and conditions of approval have been crafted to address these agency concerns.

Public Comments:

Comments were received from the following members of the public representing themselves:

Kay Mulbeier
Gary Kasowski
Allen & Lan Jones
Liz Remeto
Christine Johnson
Adam Burnett
Roian Daly
Jan Thompson
Maren L. McDonald
Matt Clark
Kim Person
Joe Skvarla
Brian Rogers
Margaret Suman
Ken McKim
David McDuff
James Carmody
Bruce Higgs
Don Owens

Mr. James Carmody was retained by the Cle Elum Ridge Community and provided comments on their behalf.

These comments have been included in the record and consideration was integrated into the conditions of approval.

Post Comment Period Exhibits

The following individuals and agencies provided additional correspondence following the close of the comment period on February 24th, 2015 at 5:00 p.m.

Kittitas County Public Works Department
Washington State Department of Ecology
Karma Chapman

These correspondences have been included in the record and consideration was integrated into the conditions of approval.



VIII. RECOMMENDATION

As conditioned below, the application is not detrimental to the general public health, safety or welfare and meets intent and criteria associated with Title 12, Chapter 16.08, Chapter 16.09, Chapter 16.12 and Chapter 17.30 of the Kittitas County Code as well as the Kittitas County Comprehensive Plan. Staff recommends approval of the Big Buck Ridge Preliminary Plat LP-07-00040, subject to the following findings of fact and conditions outlined below.

Staff also feels compelled to recognize before the Hearings Examiner that the conditions outlined below may result in substantive changes to the plat as proposed. It is possible that the applicant may, after review of the comments, conditions, and initial testimony at the Public Hearing, wish to alter the plat to a degree which would require additional review by both staff and the public at large. At the discretion of the Hearings Examiner, a remand may be the preferred or appropriate action to take at this time.

Suggested Findings of Fact

1. Wayne Nelson authorized agent for Becky Andrus, landowner, has submitted a performance based cluster plat application to create 14 one acre single family parcels and approximately eleven acres of open space. The plat proposes a group B water system and onsite individual septic systems. The subject property's zoning is vested as Residential 3.
2. The subject property is 2 parcels, located approximately 1/2 mile north of the Yakima Avenue in the City of Cle Elum at 140 Big Buck Ridge Road (outside city limits), Cle Elum WA, in a portion of Section 26, Township 20N, Range 15E, WM in Kittitas County, bearing Assessor's map numbers 20-15-26010-0010 and 20-15-26010-0009.
3. Site Information

Total Project Size:	25 acres
Number of Lots:	14
Domestic Water:	Group B Community Water System
Sewage Disposal:	Individual on-site septic systems
Power/Electricity:	Puget Sound Energy
Fire Protection:	Fire District 7
Irrigation District:	None
4. Site Characteristics:
North: Light Development/Vacant
South: Power Lines; Undeveloped/Vacant
East: Undeveloped/Vacant
West: Subdivided Single Family under construction
5. The area is primarily covered in sparse forest; topography starts relatively flat on the north end of the parcels then steadily gains in slope (up to 33%) as it progresses to the south.
6. The proposed project will have access from Bigbuck Ridge Road, a 60-foot private access easement. A second access route is required as conditioned by Kittitas County Public Works exhibit, number 5.
7. The Comprehensive Plan designation is Rural.
8. The subject property is vested within the Rural-3 zoning district. The minimum lot size is one dwelling for each three acres, except as provided for in Kittitas County Code 16.09, Performance Based Cluster Platting.



9. The purpose and intent of the Rural-3 zone is to provide areas where residential development may occur on a low density basis. A primary goal and intent in siting R-3 zones will be to minimize adverse effects on adjacent natural resource lands.
10. The application for the Big Buck Ridge Plat was submitted to Community Development Services (CDS) on June 20, 2007. On July 18, 2007, staff issued a letter of incomplete application, requiring an address list for all landowners within 300 feet of the proposal. The list was provided on July 23, 2007; the application was de facto deemed complete on August 16, 2007 with the request for a traffic impact analysis. The notice of application was on February 9, 2015. 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 February 24, 2015.
11. An application was submitted to Community Development Services on August 17, 2011. The Notice of Application for the preliminary plat application was issued on November 17, 2011. 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 December 2, 2011.
12. 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 March 25, 2015. The appeal period ended on April 9, 2015 at 5:00 p.m. No appeals were filed.
13. As conditioned 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 community water system and individual septic systems. Staff has conducted an administrative critical area review in accordance with KCC 17A and found critical areas which include steep slopes.
14. As conditioned the proposal is consistent with the Kittitas County Zoning Code Title 17
15. As conditioned the proposal is consistent with the Kittitas County Subdivision Code for Preliminary Plats.
16. As conditioned the proposal is consistent with the Kittitas County Subdivision Code for Performance Based Cluster Plats.
17. This application is subject to the Kittitas County Road Standards, dated 9/6/05. As conditioned, the proposal is consistent with the provisions of KCC Title 12.
18. The following agencies provided comments during the comment period: Washington State Department of Health, Washington State Department of Ecology, and Kittitas County Public Health. Kittitas County Public Works submitted correspondence on March 16, 2015. These comments and correspondence have been considered as conditions of approval to address these agency concerns.

Suggested Conclusions:

1. As conditioned, the development meets the goals, policies and implementation recommendations as set forth in the Kittitas County Comprehensive Plan.
2. As conditioned, this proposal is consistent with applicable federal and state laws and regulations.
3. Public use and interest will be served by approval of this proposal as conditioned.



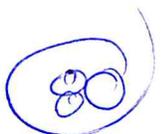
4. As conditioned, the proposal is consistent with Kittitas County Code Title 16 Subdivision, Title 17 Zoning, Title 17A Critical Areas, Title 15 Environmental, and Title 12 Roads and Bridges.

Suggested Conditions of Approval:

1. The project shall proceed in substantial conformance with the plans and application materials on file dated June 20, 2007 except as amended by the conditions herein.
2. A certificate of title of the property proposed to be platted shall be submitted with the final plat.
3. A note shall be placed on the final plat stating that any construction within areas of 33% or greater slope will require geotechnical engineering per IRC R403.7.7 and/or IRC 1805.3.1 or current adopted code.
4. The applicant is responsible for compliance with all applicable local, state and federal rules and regulations, and must obtain all appropriate permits and approvals.
5. All current and future landowners must comply with the International Fire Code.
6. 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.
7. Computer sheets shall be submitted with the final plat showing the closure of plat boundaries, blocks, lots or any tract. It is the responsibility of the Professional Licensed Surveyor (PLS) to ensure the lot closures are correct and accurate.
8. Individual onsite sewage systems will need to meet Kittitas County code requirements.
9. According to the Public Health Department, final plat approval will be conditioned upon:
 - a. written findings of adequacy of potable water supplies;
 - b. a well site inspection performed by KCPHD staff and the well drilled;
 - c. completion and submission of a Group B Public water system to the Washington State Department of Health (WSDOH);
 - d. a contract with an approved Kittitas County Satellite Management Agency;
 - e. the construction or bonding of all infrastructure including the well house and storage tanks;
 - f. issuance of a public water system ID number from WSDOH;
10. The Final Plat shall meet all requirements as listed in Chapter 16.20 of the Subdivision Code, as follows:

16.20.020 Final Plat General Information

- a. The final plat shall be drawn on polyester film in a neat and legible manner.
- b. The final plat shall be drawn to such a scale as to make a sheet eighteen inches by twenty-four inches. Should this size sheet unduly congest the drawing, the plat may be submitted on two or more sheets of the above dimensions. The perimeter of the subdivision shall be depicted with heavier lines than appear elsewhere on the plat. A marginal line shall be drawn completely around each sheet, leaving an entirely blank margin of one inch on the sides. The scale shall be one (1) inch equals two hundred (200) feet, or greater, unless otherwise approved by the director.
- c. All lettering shall be printed with permanent ink.
- d. Each sheet of the final plat shall contain the subdivisions name at the top of the sheet in large letters followed underneath with the section, township, range, county and state. The space for recording the receiving number is in the upper right hand corner, sheet numbers at the bottom of the sheets.
- e. It shall show all courses and distances necessary to re-stake any portion of said plat.



- f. Required monuments shall be shown together with a legend of monuments on the face of each plat sheet. (Ord. 2005-31, 2005)

16.20.040 Plat Drawing

- a. Section Data. All section, township, municipal and county lines lying within or adjacent to the subdivision;
 - b. Tie Monuments. The location of all monuments or other evidence used as ties to establish the subdivision's boundaries;
 - c. Plat Monuments. The location of all permanent control monuments found or established within the subdivision;
 - d. Boundaries. The boundary of the subdivision, with complete bearings and lineal dimensions in heavier lines;
 - e. Bearing and Distances. The length and bearings of all straight lines, the radii, arcs, and central angles of all curves;
 - f. Lot Dimensions. The length of each lot line, together with bearings and other data necessary for the location of any lot line in the field;
 - g. Road Names. The location, width, centerline, and name or names or number of all streets within and adjoining the subdivision;
 - h. Easements. The location and width, shown with broken lines, and description of all easements. Easements may be described in the plat restrictions in lieu of being shown on the plat drawings;
 - i. Lot Numbers. Numbers assigned to all lots and blocks within the subdivision;
 - j. Adjacent Owners. Names of owners of land adjacent to the subdivision, and the names of any adjacent subdivisions;
 - k. 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;
 - l. Vicinity Maps. A vicinity map showing the boundary of the plat in relation to the surrounding area such as adjacent subdivisions, rivers, creeks, roads or highways, canals, etc. Minimum area shown would be the section or sections containing the platted area with a scale of approximately 4" = 1 mile;
 - m. Contours. Contour lines are not shown on a final plat as required on the preliminary plat;
 - n. Miscellaneous Items. North arrow, scale and legend of monuments to be shown on open area of sheets;
 - o. Grid Coordinates. A tie shall be made and shown on the plat if plat is within one mile of any such monument.
 - p. Well location. The drawings shall be marked with a "w" indicating location of the well and a broken line showing the one hundred foot radius around such.
 - q. Ditches. Location of existing ditches apparent or of record. (Ord. 2005-31, 2005)
11. Timing of Improvements: This application is subject to 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 structures 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.
12. 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.
13. Stormwater: 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.

14. Grading Permit: A grading permit shall be required prior to beginning any site work. See KCC 14.05 for more information.
15. Second Access: A second access will be required 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 Marshal; 2) If the second access is to be used for ingress and egress, it must meet the same standards of the first access.

Documentation of a legal easement across the route of the second access will be required prior to final approval. The second access must be constructed and certified by an engineer licensed in the State of Washington prior to issuance of a building permit.

16. Private Road Improvements: Access 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 20', with 1' shoulders, for a total width of 22'.
 - b. Minimum centerline radius shall 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 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 2009 International Fire Code. Contact the Fire Marshal regarding any additional cul-de-sac requirements.
17. Joint-Use Driveway: A joint-used 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.
18. Single-Use Driveway: 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 or 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.
19. Plat Notes; Plat notes shall reflect the following:
- a. Entire private road shall achieve 95% compaction and shall be inspected and certified by a licensed engineer in the State of Washington specifying that the road meets current Kittitas County Road Standards prior to the issuance of building permit for this plat.
 - b. Entire private road shall be inspected and certified by a civil engineer licensed in the State of Washington specifying that the road meets Kittitas County Road Standards as adopted September 6, 2005, prior to the issuance of a building permit. Any future subdivision or land use action will be reviewed under the most current road standards.
 - c. 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.
 - d. Maintenance of the access is the responsibility of the property owners who benefit from its use.
 - e. An approved access permit will 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.
 - f. Any further subdivision or lots to be served by proposed access may result in further access requirements. See Kittitas County Road Standards.
 - g. A public utility easement 10 feet in width is reserved along all lot lines. The 10 foot easement shall abut the exterior plat boundary and shall be divided 5 feet on each side of interior lot lines. Said easement shall also be used for irrigation.
20. Plat Approvals: All plats must show the acceptance signature of the County Engineer. The acceptance block shall be as follows (per KCC 16.24.170):
- EXAMINED AND APPROVED
- This ___ day of _____, A.D., 20__.
- _____.
- Kittitas County Engineer
21. Private Road Maintenance Agreement: The applicant shall meet all applicable conditions of any pre-established or required Private Road Maintenance Agreements.
22. Lot Closure: It is the responsibility of the Professional Licensed Surveyor (PLS) to ensure the lot closures are correct and accurate.
23. 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.

24. Fire Protection: Contact the Kittitas County Fire Marshal regarding any additional access requirements for Emergency Response.
25. 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.
26. 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.
27. Washington Administrative Code (WAC) 173-400-040 requires that reasonable precaution be taken to prevent dust from leaving the site. Also, dust is prohibited from interfering unreasonable with the use and enjoyment of property, causing health impacts, or damaging property or business.
28. 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 reseedling of areas disturbed by development to preclude the proliferation of noxious weeds."
29. All applicable survey data and dedications shall be reflected pursuant to KCC 16.24: Survey Data-Dedications.
30. Both sheets shall reflect the Plat number: LP-07-00040.
31. An NPDES Construction Stormwater General Permit from the Washington State Department of Ecology is required for this project. 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.
33. No water right records associated with this property were found in the Central Regional Office. In Washington State, prospective water users must obtain authorization from the Department of Ecology before diverting surface water or withdrawing ground water, with one exception. Ground water withdrawals of up to 5,000 gallons per day used for single or group domestic supply, industrial purposes, stock watering 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.

On March 28, 2002 the Washington State Supreme Court ruled that 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 because in combination, the withdrawal will exceed the exemption criteria.
34. An internal looped trail shall be bonded for or constructed in conjunction with the plat infrastructure. It shall run parallel with, but in addition to, the entire length of the private road servicing the plat to the 10 foot easement depicted on the west lot line of lot 8; then north across the .41 acre open space tract where it will connect with the 10 foot trail easement along the north and west lot lines of lot 1 to the 1.50 acre open space tract; then north and east back to the private road easement. This active recreation trail shall be constructed of an approved hard surface to accommodate wheeled traffic and utilize standards in conformance with the ICC



A 117.1-2009 manual for accessible and usable buildings and facilities.

35. Open space tracts shall be labeled with a unique identifier.
36. The face of the plat will depict accurate calculations for open space tracts which do not include areas covered by road easement or driveway, well head protection areas, utility right of way, critical area or region encumbered by other federal, state, or local jurisdiction (as per ordinance 2007-22).
37. The open space tracts shall be:
 - a. owned in a proportionate and un-severable manner as tenants in common by each lot owner; and
 - b. assessed, taxed, and foreclosed upon each building lot.
38. Based on comments received during the public comment period and other information submitted with this project permit application, A SEPA Mitigation Determination of Non-Significance (MDNS) was issued by Community Development Services on December 21, 2012. The following are the mitigation contained within the MDNS and shall be conditions of approval:

Water and Septic

1. The proposed plat is located within the upper county as defined in WAC 173-539A-090; the proposed group B water system shall be developed in complete compliance with the regulations and requirements of WAC 173-539A. The development will need to:
 - a. Have well site inspections.
 - b. Complete and submit a Group B water system workbook.
 - c. Contract with a Satellite Management Agency.
 - d. Complete or bond for infrastructure.
 - e. Obtain WSDOH approval and identification number.
 - f. Construct well(s) in accordance with the provisions of WAC 173-160. Wells must be located 100 feet from any known, suspected, or potential source of contamination.
 - g. File a well report with the Department of Ecology within thirty (30) days after the completion of the well.
2. On-site sewage systems shall be constructed in accordance with requirements and regulations in Kittitas County Code (KCC) 13.04 at the time of application (6/20/2007).

Transportation

3. KCC 12.12.010(6) requires private roads within the plat to be maintained by a legal entity made up of all benefitted property owners under the provisions of an acceptable and recorded Private Road Maintenance Agreement.
4. All parcels located within this project shall be required to join the existing Private Road Maintenance Agreement which is made up of all the benefitted property owners served by Deer Creek Road and other roadways within Section 23, Township 20 North, Range 15 East.

Stormwater

5. 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.

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6. 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 for review to Public Works 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. Stormwater plans shall be submitted in accordance with KCC 12.06 and 12.08.

Cultural Resources and Historic Preservation

7. Should ground disturbing or other activities related to the proposed 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.

Light and Aesthetics

8. A plat note shall be affixed which states: All outdoor lighting shall be shielded and directed downward to minimize the effect to nearby residential properties.

Noise

9. Development and construction practices during building of 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.

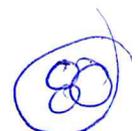


EXHIBIT 2

PROJECT NAME:
LP-07-00040 Big Buck Ridge

Completed for: Hearing Examiner Public Hearing 4/23/2015

Index #	Document Name
1	Application Receipt – 6/20/2007
2	Closures – 6/19/2007
3	Well Reports – Multiple Dates
4	SEPA Checklist – 6/19/2007
5	Plat Application 6/20/2007
6	Preliminary Plat – 6/20/2007
7	Public Health Form Letter – 6/20/2007
8	Road Variance Request – 5/18/2007
9	Deem Incomplete Letter – 7/18/2007
10	Adjoining Property/Mailing Labels 7/23/2007
11	Traffic Impact Analysis Required Letter – 8/16/2007
12	Second Access Required Letter – 12/5/2007
13	Sixty Days to Submit Letter – 2/9/2010
14	TIA Correspondence Letter – 6/14/2010
15	Extension Request – 6/15/2010
16	Extension Granted Letter – 6/25/2010
17	Extension Request – 10/19/2010
18	Extension Granted Letter – 10/17/2010
19	Extension Request – 6/27/2011
20	Extension Granted Letter – 6/27/2011



21	Extension Request – 9/29/2011
22	Extension Granted Letter – 9/30/2011
23	Extension Request – 1/11/2012
24	Extension Granted Letter – 1/11/2012
25	Comments – City of Cle Elum – 1/13/2012
26	Correspondence RE TIA – 1/26/2012
27	Extension Request – 6/26/2012
28	Extension Granted Letter – 6/26/2012
29	Extension Request – 10/9/2012
30	Extension Granted Letter – 10/23/2012
31	Traffic Impact Analysis – 2/19/2013
32	Memo from Public Works – 5/6/2013
33	Email from Public Works – 5/29/2013
34	Site Visit Photos – 12/19/2014
35	Critical Areas Checklist – 1/21/2015
36	Planners Maps – 1/21/2015
37	Notice of Application Documentation – 2/9/2015
38	Newspaper Article – 2/12/2015
39	Owens Comments – 2/24/2015
40	Higgs Comments – 2/24/2015
41	Carmody Comments – 2/24/2015
42	McDuff Comments - 2/24/2015
43	McKim Comments – 2/23/2015
44	Suman Comments – 2/23/2015
45	Rogers Comments – 2/23/2015
46	Skvarla Comments – 2/23/2015



47	Person Comments – 2/22/2015
48	Clark Comments – 2/22/2015
49	McDonald Comments – 2/21/2015
50	Thompson Comments – 2/21/2015
51	Ecology Comments – 2/24/2015
52	Daly Comments – 2/18/2015
53	Burnett Comments – 2/16/2015
54	Johnson Comments – 2/16/2015
55	Remeto Comments – 2/16/2015
56	Jones Comments – 2/16/2015
57	Kasowski Comments – 2/16/2015
58	Kittitas County Public Health Comments – 2/10/2015
59	Mulheiber Comments – Beginning 2/13/2015
60	Washington State Department of Health Comments – 2/9/2015
61	City of Cle Elum Comments – 1/13/2012
62	Transmittal of Comments – 3/19/2015
63	Chapman Exhibit – 2/24/2015 (9:43 p.m.)
64	Ecology Exhibit – 3/3/2015
65	Public Works Exhibit – 3/16/2015
66	Washington State Department of Health Exhibit – 2/25/2015
67	Road Maintenance Exhibit (Public Works) – 3/20/2015
68	Notice of SEPA Action and Public Hearing – 3/25/2015
69	Mitigated Determination of Non-Significance – 3/25/2015
70	Published Notice of SEPA Action and Public Hearing – 3/25/2015
71	Newspaper Article – 3/26/2015
72	Newspaper Article – 3/30/2015

73	Request to Postpone Public Hearing – 3/31/2015
74	Notice of SEPA Action & Postponement – 3/31/2015
75	Notice of SEPA Action & Postponement Publication Documents – 4/2/2015
76	Notice of Public Hearing Documentation – 4/14/2015
77	Ordinance 2007-22 – 7/19/2007
78	Chapter 17.30 Rural-3 Zone – 7/10/2007

EXHIBIT 3

BOARD OF COUNTY COMMISSIONERS
COUNTY OF KITTITAS STATE OF WASHINGTON

ORDINANCE NO. 2006 - 57

ANDRUS REZONE (Z-06-23)

IN THE MATTER OF AMENDING THE KITTITAS COUNTY ZONING ATLAS FOR A
PORTION OF SECTION 26 OF TOWNSHIP 20 N., RANGE 15 E., FROM
FOREST&RANGE TO RURAL-3

WHEREAS, according to Kittitas County Code Titles 15A & 17, relating to general rezones, adopted pursuant to RCW 36.70B & 36.70 respectively, an open record hearing was held by the Kittitas County Planning Commission on September 21, 2006 for the purpose of considering a zone change consisting of approximately 25.0 acres from Forest&Range to Rural-3 and described as follows:

Located east of Deer Creek Rd., south of Big Tail Rd., and north of the City of Cle Elum, within the NE ¼, Section 26, T.20N., R.15E., W.M., Kittitas County, WA. The rezone applies to tax parcel number(s) 20-15-26010-0009, 0010; and,

WHEREAS, testimony was taken from those persons present who wished to be heard during said open record hearing before the Planning Commission; 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 zone change; and,

WHEREAS, the Planning Commission recommended denial of said proposed rezone in a 3-1 decision; and,

WHEREAS, a closed record public meeting was held by the Board of County Commissioners on November 7, 2006 to consider the Planning Commission's recommendation on this matter; and,

WHEREAS, the following FINDINGS OF FACT have been made concerning said proposed rezone:

1. Becky Andrus, landowner has submitted an application for a general zone change from Forest & Range to Rural-3 for approximately 25.0 acres. The site is located east of Deer Creek Rd., south of Big Tail Rd., and north of the City of Cle Elum, within the NE ¼, Section 26, T.20N., R.15E., W.M., Kittitas County, WA. The rezone applies to tax parcel number(s) 20-15-26010-0009, 0010.
2. The Community Development Services Department issued a Notice of Application pursuant to KCC 15A on June 30, 2006. Said notice solicited comments from jurisdictional agencies and landowners within 300 feet of the subject property as required by Kittitas County Code.
3. Based on the review of the submitted application materials (including an environmental checklist), correspondence received during this comment period and other information on file with CDS, A SEPA



Mitigated Determination of Non-Significance was issued by the Community Development Services Department on August 8, 2006. Notice of said determination was provided to all existing parties of record via United States Mail and was published in the Daily Record as required by State Statute and County Code. No SEPA Appeals were received. The SEPA MDNS has been attached for reference. (See attached exhibit B)

4. An administrative site analysis was completed by the staff planner in compliance with Title 17A. Moderate to steep slopes are located throughout the site, BPA easement crosses a portion of the site, coalmining activities have been a historic practice in the vicinity, but no known shafts exist on site.
5. An open record hearing was held by the Planning Commission on September 21, 2006 to consider this rezone request. Notice of said public hearing was provided to all parties of record via United States Mail and was published in the Daily Record as required by State Statute and County Code. Testimony was taken from those persons present at said hearing that wished to be heard and the necessary inquiry has been made into the public interest to be served by this non-project action.
6. The requested zone change is consistent with the Rural land use designation of the Kittitas County Comprehensive Plan.
7. The proposed requested zone change does meet all seven criteria as listed in KCC 17.98.020 (E).
 - a) *The proposed amendment is compatible with the comprehensive plan.*
 - a. The Comprehensive Plan designation of the subject property is Rural.
 - b. The requested zone change to Rural-3 is compatible with this designation.
 - b) *The proposed amendment bears a substantial relation to the public health, safety or welfare.*
 - a. The zoning south of the subject parcels is currently Rural-3, while zoning to the east has been rezoned to Rural-5.
 - b. The subject property abuts the City of Cle Elum UGA on three sides.
 - c. The rezone allows for the potential of smaller, rural parcels that are consistent with neighboring lot sizes. Smaller parcels are more valuable. The creation of this potential will increase the assessed value of the property and thereby provide more revenue for essential county services, schools, and the Fire District.
 - d. The rezone will encourage and allow for the concentration of rural densities.
 - e. The rezone encourages and allows for rural residential densities an area with immediate access to Big Tail Road.
 - c) *The proposed amendment has merit and value for Kittitas County or a sub-area of the county.*
 - a. It provides for a potential for an increased tax revenue/tax base.
 - b. The rezone allows for a mixture of densities in the County.
 - d) *The proposed amendment is appropriate because of changed circumstances or because of a need for additional property in the proposed zone or because the proposed zone is appropriate for reasonable development of the subject property.* The rezone is necessary for the reasonable development and use of the subject property because:
 - a. The subject property abuts the Cle Elum UGA on three sides.
 - b. The zoning south of the subject parcels is currently Rural-3, parcels abutting the subject property to the east is have recently been rezoned to Rural-5.
 - c. This rezone has the potential to increase the available housing stock.
 - d. The rezone is necessary for the reasonable development and use of the subject property.

- e) *The subject property is suitable for development in general conformance with zoning standards for the proposed zone.*
 - a. The subject property abuts the Cle Elum UGA on three sides.
 - b. Adequate acreage exists to handle development that shall conform with zoning standards of the proposed zone.
- f) *The proposed amendment will not be materially detrimental to the use of properties in the immediate vicinity of the subject property.*
 - a. The surrounding area is composed of a mixture of uses which include residential, and natural resource.
 - b. The proposed amendment abuts the City of Cle Elum UGA on three sides and is a logical extension of density in this specific area.
- g) *The proposed changes in use of the subject property shall not adversely impact irrigation water deliveries to other properties.*
 - a. There is no impact to irrigation.

8. Additional conditions are necessary to protect the public's interest. The condition is as follows:

- a. SEPA review will be required for any future development regardless of the exemption status at time of development. (See attached Exhibit B)

9. No public testimony was heard.

NOW THEREFORE,

BE IT HEREBY ORDAINED by the Board of County Commissioners of Kittitas County, Washington, after due deliberation and in the best interest of the public, does hereby approve said zone change from Forest&Range to Rural-3, known as the Andrus Rezone (Z-06-23), and does hereby authorize the amendment of the Kittitas County Zoning Map as set forth in (attached Exhibit A).

DATED this 21st day of November, 2006 at Ellensburg, Washington.



ATTEST:
CLERK OF THE BOARD

Julie A. Kjosvik
Julie A. Kjosvik

BOARD OF COUNTY COMMISSIONERS
KITTITAS COUNTY, WASHINGTON

David B. Bowen
David B. Bowen, Chairman

Alan A. Crankovich
Alan A. Crankovich, Vice-Chairman

APPROVED AS TO FORM:

James Hurson WSBA #12686

Perry D. Huston
Perry D. Huston, Commissioner

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Exhibit A: Map Andrus Rezone (Z-06-23)



Exhibit B: SEPA MDNS Andrus Rezone Z-06-23

**SEPA
MITIGATED DETERMINATION OF NONSIGNIFICANCE**

- File:** Andrus Rezone File No. Z-06-23
- Description:** Zone Change of 25 Acres from Forest & Range-20 to Rural-3
- Proponent:** Becky Andrus
P.O. Box 785
Cle Elum, WA 98922
- Location:** East of Deer Creek Rd., South of Big Tail Rd., and North of the City of Cle Elum, within the NE ¼, Section 26, T.20N., R.15E., W.M., Kittitas County, WA. The rezone applies to tax parcel numbers 20-15-26010-0009, 0010.
- Lead Agency:** Kittitas County Community Development Services

The lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21C.030(2)(c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public on request. The lead agency for this proposal has also determined that certain mitigation measures are necessary in order to issue a Determination of Non-Significance for this proposal. Failure to comply with the mitigation measures identified hereafter will result in the issuance of a Determination of Significance (DS) for this project. These mitigation measures include the following:

I. Transportation

- A. The project is accessed via a private driveway off of Big Tail Road.
- B. 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 comply with all applicable agency standards including Kittitas County Road Standards (See Kittitas County Road Standards, as adopted 9/06/05). Kittitas County Department of Public Works requires a "maximum build-out" plan be discussed in a pre-applicant meeting with the applicant to clarify some of these issues.
- C. At the time of a project action, the applicant shall submit a stamped traffic analysis from a licensed engineer in the State of Washington considering among other factors, intersection spacing, sight distances, traffic volumes, load bearing capacity of soils, pavement thickness design, etc. Reference Current Kittitas County Road Standards.

II. 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 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.

III. Public Services

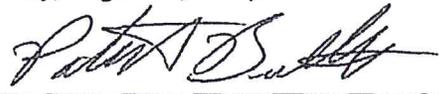
- A. Any future development must comply with International Fire Code (IFC) and Appendices.

IV. SEPA Review

- A. Any future subdivision or development of the properties involved within this rezone will be subject to additional SEPA review regardless of exemptions.

This MDNS is issued under WAC 197-11-350. The lead agency will not act on this proposal for 15 days. Any action to set aside, enjoin, review, or otherwise challenge this administrative SEPA action's procedural compliance with the provisions of Chapter 197-11 WAC shall be commenced within 10 working days (on or before 5:00 PM, Friday, August 25, 2006).

**Responsible
Official:**



Patrick Butler

Title: Staff Planner

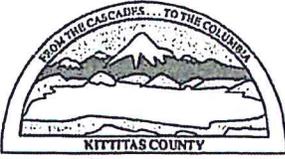
Address: Kittitas County Community Development Services
411 North Ruby St., Suite 2
Ellensburg, WA 98926
(509) 962-7506 FAX 962-7682

Date: August 8, 2006

Pursuant to Chapter 15A.07 KCC, this MDNS may be appealed by submitting specific factual objections in writing with a fee of \$300.00 to the Kittitas County Board of Commissioners, Kittitas County Courthouse Room 110, Ellensburg, WA 98926. Timely appeals must be received no later than 5:00 PM, Friday, August 25, 2006. Aggrieved parties are encouraged to contact the Board at (509) 962-7508 for more information on appeal process.

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EXHIBIT 4



KITITITAS COUNTY COMMUNITY DEVELOPMENT SERVICES

411 N. Ruby St., Suite 2, Ellensburg, WA 98926

CDS@CO.KITITITAS.WA.US

Office (509) 962-7506

Fax (509) 962-7682

July 18, 2007

Becky Andrus.
P.O. Box 785
Cle Elum, WA 98922

RE: Big Buck Ridge Cluster Plat, File number P-07-40

Dear Ms. Andrus:

Community Development Services is in receipt of the referenced application. The application is deemed incomplete and the following additional information is required:

1. The address list of all landowners within 300-feet of the site's tax parcel was not submitted as part of the required attachments to your Long Plat Application.

When the additional information is received and the application is deemed complete, our review of the application will continue. If you have any questions or need assistance, please contact our office at (509) 962-7637.

Sincerely,

Dan Valoff
Planner 1

No adjacent
prop owners
submitted

DARRYL PIERCY, DIRECTOR

ALLISON KIMBALL, ASSISTANT DIRECTOR

COMMUNITY PLANNING • BUILDING INSPECTION • PLAN REVIEW • ADMINISTRATION • PERMIT SERVICES • CODE ENFORCEMENT • FIRE INVESTIGATION

EXHIBIT 5

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EXHIBIT 5
(KCC 15A.03.040)

15A.03.040 Determination of complete application.

1. Within 28 days after receiving a project permit application, the local permitting agency shall mail or provide in person a written determination to the applicant, stating either:
 1. That the application is complete; or
 2. That the application is incomplete and what is necessary to make the application complete. An incomplete application shall expire after 180 calendar days unless the requested supplemental information is submitted in complete form.
2. To the extent known by the permitting agency, the permitting agency shall identify other agencies of local, state or federal governments that may have jurisdiction over some aspect of the application.
3. A project permit application is complete for the purposes of this title when it meets the procedural submission requirements of Kittitas County and is sufficient for continued processing even though additional information may be required or project modifications may be undertaken subsequently. The determination of completeness shall not preclude Kittitas County from requesting additional information or studies either at the time of the notice of completeness or subsequently if new information is required or substantial changes in the proposed action occur.
4. Within 14 days after an applicant has submitted to the permitting agency additional information identified by the permitting agency as being necessary for a complete application, the permitting agency shall notify the applicant whether the application is complete or what additional information is necessary. In determining the number of days that have elapsed after Kittitas County has notified the applicant that the application is complete, the following periods shall be excluded:
 1.
 1. Any period during which the applicant has been requested by Kittitas County to correct plans, perform required studies, or provide additional required information. The period shall be calculated from the date Kittitas County notifies the applicant of the need for the additional information until the earlier of the date Kittitas County determined whether the additional information satisfies the request for information or 14 days after the date the information has been provided to Kittitas County.
 2. If Kittitas County determines that the additional information submitted by the applicant is insufficient, it shall notify the applicant of the continued deficiencies and the procedures under subsection (D)(1)(a) of this section shall apply as if a new request for studies has been made.
 2. Any period during which an environmental impact statement is being prepared following a determination of significance pursuant to Chapter 43.21C RCW, if Kittitas County and the applicant in writing agree to a time period for completion of an environmental impact statement.
 3. Any period of administrative appeals of project permits, if an open record hearing or a closed record appeal, or both, are allowed. The time period to consider and decide such appeals shall not exceed:

1. Ninety days for an open record appeal hearing;
2. Sixty days for a closed record appeal; and
3. The parties to an appeal may agree to extend these time periods.
4. Any extension of time mutually agreed upon by the applicant and Kittitas County.
5. These time limits do not apply to a project permit application, if the project:
 1. Requires an amendment to the comprehensive plan or a development regulation;
 2. Requires approval of a new fully contained community as provided in RCW 36.70A.350, a master planned resort as provided in RCW 36.70A.360, or the siting of an essential public facility as provided in RCW 36.70A.200;
 3. Is substantially revised by the applicant, in which case the time period shall start from the date at which the revised project application is determined to be complete.
6. If Kittitas County is unable to issue its final decision within the time limits provided, it shall provide written notice of this fact to the applicant. The notice shall include a statement of reasons why the time limits have not been met and an estimated date of issuance of the notice of final decision.
7. Applications shall be void if they remain incomplete for more than 180 days.
8. This section shall apply to project permit applications filed on or after the date of adoption of this title. (Ord. 2000-07; Ord. 9810, 1998)

15A.03.045 Permit processing time.

1. Once an application has been deemed complete, the Director may request the applicant to submit additional corrections, studies or other information on the proposed project. The Director shall set a reasonable deadline for the submittal of corrections, studies or other information when requested, and shall provide written notification of such requests to the applicant.
2. Failure by the applicant to meet such deadline shall be cause for the application to be void. However, an extension of such deadline may be requested by an applicant if the request is made prior to the expiration of the deadline. Extension requests shall be submitted in writing, include a justification of why an extension is warranted, and include an extension fee, to be determined through resolution.
3. When considering a request for a deadline extension, the Director shall give consideration to the code provisions to which the project is vested, if any. In order to assure equity in permit processing between past, current, and future applicants, deadline extensions shall be limited to one extension after code provisions affecting the project have changed. Once code provisions have changed as to make the vested code substantially different than current code, a requested deadline extension of up to six months may be granted, but it shall be the final extension granted. The Director shall determine whether code changes have created substantially different regulations.
4. The Director shall provide a written, mailed response to the applicant with its decision on each extension request. (Ord. 2013-001, 2013; Ord. 2010-014, 2010)

EXHIBIT 6

City of Cle Elum
119 West First Street
Cle Elum, WA 98922



Telephone: (509) 674-2262
Fax: (509) 674-4097
www.cityofcleelum.com

January 13, 2012

Kittitas County Department of Public Works
Attention: Christina Wollman
411 N. Ruby Street, Suite 1
Ellensburg, WA 98926

Re: Big Buck Ridge (P-07-40)

Dear Ms. Wollman:

Thank you for the opportunity for the City of Cle Elum to provide comments on the above referenced cluster subdivision. As we understand the project, access to the property is via Montgomery Avenue, an existing city street. This area was fully evaluated as part of the EIS prepared for City Heights and the City will not require any additional studies or improvements specific to the proposed development of Big Buck Ridge. However we believe the proportionate share of Road Impacts Mitigation to be \$475 per lot, payable to the City of Cle Elum at time of Short Plat Approval. This mitigation figure is derived from total mitigation (proportional impact based on traffic study and concurrency analysis) prepared for the CESS Environmental Impact Statement.

Please do not hesitate to contact me if you should require any additional information.

Sincerely,

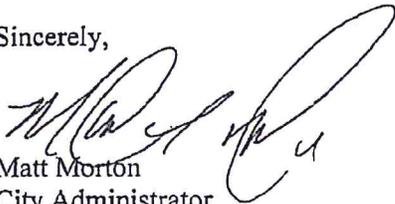
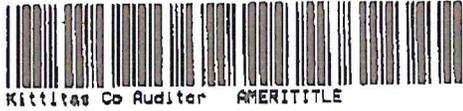

Matt Morton
City Administrator

EXHIBIT 7



200204050022
 Page: 1 of 2
 04/05/2002 03:21P
 WDED 10.00

When Recorded Return to:
 Cle Elum's Sapphire Skies, LLC
 315 - 39th Ave. SW #8
 Puyallup, WA 98373

RE EXCISE TAX PAID
 Amount \$ 2585-70
 Date 04-05-02
 Affidavit No. 19650
 KITTITAS COUNTY TREASURER
 By K. Hill

AMT 89786
 10-

Grantor: Cle Elum's Sapphire Skies, LLC
 Grantee: Cory W. Andrus and Rebecca L. Andrus, husband and wife

Legal Description: Part of the Northeast quarter of the Northeast quarter ^{and 1/4} of the Southeast quarter of the Northeast quarter of Section 26, Township 20 North, Range 15 East, W.M., Kittitas County, Washington, more particularly described as follows:

Commencing at the Northeast corner of said Section 26; thence North 88° 38' 56" West along the North line of said Northeast quarter of the Northeast quarter a distance of 562.75 feet to the true point of beginning; thence continuing North 88° 38' 56" West along said North line a distance of 766.78 feet; thence South 00° 25' 27" West along the West line of said Northeast quarter of the Northeast quarter a distance of 1,310.23 feet to the Southwest corner of said Northeast quarter of the Northeast quarter; thence continuing South 00° 25' 27" West along the West line of said Southeast quarter of the Northeast quarter a distance of 14.40 feet; thence South 73° 18' 17" a distance of 788.37 feet; thence North 00° 47' 37" East parallel to the East line of said Section 26, a distance of 1,533.14 feet to the North line of said Northeast quarter of the Northeast quarter and the true point of beginning.

Assessor's Tax Parcel ID#: 20-15-26010-0001

WARRANTY DEED

KNOW ALL PERSONS BY THESE PRESENTS: That Cle Elum's Sapphire Skies, LLC, a Washington limited liability company, whose address is 315 - 39th Avenue SW #8, Puyallup, WA 98373, GRANTOR, in consideration of the sum of Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration, the receipt of which is hereby admitted, does hereby grant, bargain, sell, convey and confirm unto Cory W. and Rebecca L. Andrus, husband and wife, GRANTEE, and to their successors and assigns, FOREVER, the real property situated in the County of Kittitas, State of Washington, described above in the "Legal Description" (the Property).

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TOGETHER with all and singular the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

The said GRANTOR hereby covenants that it will forever WARRANT and DEFEND all right, title, and interest in and to the Property, and the quiet and peaceable possession thereof, unto the said GRANTEE, its successors and assigns, against the acts and deeds of said GRANTOR, and all and every person and persons whomsoever lawfully claiming or to claim the same.

IN WITNESS WHEREOF, said GRANTOR has caused its name to the subscribed by its property officers, thereunto duly authorized on this 2 day of April, 2002.

Cle Elum's Sapphire Skies, LLC
By: The Herbrand Company, Managing Member

James E. Wood
by: James E. Wood, Vice President, The Herbrand Co.

STATE OF WASHINGTON)
COUNTY OF PIERCE)ss.

I certify that I know or have satisfactory evidence that James E. Wood signed this instrument, on oath stated that he is authorized to execute the instrument and acknowledged he is the Vice President of The Herbrand Co. who is Managing Member of Cle Elum's Sapphire Skies, L. L. C., to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

Dated: April 2, 2002

Melinda Lord
Notary public in and for the State of Washington,
residing at Graham
My commission expires on 9-1-2005

NOTARY PUBLIC
STATE OF WASHINGTON
MELINDA LORD
My Appointment Expires Sept. 1, 2005

EXHIBIT 8

RETURN TO:
Cle Elum's Sapphire Skies, LLC
315 - 39th Ave. SW #8
Puyallup, WA 98373



DOCUMENT TITLE(S): *Amended Easement*

GRANTOR(S):

CLE ELUM'S SAPPHIRE SKIES, L.L.C.

GRANTEE(S):

CORY W. ANDRUS AND REBECCA L. ANDRUS, HUSBAND AND WIFE

REFERENCE NUMBER(S) OF DOCUMENTS AMENDED:

RECORDED TO AMEND EASEMENT RECORDED APRIL 5, 2002 UNDER AUDITOR'S FILE NO.
200204060025

ABBREVIATED LEGAL DESCRIPTION:

SECTION 23, TOWNSHIP 20N, RANGE 15E, W.M., PTN SOUTH HALF (60' EASEMENT)
SECTION 26, TOWNSHIP 20N, RANGE 15E, W.M., PTN NORTH HALF (60' EASEMENT)

ASSESSOR'S PROPERTY TAX PARCEL NUMBER:

NOTE: The auditor/recorder will rely on the information on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

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When recorded return to:

Cle Elum's Sapphire Skies, LLC
315 - 39th Avenue SW #8
Puyallup, WA 98373



REVIEWED BY
KITTITAS COUNTY TREASURER
DEPUTY K. Hill
DATE 04-17-03

EASEMENT FOR INGRESS, EGRESS AND UTILITIES

This Easement Agreement ("Agreement") is dated the 1 day of April, 2003, between Cle Elum's Sapphire Skies, L.L.C. hereinafter called "Grantor," and Cory W. Andrus and Rebecca L. Andrus husband and wife herein after called "Grantee."

Whereas, Grantor has sold by Warranty Deed certain real property and equitable rights and appurtenances associated therewith located in Kittitas County, Washington to Grantee.

Whereas the Grantor wishes to grant easement rights to the Grantee as follows:

A Sixty Foot (60') Easement for ingress, egress and utilities: As depicted on the attached "Exhibit C".

The Grantor's herein reserve unto themselves their devisees, heirs, successor and assigns a reciprocal Sixty Foot (60') Easement (also as described in "Exhibit C"), with such additional width that may be necessary for needed cuts and fills, for ingress, egress, utilities road construction and repair.

GRANTOR: Cle Elum's Sapphire Skies LLC
By: The Herbrand Company, Managing Member

James E. Wood
By James E. Wood, Vice-President, The Herbrand Co.

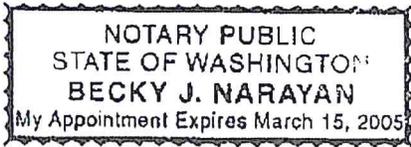
March 26, 2003
Date

STATE OF WASHINGTON)
COUNTY OF PIERCE)ss.

I certify that I know or have satisfactory evidence that James E. Wood signed this instrument, on oath stated that he is authorized to execute the instrument and acknowledged it as the Vice President of The Herbrand Co. who is managing member of Cle Elum's Sapphire Skies, LLC., to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

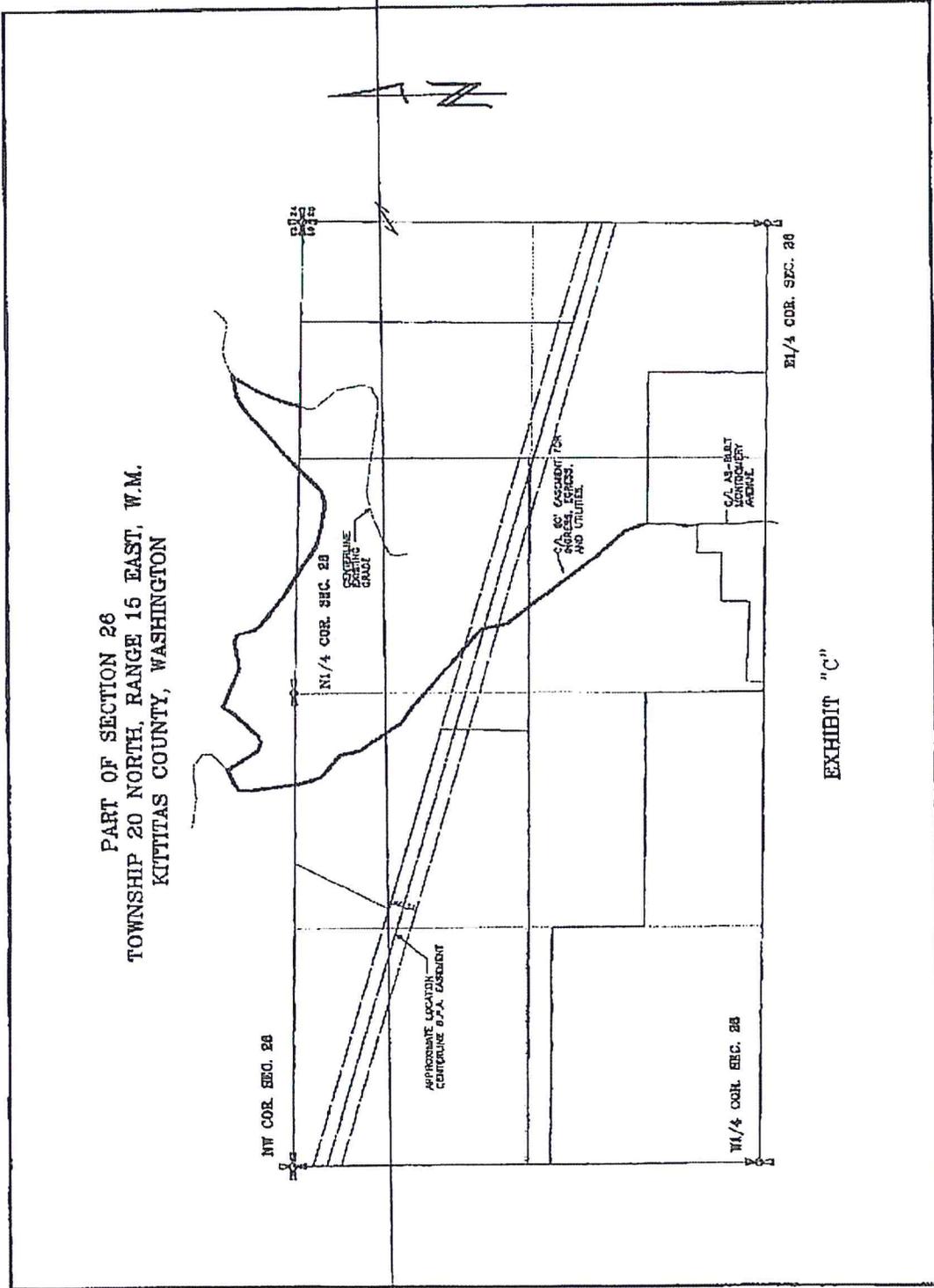
Dated: 3-26-03

Becky J. Narayan
Notary public and for the State of Washington,
residing at Puyallup
My commission expires on 3-15-05



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PART OF SECTION 28
 TOWNSHIP 20 NORTH, RANGE 16 EAST, W.M.
 KITTITAS COUNTY, WASHINGTON

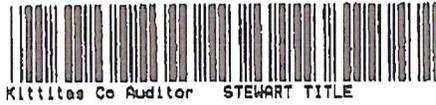


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EXHIBIT 13

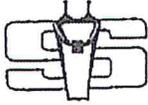
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EXHIBIT 9



200308260035
 Page: 1 of 10
 08/26/2003 03:59P
 AGR 28.00

When recorded return to:



Stewart Title of Kittitas County, L.L.C. REVIEWED BY
 208 West 9th Avenue, Suite 6
 Ellensburg, WA 98926

KITTITAS COUNTY TREASURER
 DEPUTY Michael M
 DATE 8-26-03

Document Title(s) (or transactions contained therein)
Road Maintenance Agreement

Reference Number(s) of Documents assigned or released: 200307290059

Grantor(s) (Last name first, then first name and initials)

1. Cle Elums Sapphire Skies LLC
- 2.
- 3.
- 4.
5. Additional names on page _____ of document.

Grantee(s) (Last name first, then first name and initials)

1. DJ Cattle and Land, LP
2. Cle Elum Homestead LLC
3. David G. Berry
- 4.
5. Additional names on page _____ of document.

Abbreviated legal description

Additional legal description on page _____ of document.

Assessor's Property Tax Parcel/Account Number

The Auditor will rely on the information provided on the form. The staff will not read the document to verify accuracy or completeness of the indexing information provided herein.

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200307290039
 Page: 1 of 7
 07/20/2003 04:08P
 AGR 29.00

Return Original To:
 Cle Elum's Sapphire Skies
 35 - 39th Ave SW, Suite 8
 Puyallup, WA 98373

REVIEWED BY
 KITTITAS COUNTY TREASURER
 DEPUTY K. Hiel
 DATE 07-29-03

ROAD MAINTENANCE AGREEMENT

* **RERECORDING TO ADD EXHIBITS A + B**

THIS ROAD MAINTENANCE AGREEMENT ("Agreement") is made as of this 16 day of June, 2003, by and among Cle Elum's Sapphire Skies, LLC, a Washington limited liability company ("CESS"), and DJ Cattle and Land, L.P., a Washington limited partnership, Cle Elum Homestead, LLC, a Washington limited liability company and David G. Berry (collectively "Berry").

RECITALS

- A. The parties desire to set forth a method for the maintenance of certain roads used by the owners of certain property located in Kittitas County, Washington, which are described on attached Exhibit "A" and Exhibit "B" (the "Properties").
- B. The Properties are also depicted on the map attached as Exhibit "A" and Exhibit "B" are separately referred to as the "CESS Lots," the "Berry Lots". Each lot comprising the Properties and each additional lot created from a segregation, short plat or subdivision of the existing lots (the "Lots" or separately a "Lot") will be assigned certain maintenance shares for certain roads pursuant to this Agreement. Lots created from CESS Lots shall also be CESS Lots; Lots created from Berry Lots shall also be Berry Lots for purposes of this Agreement and the allocation of costs.
- C. The roads are depicted on the map attached hereto as Exhibit "A" and Exhibit "B" and shall be referred to, respectively, as the "Outlet Road," the "South Road" and the "Upper Roads," and collectively as the "Roads."
- D. The parties are willing to maintain the Outlet Road, the South Road and the Upper Roads on the terms and conditions set forth in this Agreement.

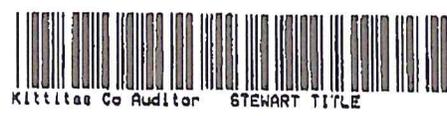
AGREEMENT

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants and commitments set forth herein, the parties agree as follows:

- 1. Easements. This Agreement shall not govern the easements held by the parties and their successors over the Roads; provided, however, that no party or successor shall be obligated for maintenance over a road on which such party or successor has no easement rights. Furthermore, this Agreement shall not govern or restrict the ability of any Lot owner in granting road easements over such owner's property subject to this Agreement.

1 - ROAD MAINTENANCE AGREEMENT

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200308260035
 Page: 2 of 10
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2. Maintenance. The cost of road maintenance, snowplowing and resurfacing shall be allocated as follows:

- Outlet Road One equal maintenance share for each CESS Lot, each Berry Lot.
- South Road One equal maintenance share for each CESS Lot and each Berry Lot, *provided*, however, that the owner of any CESS Lot which relinquishes its easement over the South Road and acquires other access to its Lot shall no longer be obligated for maintenance under this Agreement
- Upper Roads One equal maintenance share for each Berry Lot.

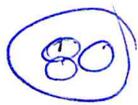
The parties hereto shall meet and establish necessary maintenance provisions. Such provisions shall include, but shall not be limited to:

- (a) The appointment of a maintainer, which may be one of the parties hereto or any third party, who will perform or cause to be performed, at a reasonable and agreed upon rate, the maintenance and resurfacing of the road or the portion thereof being used, and snowplowing; and
- (b) The Roads shall be snowplowed, at a minimum, 16 feet wide. Upon 6 inches of snowfall, the Roads shall be snowplowed. The Roads shall be snowplowed a maximum of one time per day. It is the intent of these standards to maintain the Roads passable by four-wheel drive vehicles. It shall be the responsibility of Lot owners to plow their own driveways; and
- (c) A method of payment by which each party using said road or a portion thereof shall pay its share of the cost incurred by said maintainer in maintaining or resurfacing said road or portion thereof.

For the purposes of this easement, maintenance is defined as the work normally necessary to preserve and keep the roadway, road structure and road facilities as nearly as possible in their present condition or as hereafter improved.

3. Road Damage. Each party using any portion of said road shall repair or cause to be repaired at its sole cost and expense that damage to said road occasioned by it that is in excess of that which it would cause through normal and prudent usage of said road. Should inordinate damage to said road occur which is not caused by an authorized user of said road, the parties hereto shall meet to agree on the cost of replacement, and the shares of replacement cost to be borne by each user of said road.

4. Construction and Improvement. Unless a majority of the Lot owners responsible for maintaining a particular Road (under Section 2 above) approve in advance any road improvements (other than the routine maintenance provided for in Section 2 above), the costs of said improvements shall be solely for the account of the improver. When a majority of responsible Lot owners approve said improvements, however, the cost of said improvements shall be shared by all responsible Lot owners in accordance with Section 2, above, and said costs



shall constitute a lien on the property of each responsible Lot owner until paid. All work performed or caused to be performed to install or maintain utilities shall be completed in a careful and workmanlike manner to CESS'S reasonable satisfaction, free and clear of all claims or liens and in accordance with applicable law. All areas disturbed by the improver in installing or maintaining utilities shall be promptly restored to their prior condition.

5. Default; Remedies. In the event of a breach of this Agreement by any party, the damages suffered by the other parties are difficult if not impossible to ascertain, and therefore the non-breaching parties shall have the right to obtain specific performance of the obligations of the breaching party in addition to damages for all loss and expense (including, without limitation, attorneys' fees and costs) arising from such breach.

6. Notices. All notices or other communications shall be in writing and shall be sent by personal delivery, telephone facsimile transmission, first-class mail, postage prepaid, or express courier or delivery service, addressed as follows:

If to CESS, to:

James E. Wood
Cle Elum's Sapphire Skies, LLC
315 39th Avenue SW #8
Puyallup, WA 98373

with a copy to:

Michael J. Murphy
Groff Murphy Trachtenberg
& Everard PLLC
300 E. Pine
Seattle, WA 98122

If to Berry, to:

David G. Berry
P.O. Box 654
Port Orchard, WA 98366

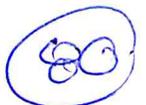
with a copy to:

7. Successors and Assigns. This Agreement shall be a covenant running with the land and shall benefit and burden the Property. This Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns. CESS, at its option, may record a copy of this Agreement, or a memorandum of same in the real property records of Kittitas County, Washington.

8. Severability. If any provision of this Agreement shall be determined to be unenforceable, that shall not affect any other provision of this Agreement.

9. Amendments; Waivers. This Agreement may be amended only by a written instrument signed by all parties. No breach of any agreement, warranty or representation shall be deemed waived unless expressly waived in writing and signed by the party who might assert such breach. No failure or delay by either party in exercising any right under this Agreement shall operate as a waiver of such right, nor shall any single or partial exercise of any right preclude any other or further exercise of such right or the exercise of any other right. The remedies provided in this Agreement are cumulative and not exclusive of remedies provided by law.

3 - ROAD MAINTENANCE AGREEMENT



10. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

11. Entire Agreement. This Agreement constitutes the entire agreement and supersedes all prior agreements and understandings, written or oral, between the parties, with respect to its subject matter.

12. Counterparts. This Agreement may be signed in several counterparts, each of which shall be an original, but all of which together shall constitute the same instrument.

13. Legal Fees. In the event of legal action or proceeding to enforce any of the provisions of this Agreement, costs and reasonable attorneys' fees (including reasonable charges allocated for internal counsel) shall be awarded to the prevailing party.

14. Termination. This Agreement shall terminate in part or in whole, as the case may be, with respect to any portion of the Roads, which become public roads.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the year and date first written above.

Cle Elum's Sapphire Skies, LLC

By: The Herbrand Company, Managing Member

By: James E. Wood
James E. Wood, Vice President

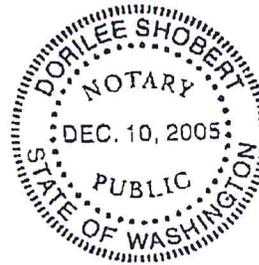
By: David G. Berry
David G. Berry

By: DJ Cattle and Land, L.P.
By: David G. Berry
David G. Berry

Title: MANAGER
CLE ELUM

By: Homestead, LLC
By: David G. Berry
David G. Berry

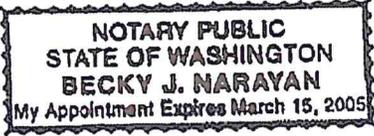
Title: MANAGER



STATE OF WASHINGTON)
) ss.
COUNTY OF Pierce)

On this day personally appeared before me the undersigned, a notary public in and for the State of Washington, duly commissioned and sworn, James E. Wood to me known or proved to me on the basis of satisfactory evidence to be the Vice President of THE HERBRAND COMPANY, a Washington corporation, to me known or proved to me on the basis of satisfactory evidence to be the Managing Member of CLE ELUM'S SAPPHIRE SKIES, LLC, the Washington limited liability company that executed the foregoing instrument, and acknowledged the same instrument to be the free and voluntary act and deed of said company for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

Given under my hand and official seal this 21 day of July 2003.



Becky J. Narayan
Print Name: Becky J. Narayan
NOTARY PUBLIC in and for the State of Washington, residing at Rivallup
My Appointment Expires: 3-15-05

STATE OF WASHINGTON)
) ss.
COUNTY OF KITAP)

On this day personally appeared before me the undersigned, a notary public in and for the State of Washington, duly commissioned and sworn, DAVID G BERRY to me known or proved to me on the basis of satisfactory evidence to be the MANAGER of OJ CATTLE & LAND, L.P., a Washington LIMITED PARTNSHP that executed the foregoing instrument, and acknowledged the same instrument to be the free and voluntary act and deed of said L.P. for the uses and purposes therein mentioned, and on oath stated that HE is authorized to execute the said instrument.

5 - ROAD MAINTENANCE AGREEMENT

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Dorilee Shobert
Print Name: DORILEE SHOBERT
NOTARY PUBLIC in and for the State of
Washington, residing at PORT CRCHARD
My Appointment Expires: 12-10-2005

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Page: 7 of 7
07/23/2003 04:00P
AGR 28.00
Kittitas Co Auditor WAYNE NELSEN



KITTITAS COUNTY, State of Washington
I, David B. Bowen, Kittitas County Auditor, do hereby certify
that the enclosed instrument is a true and correct copy of
the imaged original record preserved in my office. Witness
my hand and official seal.
Date: 8-26-03 By Deputy: S Newkirk

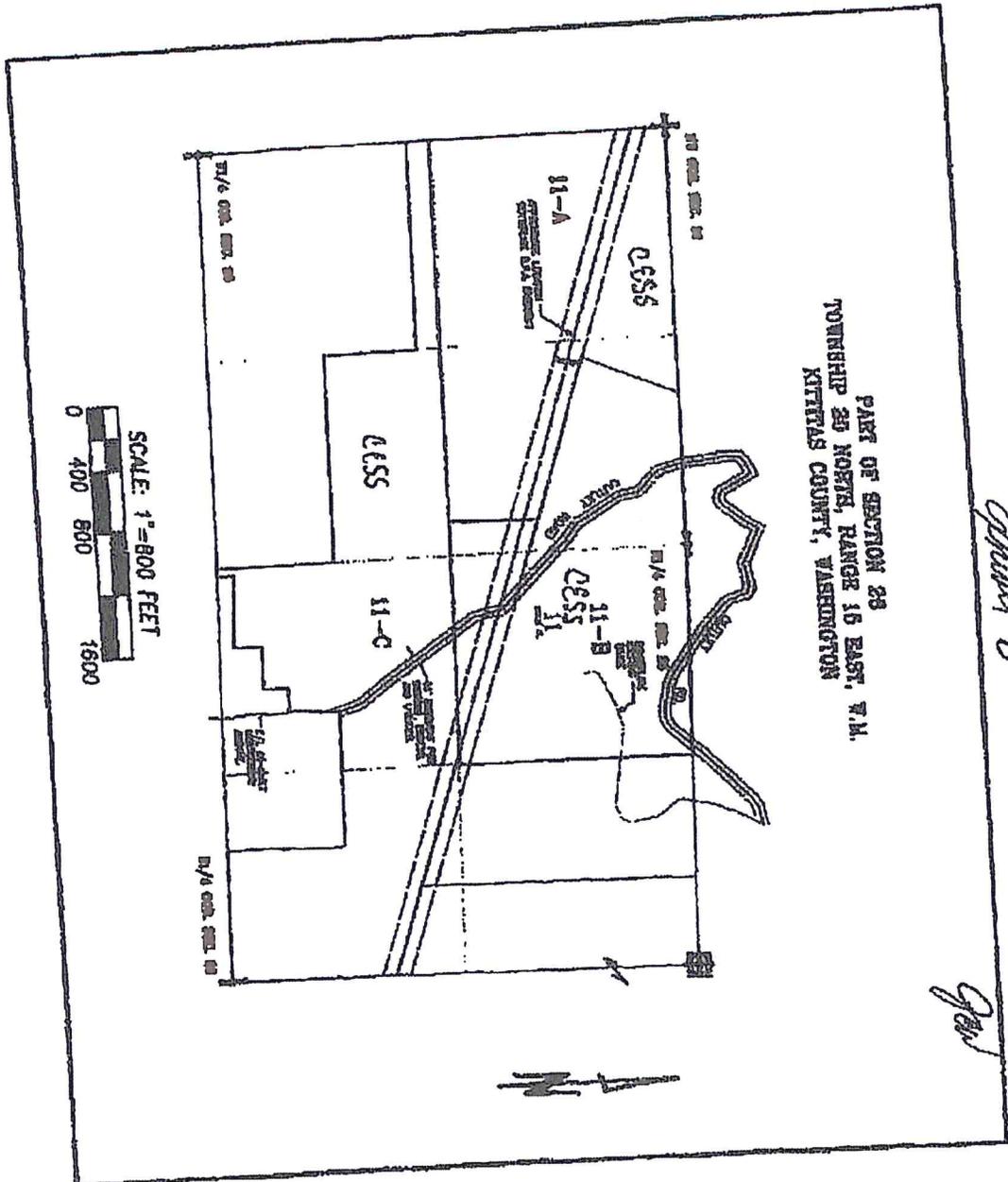
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Kittitas Co Auditor STEWART TITLE

7 - ROAD MAINTENANCE AGREEMENT

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 Page: 10 of 10
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 Kittitas Co Auditor STEWART TITLE



"Exhibit B"

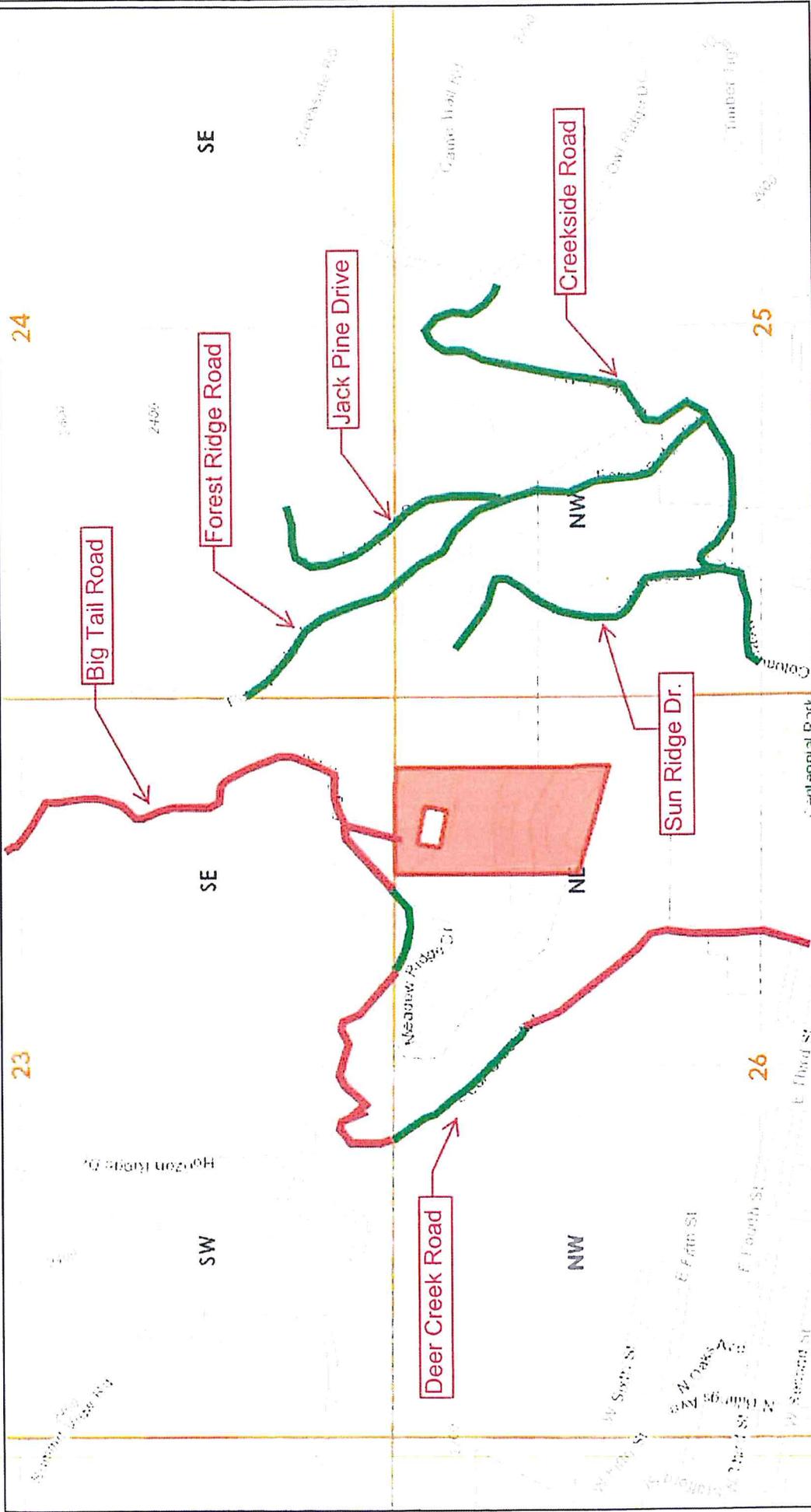
gaw

08

EXHIBIT 10

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Kititas County COMPAS Map



1 inch = 1,505 feet
Relative Scale 1:18,056

Disclaimer:
Kititas County makes every effort to produce and publish the most current and accurate information possible. No warranties, expressed or implied, are provided for the data, its use, or its interpretation. Kititas County does not guarantee the accuracy of the material contained herein and is not responsible for any use, misuse or representations by others regarding this information or its derivatives.

Date: 4/20/2015

- = Road Maintenance
- = No Road Maintenance



EXHIBIT 11

TREASURER'S USE ONLY	RECORDER'S USE ONLY
Real Estate Excise Tax Exempt Kittitas County Treasurer By <u>S. Johnson</u> <u>0228-02</u>	 200282280020 Page: 1 of 18 02/28/2002 01:05P MULTI 35.00 Kittitas Co Auditor CLE ELUM SAPPHIRE BK

Return To: Cle Elum's Sapphire Skies LLC
301 W. First St. #B
Cle Elum, WA 98922

Kittitas County Auditor/Recorder's Indexing Form

Please Print Or Type All Information

- A. Document Titles (or transactions contained therein):
 1. Covenants, Conditions & restrictions
 2. Easements
- B. Grantor (last name, first name, middle initial):
 1. Cle Elum's Sapphire Skies
 2. Brookside Trails
 Additional grantors on page ___ of document.
- C. Grantee (last name, first name, middle initial):
 1. public
 2. _____
 Additional grantees on page ___ of document.
- D. Legal description (lot, block, plat or section, township, range):
S 1/2, S 1/2, Sec 24, Twn. 20, Range 15E
 Additional legal description on page ___ of document.
N 1/2, Sect 25, Twn. 20, N, Range 15E
- E. Assessor's property tax parcel/account number(s):

- F. Reference numbers of documents assigned or released:
N/A.
 Additional references on page ___ of document.

The auditor or recording officer will rely on the information provided on this form. The staff will not read the document to verify the accuracy of or the completeness of the indexing information provided herein.

**BROOKSIDE TRAILS
COVENANTS, CONDITIONS AND RESTRICTIONS**

This Declaration is made and entered by Cle Elum's Sapphire Skies, LLC, a Washington Limited Liability Company, referred to below as Declarant. Declarant does hereby declare and set forth covenants, conditions and restrictions (CC&R's) to run with all of the lands described below as provided by law, which covenants, conditions, restrictions, and reservations of easements shall be binding upon all parties and persons claiming an interest in any of the property described hereafter, and which covenants, conditions, restrictions, and reservations of easements shall be for the benefit of and limitations upon all future owners, and being for the purpose of providing reasonably necessary services and keeping said real estate desirable, uniform and suitable in architectural design and use as specified herein.

The following disclosures and representations are made:

- A. The land affected by this Declaration, as of the date of execution of this Declaration, is legally described on Exhibit "A" attached hereto.
- B. The property and roads are as depicted on the map attached hereto as Exhibit "B". The map is intended to indicate the current intended location and roads for the Property.
- C. Declarant intends by this document to impose upon the entire Property described herein, a mutually beneficial and enforceable common plan of reciprocal covenants, conditions and restrictions.

Therefore, Declarant hereby declares that the Property shall be held, conveyed, sold, and improved, subject to the following declarations, limitations, covenants, conditions and restrictions, all of which are for the purpose of enhancing and protecting the value and attractiveness of the Property, and every part thereof, in accordance with the plan for improvement, sale, and ownership of the Property as a residential development. All of the limitations, covenants, conditions and restrictions shall constitute covenants and encumbrances which shall run with the land and shall be binding upon Declarant and its successors-in-interest and assigns for its term and all parties having or acquiring any right, title, or interest in or to any part of the Property.

ARTICLE I

ASSOCIATION, ADMINISTRATION, MEMBERSHIP
AND VOTING RIGHTS

- 1.1 Organization of Association: The Association is or shall be incorporated as BROOKSIDE TRAILS HOMEOWNERS ASSOCIATION, pursuant to the Washington Nonprofit Corporation Act.
- 1.2 Duties and Powers: The duties and powers of the Association are those set forth in this Declaration, The Articles and bylaws, together with its general and implied powers of a nonprofit corporation, generally to do any and all things that a corporation organized under the laws of the State of Washington may lawfully do which are necessary or proper in operating for the peace, health, comfort, safety and general welfare of its Members, subject only to the limitations upon the exercise of such powers as are expressly set forth in this Declaration, the Articles and bylaws. Without limiting the generality of the foregoing, the primary functions of the Association shall be the maintenance, operation and insurance of the entry statement, private roads, drainage system, common drainage and retention system and any other common amenities or elements which may be constructed and/or transferred to the Association; and collection of Assessments and payment of Common Expenses.





1.3 Membership: The Owner of a Lot shall automatically, upon becoming the Owner of that Lot, be a Member of the Association, and shall remain a Member thereof until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease. Membership shall be in accordance with the Articles and the bylaws of the Association.

1.4 Transferred Membership: Membership in the Association shall not be transferred, pledged, or alienated in any way, except upon the transfer of ownership of the Lot to which it is appurtenant; and then Membership shall immediately transfer to the new Owner. Any attempt to make a prohibited transfer is void. When a Lot is transferred to a new Owner, the Association shall have the right to record the transfer of Membership upon its books, and thereupon the old membership outstanding in the name of the former Owner shall be null and void.

1.5 Classes of Membership. The association shall have two classes of voting membership:

Class A. Class A members shall be all Owners of Lots, with the exception of the Declarant and any owners who are non- occupant Builders until the termination of the Class B membership. Each Class A member should be entitled to one (1) vote for each Lot owned.

Class B. The Class B members shall be the Declarant and any non-occupant Builder. The Declarant and non-occupant builders shall be entitled to three (3) votes for each lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (i) When one-hundred percent (100%) of the Lots have been conveyed to Purchasers; or
- (ii) Five (5) years after the conveyance of the first Lot to a Purchaser; or
- (iii) When the Declarant notifies the Association in writing that it relinquishes its Class B membership.

1.6 Membership Meetings: Regular and special meeting of Members of the Association shall be held with the frequency, at the time and place, and in accordance with the provisions as set forth in the Bylaws.

1.7 Board of Trustees: The affairs of the Association shall be managed by a Board of Trustees, which shall be established and which shall conduct regular and special meetings according to the provisions as set forth in the Articles and Bylaws.

1.8 Use of Agent: The Board of Trustees, on behalf of the Association, may contract with a professional management agent for the performance of maintenance and repair and for conducting other activities on behalf of the Association, as may be determined by the Board.

ARTICLE 2

RIGHTS IN COMMON AREA

2.1 Common Area: The Common Area shall include all portions of the Property intended for the common use and enjoyment of the Owners, including the entry statement, any areas which may be landscaped by the Association, common drainage and retention system for the Property, and any other amenities which may be accepted by the Association as an item to be maintained by the Association, all of which shall be dedicated to the common use and enjoyment of all Owners. The Common Area and roadways shall be operated, maintained, and insured by the Association for the use and benefit of Owners of Lots in the Project, subject to reasonable rules and regulations enacted according to the bylaws. Each Lot Owner, through membership in the Association, shall have a nonexclusive right to use the Common Area and roadways in accordance with the purposes for which it is intended without hindering the exercise of or encroaching upon the lawful rights of any other Lot Owners. Declarant reserves for itself and its successors-in-interest and assigns an easement (and the right to grant further easements) over and onto all portions of the Common Area and roadways for ingress and egress to and from, and for drainage and utilization of the infiltration system(s) for the benefit of, adjacent property in connection with the development, use, sale, and occupancy thereof.

Declarant reserves the right to make such grant or grants of property to said Homeowners Association, including any common areas identified on the Plat as is necessary to complete development of said property. Roadways are hereby established as easements pursuant to Article 7, and nothing herein shall prevent the Owners from making future grant of these roadways to the Association.

2.2 Partition of Common Area Prohibited: Regardless of the possible dissolution of the Association, no Owner shall bring any action for partition or division of any part of the Common Area, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation, management, use, and enjoyment of the Common Area. Should there occur dissolution of the Association, such common areas would devise to an equal ownership interest among the Lots represented.

No portion of any common area may be further subdivided, or put into other use than that of an open space common area or common roadway.

2.3 Damage by Owner: Each Owner shall be liable to the Association for any damage to a roadway or Common Area not fully reimbursed to the Association by insurance, if the damage is sustained because of the negligence or willful misconduct of the Owner, the Owner's guests, tenants, or invitees, or any other persons deriving their right of use and enjoyment of the Common Area from the Owner, or his or their respective family and guests, both minor and adult. However, the Association acting through the Board, reserves the right to determine whether any claim shall be made upon the insurance maintained by the Association, and the Association further reserves the right to levy a Special Assessment equal to the increase, if any, in insurance premiums directly attributable to the damage caused by an Owner or person for whom the Owner may be liable as described above. The cost of correcting the damage to the extent not reimbursed to the Association by insurance shall be a Special Assessment against the Member's Lot and may be enforced as provided hereby for the enforcement of any other Assessment.

ARTICLE 3

ARCHITECTURAL CONTROL

BROOKSIDE TRAILS is a rural residential community. The goals and primary objective of the Architectural Control Committee (ACC) are to maintain a quality community appearance, insure compatible development of land and structures, and to protect and enhance real estate values.

3.1 Architectural Committee: The ACC shall consist of three (3) members. The initial members shall be Sean Northrop, James Wood, and Paul Willms. Declarant shall retain architectural control until the sooner of the date when no Lots are owned by the Declarant or the date when the Declarant gives written notice to the Association that the Declarant has elected to pass control of the ACC to the Board of Trustees of the Association who shall then appoint the members.

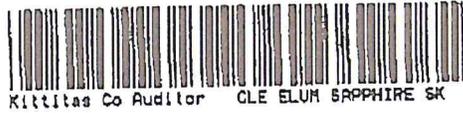
3.2 Prohibition of Alteration and Improvement: Subject to the exemption of Declarant hereunder, no fences, structure, improvement, or alteration of any kind which will be visible from other Dwellings, private roadways serving the Property or any public right of way shall be commenced, erected, painted or maintained upon the Property, until the same has been approved in writing by the ACC.

3.3 Plans and Approval: The ACC, shall base decisions to approve or deny proposals on the quality of the proposed workmanship and the materials to be used, the harmony of the proposal to the external design and existing structures, and as to location with respect to topography and finished grade elevation. The ACC shall also have the authority to develop and make available to all Owners within the Property, a set of rules and guidelines to assist Owners in preparing plans under this section. The rules and guidelines shall not be binding upon the Declarants or ACC, but shall set forth general criteria to be considered by the ACC in evaluating a particular application for architectural approval.

The ACC shall consider and act upon any and all plans and specifications submitted for its approval under this Article and perform such other duties as from time to time shall be assigned to it by the Board, including the inspection of construction in progress to assure its conformance with plans approved by the ACC. The ACC may also take into account proposed exterior colors and materials in review of an application. Any application submitted to the ACC pursuant to this Article shall be deemed approved unless written disapproval or a request for additional information or materials by the ACC shall have been transmitted to the applicant within thirty (30) days after the date of receipt by the ACC of all required materials.

3.4 Non-Liability of ACC Members: Neither the ACC or Declarant, nor any member thereof shall be liable to the Association, or to any Owner for any loss damage or injury arising out of or in any way connected with the performance of the ACC's duties hereunder unless due to the willful misconduct or bad faith of the ACC or member. The ACC shall review and approve or disapprove all plans submitted to it for any proposed structure, improvement or alteration, solely on the basis of the criteria established in this Declaration, aesthetic considerations and the overall benefit or detriment which would result to the immediate vicinity and the Property generally. The ACC shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building, zoning or other codes.

3.5 Minimum Standards: The minimum standards stated in Article Four (4) shall be binding upon the ACC unless and until this Declaration may be amended as provided below.



ARTICLE 4

RESIDENCE AND USE RESTRICTIONS

- 4.1 Land Use and Building Type: BROOKSIDE TRAILS is designed and intended to be a territorial view community, and all design and improvement guidelines, and all covenants, conditions, and restrictions contained herein shall be construed to further the intent that views from each parcel remain unobstructed. Only one single family residence and one detached garage no larger than 2,500 square feet shall be constructed on any lot.
- (a) Minimum Dwelling Size: Each dwelling structure shall consist of a minimum of One Thousand Eight Hundred (1,800) square feet, exclusive of basement, garages, patios, breeze-ways and detached storage rooms. For purposes of this provision, a Dwelling with a daylight basement shall include the daylight basement area toward the total square footage. No mobile or manufactured homes shall be allowed.
 - (b) Roofs: All roofs and roof materials shall be fire retardant and as approved by applicable governmental authorities. Subject to governmental approval, the following roof materials are permitted: metal, tile, slate, or fire-retardant, dimensional shake shingles, architectural composition (Elk Prestique Plus 30-year or comparable) shingles, and comparable roofing materials. Untreated cedar shakes or shingles shall not be permitted. Minimum roof pitch shall be 6/12.
 - (c) Construction: All homes constructed on each lot shall be built of new materials, with the exception of "décor" items such as used brick, weathered planking, and similar items. No homes on any Lot shall consist, in whole or part, of a mobile home, nor of "factory built housing" (as that term is defined in RCW 43.22.450 as in effect at the time of execution of this Declaration.)
 - (d) Antennae and Satellite Dishes: No antenna, satellite dish or other device for the transmission or reception of radio, television, satellite signals or other form of signal transmission or reception of any sort shall be erected, used or maintained outdoors and above ground, except "mini-dishes" (maximum 18 inches diameter) shall be permitted. Said antennae or dish shall not be located on the side of the home fronting the community roads.
 - (e) Fencing: All fences and fencing material shall be primarily of wood, or wood grain composite, and shall be wood rail variety. No barbed wire may be used on the property perimeter. Fence height shall be a maximum of 8 feet from ground elevation.
 - (f) Outbuildings: All outbuildings (detached garages, etc.) must complement the dwelling in material, color and design and must be placed in an unobtrusive location within the Building Pad, and must be set back or even with the front of the house. The size of the detached garage shall not exceed 2,500 square feet. Only one single storage shed less than 40 square feet may be constructed on a lot. The ACC, at its discretion, may waive these requirements and the location requirement if an acceptable plan is submitted that is compatible and will enhance the property without overly restricting views from other Lots in the subdivision.
 - (g) Exterior Colors: Exterior colors of all buildings shall be of moderate hues and/or earth tones and shall be approved by the ACC.
- 4.2 Recreational vehicles, boats, trailers, campers, etc. shall not be parked in the public right of way or on community roads for a period of time exceeding 18 hours, nor shall they be parked in the right of way on a daily or regular basis. All residents or guests staying more than 24 hours shall park their vehicles on private property.

- 4.3 Vehicle & Equipment Storage: All inoperable vehicles and equipment must be stored inside of an enclosed building. All stored recreational vehicles shall be placed behind the front elevation of the house, and must be screened from view.
- 4.4 Vacation Provisions. Any lot may be used for vacation purposes and have a motor home or vacation trailer for a period of time not to exceed six weeks. Said recreational vehicles are not to be left on property unless otherwise permitted by these CC&R's.
- 4.5 Business Use Prohibited: No trade, craft, business, or commercial or manufacturing enterprise or activity of any kind, other than a professional business conducted from an office inside the home and which does not generate excessive customer traffic, shall be conducted or carried on upon any Lot within the Property. This Section is specifically intended to prohibit maintenance or operation of a day care, unless required to be permitted by law. In addition, no goods, equipment, vehicles, materials or supplies used in connection with any business or commercial activity shall be permitted, kept, parked, stored, dismantled, or repaired on any Lot or street within the Property, unless stored entirely within a structure permitted by these CC&Rs.
- 4.6 Nuisance Prohibited: No noxious, illegal, or offensive activities shall be carried on in any Dwelling, or in any part of the Property, nor shall anything be done thereon which may be or may become an annoyance or a nuisance to, or which may be in any way interfere with, the quiet enjoyment of each of the Owners of his or her respective Dwelling Lot, or which shall in any way increase the rate of insurance for the Property, or cause any insurance policy to be canceled or to cause a refusal to renew the same, or which will impair the structural integrity of any building. No Lot within the Property shall be used as a dump for trash or rubbish of any kind, and all garbage or other waste shall be kept in appropriate sanitary containers for proper disposal. No waste, including rocks, dirt, lawn, or shrubbery clippings shall be dumped into the roadways or ditches or onto any vacant Lots within the Property.

In the event correction action to bring a lot into compliance with this paragraph is not completed within 15 days of the mailing of notice by the Board of Directors, the Board of Directors may hire the work done and all charges including all attorney's fees incurred shall become a lien against the lot and foreclosed as are mortgages.

- 4.7 Temporary Structures: No structure of a temporary character, basement only, tent, shack, garage, barn, prefabricated structure or other outbuildings, or trailer shall be used as a residence, except on a temporary basis during the course of evident construction of the primary dwelling, but in no case longer than 6 months. No mobile homes are permitted on the property.
- 4.8 Time of Completion: Any Dwelling or structure erected or placed on any Lot in the Property shall be completed as to exterior appearance, including finished painting, within fourteen (14) months from the date of commencement of construction. Provided, the Architectural Control Committee may extend the time requirement for completion on behalf of any Owner upon a showing of good cause, in the sole discretion of the Architectural Control Committee.
- 4.9 Animals: Animals include horses, dogs, cats, caged birds, fish in tanks, and other small household pets which shall be permitted on Lots. Dogs shall not be allowed to run at large or to create a disturbance for other Owners. Leashed dogs are permitted within rights of way or common areas only when accompanied by their owners or their agents. Efforts shall be made by the person accompanying the dog to exercise "scooping" of animal waste. The Board may enact as becomes necessary reasonable rules respecting the use of common areas by Owners walking their pets.

Animals including horses, livestock and poultry can be raised for purpose of private use and enjoyment, provided they are not kept, bred or maintained for any commercial purpose. Pigs shall not be permitted. All animal enclosures must be kept in a neat, clean, and odor free condition at all



times. The Declarant or HOA may at any time require the removal of any pet or animal which it finds disturbing other Owners unreasonably, in the HOA's determination, and may exercise this authority for specific pets or animals even though other pets or animals are permitted to remain.

- 4.10 Signs: Professional appearing signs advertising Lots for sale or rent, including the temporary daytime display of signs advertising open houses, may be displayed on the appropriate Lot without prior approval of the Board or the Architectural Committee, provided that such signs shall be of reasonable and customary size, not to exceed five (5) square feet. Declarant, or its authorized agent may display one construction sign per lot to advertise lots for sale. Such signs shall not exceed 32 square feet.
- 4.11 Garbage and Refuse Material: No property shall be used or maintained as dumping ground for discarded equipment, rubbish, trash, garbage, or similar material. After initial construction of the residence, all garbage and trash shall be kept in covered containers. No cans shall be visible until such day as designated for refuse pick up.
- 4.12 Mail Boxes: Mail boxes shall be at specified group locations as per U.S. Post Office requirements.
- 4.13 No Warranty of Enforceability: While Declarant has no reason to believe that any of the restrictive covenants contained in this Article 8 or elsewhere in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Lot in the Property in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and, by acquiring the Lot agrees to hold Declarant harmless therefrom.

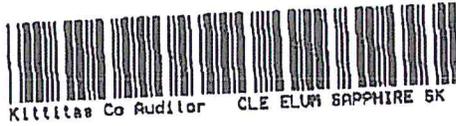
ARTICLE 5

REPAIR AND MAINTENANCE

- 5.1 Owner's Maintenance Responsibilities: Each Owner shall have responsibility for maintaining the exterior of their residence and all other buildings and improvements located upon their Lot according to standards which may be established from time to time by the ACC. Each parcel shall be maintained in a clean, sightly condition at all times and shall be kept free of litter, junk, trash, rubbish, garbage, debris, and excess building materials.
- 5.2 Repair and Maintenance Rights and Duties of Association: Subject to provisions in this Declaration pertaining to eminent domain and destruction of improvements, the Association shall paint, maintain, repair and replace all parts of the Common Area and Open Space. Private Roads, common drainage and retention system, or shall contract for such maintenance, repair and replacement to assure maintenance of such areas in good condition, reasonable wear and tear excepted. However, the Association shall not be responsible for or obligated to perform those items of maintenance, repair or improvement, which are the responsibility of the Owners as provided in Paragraph 4.1 above.

For the purpose of performing any maintenance, repair or replacement as authorized by this Article, or for purposes of making emergency repairs necessary to prevent damage to the Property or to other Dwellings, or for any other purpose reasonably related to the performance by the Board of its responsibilities under this Declaration, the Association (and its agents and employees) shall have an irrevocable easement over and onto all portions of the Common Area, and shall also have the irrevocable right after reasonable notice to the Owner, and at reasonable hours, to enter onto any Lot.





5.3 HOA Utilities: The Declarant shall be responsible for payment of all utilities consumed by the entry monument and entry landscaping, until such time as the sale of the last parcel owned by Declarant, or sooner, at Declarant's discretion, upon written notice to the HOA.

ARTICLE 6

ASSOCIATION MAINTENANCE FUNDS AND ASSESSMENTS

6.1 Creation of the Lien and Personal Obligation of Assessments: The Declarant, for each Lot, not including vacant Lots, owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed or contract therefore, whether or not it shall be so expressed in such deed or contract, is deemed to covenant and agree to pay to the Association the following Assessments, which shall be established and collected as provided herein and in the bylaws of the Association:

- Regular Assessments;
- Extraordinary Assessments; and
- Special Assessments

All Assessments, together with interest, costs, and actual attorneys' fees, shall be a charge and a continuing lien upon the Lot against which each Assessment is made. However, such lien shall be subordinate to the lien of any first mortgage or construction loan. Such liens may be enforced or foreclosed according to law, with attorney's fees and costs to be charged against the party being foreclosed. Each such assessment together with interest, costs and actual attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment fell due. No Owner of a Lot may exempt himself from liability for his or her contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Area or by the abandonment of his or her Lot.

6.2 Purpose of Assessments: The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of all the residents in the entire Property, for the improvement and maintenance of the Common Area, Private Roads, common drainage and retention system, for the maintenance of any agreed upon community landscaping, for the payment of utility bills associated with the common areas and entry statement, and for the common good of the Property. The Regular Assessments shall include an adequate reserve fund for maintenance, repair and replacement of all such items, which must be replaced on a periodic basis.

6.3 Regular Assessments: Until the end of the Association's fiscal year immediately following the closing of the sale of the first Lot in the Property, the annual maximum Regular Assessment per Lot shall be such amount as set forth in the Property budget prepared by the Declarant, payable in monthly installments. Each Lot's share for the first fiscal year shall also be prorated based on the number of months remaining in that fiscal year. Thereafter, the Board shall determine and fix the amount of the maximum annual Regular Assessment against each Lot at least sixty (60) days in advance of the start of each fiscal year; provided, however, that the maximum annual Regular Assessment may not be increased by more than ten percent (10%) above the maximum Regular Assessment for the immediately preceding fiscal year, without the vote or written assent of a two-thirds (2/3) of the total voting power as identified in the Articles and Bylaws. The Regular Assessment for 2002 is hereby set at \$360.00, payable in monthly installments of \$30.00 each month.

6.4 Extraordinary Assessments: In addition to the Regular Assessments authorized above, the Board may levy, in any fiscal year, an Extraordinary Assessment applicable to that year only for the purpose of covering the actual cost of any construction, reconstruction, repair or replacement of any improvement upon the Common Area, entry statement, common drainage and retention system or roadways, including fixtures and personal property related thereto, or to defray any unanticipated



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or underestimated expense not covered by the Regular Assessment and, where necessary, for taxes assessed against the Common Area, Drainage System or Infiltration System(s).

6.5 Special Assessments: In addition to the Regular and Extraordinary Assessments authorized above, the Board may levy Special Assessments (without limitation as to amount or frequency and without requiring a vote of Owners) against an individual Lot and its Owner for violations of any provisions within this Declaration, including the right of the Association to receive reimbursement for costs incurred in bringing that Owner and his or her Lot into compliance with the provisions of this Declaration and the bylaws, including actual attorneys' fees and costs.

6.6 Allocation of Assessments: Limited Exemption During Construction: Each Lot, including Lots owned by Declarant, shall bear an equal share of each Regular and Extraordinary Assessment. Except, Declarant shall be exempt from the payment of any Assessment on a Lot, which does not include a completed Dwelling. This exemption shall be in effect only until a certificate of occupancy or its equivalent for the Dwelling has been issued or until one hundred eighty (180) days after the issuance of a building permit for the Dwelling, whichever first occurs.

6.7 Date of Commencement of Assessments; Due Dates: Subject to the foregoing exemption pending construction, or pursuant to Declarant subsidy, the Regular Assessments provided for herein shall commence as to all Lots in the Property one year after closing of the sale of the Lot or pursuant to Paragraph 6.6 above, whichever comes first. Due dates of Assessments shall be the first day of every calendar month. No notice of such Assessment shall be required other than an annual notice setting forth the amount of the monthly Assessment.

6.8 Payment of Taxes Assessed Against Common Area or Personal Property of Association: In the event that any taxes are assessed against the Common Area or the personal property of the Association, rather than against the Lots, said taxes shall be included in the Assessments made under the provisions of this Article, and, if necessary, an Extraordinary Assessment may be levied against the Lots in an amount equal to said taxes, (regardless of any limitation otherwise applicable to Extraordinary Assessments set forth in Paragraph 6.4 above), to be paid in two (2) semi-annual installments, thirty (30) days prior to the due date of each tax installment.

6.9 Transfer of Lot by Sale or Foreclosure: The sale or transfer of any Lot shall not affect any Assessment lien, or relieve the Lot from any liability therefore, whether the lien pertains to payments becoming due prior or subsequent to such sale or transfer. Notwithstanding the foregoing, the sale or transfer of any Lot pursuant to foreclosure, or by deed in lieu of foreclosure, of a mortgage recorded prior to the recordation of a Notice of Delinquent Assessment covering such Lot, and given in good faith and for value, shall extinguish the lien of all Assessments which become owing prior to such sale or transfer. Sale or transfer pursuant to mortgage foreclosure shall not, however, affect the personal liability of the Owner for unpaid Assessments. Any Assessments for which the liens are extinguished pursuant to this Paragraph shall be deemed to be Common Expenses collectable from all of the Lots including the Lot for which the lien was extinguished.

In the case of any other conveyance of a Lot, the grantee of the same shall be jointly and severally liable with the grantor for all unpaid Assessments by the Association against the latter up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore. However, any such grantee shall be entitled to a statement from the Board, setting forth the amount of the unpaid Assessments due the Association, and such grantee shall not be liable for, nor shall the Lot conveyed be subject to a lien for, any unpaid Assessments made by the Association against the grantor in excess of the amount set forth in the statement. Provided, however, the grantee shall be liable for any Assessment becoming due after the date of any such statement.



6.10 Enforcement of Assessment Obligation; Priorities; Discipline: If any part of any Assessment is not paid and received by the Association or its designated agent within thirty (30) days after the due date, such Assessment shall thereafter bear interest at twelve percent (12%) interest until paid. Additionally, automatic late processing fees of Ten Dollars (\$10.00) per month shall be assessed for each month from the due date until the Assessment(s) and all late charges are paid. Each delinquent Assessment may be evidenced as a matter of public record by a Notice of Delinquent Assessment recorded by the Association or other party or parties entitled to enforce and/or receive the same, which recorded Notice of Delinquent Assessment shall provide notice to the public of the delinquency.

ARTICLE 7

EASEMENTS AND UTILITIES

Real Estate Excise Tax
Exempt

Kittitas County Treasurer

2-28-02 By S. Johnson

7.1 Access, Use and Maintenance Easements: Declarant expressly reserves for the benefit of the Owners reciprocal, nonexclusive easements for access, ingress and egress, and for use and enjoyment, over and under all of the Common Area, and including the roadway easements as shown on the Plat. Subject to the provisions of this Declaration, the easements may be used by Declarant, its successors, purchasers and all Owners, their guests, tenants and invitees, residing on or temporarily visiting the Property, for all purposes reasonably necessary for use and enjoyment of a Lot in the Property.

Declarant also expressly reserves for the benefit of the Board of Trustees and all agents, officers and employees of the Association, non-exclusive easements over the Common Areas and roadways as is necessary to maintain and repair the same, and to perform all other tasks in accordance with the provisions of this Declaration. Such easements over the Common Areas and roadways shall be appurtenant to, binding upon and shall pass with the title to, every Lot conveyed.

7.2 Encroachments and Utility Easements: Each Lot within the Property is hereby declared to have an easement over all adjoining Lots and the Common Area for the purpose of accommodating any encroachment due to engineering errors, and minor errors in original construction. There shall be valid easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment. Provided, however, that in no event shall a valid easement for encroachment be created in favor of any Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners.

7.3 Owners' Rights and Duties With Respect to Utilities: The rights and duties of the Owners of Lots within the Property with respect to utilities shall be as follows:

7.3.1 Whenever sanitary sewer, water, electric, gas, television receiving, or telephone lines or connections are located or installed within the Property, which connections, or any portion thereof, lie in or upon or beneath Lots owned by other than the Owner of a Lot served by said connections, the Owners of any Lots served by said connections shall have the right, and are hereby granted an easement to the full extent necessary therefore, to enter upon the lot or to have the utility companies enter upon the Lots in or upon or below which said connections, or any portion thereof lie, to repair, replace and generally maintain said connections as and when necessary.

7.3.2 Whenever sanitary sewer, water, electric, gas, television receiving, or telephone lines or connections are located or installed within the Property, which connections serve more than one Dwelling, the Owner of each Dwelling served by said connection shall be entitled to the full use and enjoyment of such portions of said connections as service his Dwelling.

80



7.3.3 In the event of a dispute between the Owners with respect to the repair or rebuilding of said connections, or with respect to the sharing of the cost thereof, then, upon written request of one of such Owners addressed to the Association, the matter shall be submitted to the Board, which shall decide the dispute, and the decision of the Board shall be final and binding on the parties.

ARTICLE 8

INSURANCE

8.1 Duty to Obtain Insurance; Types: The Board at its discretion shall be authorized to obtain and maintain the following policies of insurance:

- (a) Hazard Insurance: To the extent that there are improvements made to the Common Area which may be insured against casualty loss, a "master" or "blanket" type of hazard insurance policy or policies may be maintained, protecting such improvements against loss or damage by fire and all other hazards that are normally covered by the standard extended coverage endorsement, and all other perils customarily covered for similar types of projects. Additional endorsements, provisions, and exceptions may be entered into by the Board.
- (b) Liability Insurance: A comprehensive general liability insurance policy covering all Common Area, common drainage and retention system, and all public ways and other areas that are under the supervision of the Association. The liability policy shall provide coverage for bodily injury and property damage for any single occurrence, covering bodily injury and property damage resulting from the operation, maintenance or use of the Common Area, common drainage and retention system, and any legal liability resulting from lawsuits related to employment contracts to which the Association may be a party, in such amounts as the Board may determine.

8.2 Waiver of Claim Against Association: As to all policies of insurance maintained by or for the benefit of the Association and the Owners, the Association and the Owners hereby waive and release all claims against one another, the Board of Directors, and Declarant, to the extent of the Insurance proceeds available, whether or not the insurable damage or injury is caused by the negligence of or breach of any agreement by any of said persons.

8.3 Insurance Premiums: Insurance premiums for any blanket insurance coverage obtained by the Association and any other insurance deemed necessary by the Board of Directors shall be a Common Expense to be included in the Regular Assessments levied by the Association and collected from the Owners. That portion of the Regular Assessments necessary for the required insurance premiums shall be separately accounted for by the Association in the reserve fund to be used solely for the payment of premiums of required insurance as such premiums become due.

8.4 Trustee for Policies: The Association, acting through its Board of Directors, is hereby appointed and shall be deemed trustee of the interests of all named insureds under policies of insurance purchased and maintained by the Association. All insurance proceeds under any such policies as provided for in this Article 8 shall be paid to the Board of Directors as Trustees. The Board shall have full power to receive and to receipt for the proceeds and to deal therewith as provided herein. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried or otherwise disposed of as provided in this Declaration. The Board is hereby granted the authority to negotiate loss settlement with the appropriate insurance carriers, with participation, to the extent they desire, of mortgages who have filed written requests within ten (10) days of receipt of notice of any damage or destruction as provided in this Declaration. Any two (2) Directors of the Association may sign a loss claim form and release form



in connection with the settlement of a loss claim, and such signatures shall be binding on all the named insureds.

ARTICLE 9

DESTRUCTION; CONDEMNATION

- 9.1 Damage to Common Area: In the event of any destruction of any portion of the Common Area, the repair or replacement of which is the responsibility of the Association, it shall be the duty of the Association to restore and repair the same to its former condition, as promptly as practical. The proceeds of any insurance maintained pursuant to Article 8 for reconstruction or repair of the Property shall be used for such purpose, unless otherwise provided herein. The Property shall be reconstructed or rebuilt substantially in accordance with the original construction plans. If the amount available from the proceeds of such insurance policies for such restoration and repair is inadequate to complete the restoration and repair, the Board shall levy an Extraordinary Assessment for the deficiency and proceed with such restoration and repair.
- 9.2 Damage to Dwellings: In the event of any destruction of any Dwelling or Dwellings, it shall be the duty of the Owner(s) of the Dwelling or Dwellings to restore and repair the same to its/their former condition, as promptly as practical under the supervision of the Board. The Dwelling or Dwellings shall be reconstructed or rebuilt substantially in accordance with the original construction plans, or in accordance with the rules set forth herein and administered by the ACC.
- 9.3 Alternate Plans for Restoration and Repair: Notwithstanding the provisions of Paragraphs 9.1 and 9.2, the Association shall have the right, by a vote of two-thirds (2/3) of the voting power of the Association, to make alternate arrangements respecting the repair, restoration or demolition of any damaged portion of the Property. The alternate plan may provide for special allocation of insurance proceeds, modification of design, or special allocation of any necessary Assessments. Any plan adopted pursuant to this subparagraph shall be adopted within sixty (60) days of the damage or destruction.
- 9.4 Condemnation: The taking or partial taking of any portion of the Common Area by condemnation or threat thereof shall be negotiated by the Board. Any award shall be deposited in the general funds of the Association, subject to disbursement or other use according to an agreement supported by two-thirds (2/3) of the voting power of the Association.

ARTICLE 10

DECLARANT'S RIGHTS AND RESERVATIONS

Declarant is undertaking the work of construction of the Property. Completion of that work and the sale or other disposition of the Lots is beneficial to the establishment and welfare of the Property as a residential community. In order that said work may be completed and said Property be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

- 10.1 Prevent Declarant, or any Builder, or their contractors, or subcontractors from doing on the Property, whatever is reasonably necessary or advisable in connection with the completion of the work; or
- 10.2 Prevent Declarant, or any Builder or their representatives from erecting, constructing and maintaining on any part or parts of the property, such structures as may be reasonable and necessary for the conduct of their business of completing said work and establishing said Property as a residential community and disposing of the same in parcels by sale or other disposition; or

10.3 Prevent Declarant or any Builder from maintaining such sign or signs on any of the Property as may be necessary for the sale or disposition thereof.

So long as Declarant, or any Builder or their successors-in-interest and assigns, owns one or more of the Lots established and described in this Declaration and except as otherwise specifically provided herein, Declarant and all Builders, and their successors and assigns, shall be subject to the provisions of this Declaration.

In the event Declarant shall convey all of its right, title and interest in and to the Property to any partnership, individual or individuals, corporation or corporations, then and in such event, Declarant shall be relieved of the performance of any further duty or obligation hereunder, and such partnership, individual or individuals, corporation or corporations, shall be obligated to perform all such duties and obligations of the Declarant.

ARTICLE 11

DURATION AND AMENDMENT

- 11.1 Duration: This Declaration shall continue in full force and effect for a period of ten (10) years from the date hereof, after which time the same shall be automatically renewed for successive terms of ten (10) years each, unless a Declaration of Termination is recorded, meeting the requirements for an amendment as set forth hereafter. All properties within the Property shall continue to be subject to this Declaration during the term hereof regardless of sale, conveyance or encumbrance.
- 11.2 Amendments: This Declaration may only be amended after written approval of two-thirds (2/3) of the Owners. Notwithstanding the foregoing, any amendment made to this Declaration shall have no force or effect on the interest of an existing mortgagee, the beneficiary of a deed of trust, or a contract vendor, which interest is recorded prior to such amendment unless or until their written consent thereto has been obtained.

ARTICLE 12

GENERAL PROVISIONS

- 12.1 Enforcement: The Board, any Owner, and any governmental or quasi-governmental agency or municipality having jurisdiction over the Project shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by this Declaration, and in such action shall be entitled to recover costs and reasonable attorneys' fees as are ordered by the Court. Any such action by the Board shall be taken on behalf of two (2) or more Lot Owners, as their respective interests may appear, with respect to any cause of action relating to the Common Area or more than one Lot. Failure by any such person or entity to enforce any such provision shall in no event be deemed a waiver of the right to do so thereafter.
- 12.2 Invalidity of Any Provision: Should any provision of this Declaration be declared invalid or in conflict with any law of the jurisdiction where the Property is situated, the validity of all other provisions shall remain unaffected and in full force and effect.
- 12.3 Conflict of Property Documents: If there is any conflict among or between the Property Documents, priority shall be given to the Property Documents in the following order: Plat Map; this Declaration; Articles; Bylaws; and rules and regulations of the Association. Notwithstanding the foregoing, any provision in any of the Property Documents, which is for the protection of first mortgages shall have priority over any inconsistent provision in that document or in any other Property Document.



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Kittitas Co Auditor CLE ELUM SAPPHIRE SK

EXHIBITS

- Exhibit "A" -Legal Description
- Exhibit "B" -Map of subject property and roads

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Page: 18 of 18
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EXHIBIT 'A'

SOUTH ONE-HALF OF THE SOUTH ONE-HALF, SECTION 24, TOWNSHIP 20
NORTH, RANGE 15 EAST;

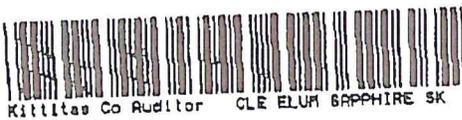
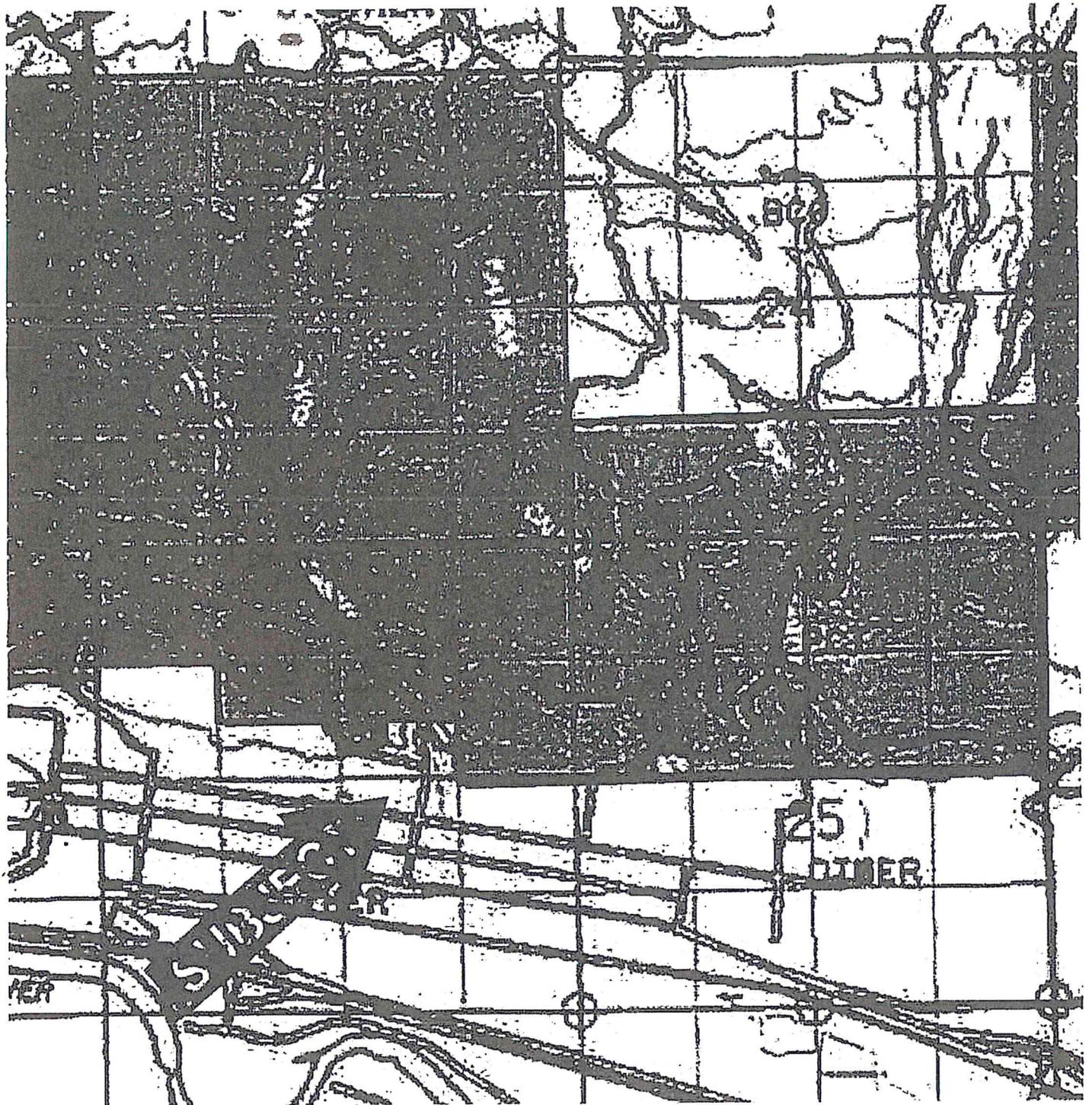
TOGETHER WITH, THE NORTH ONE-HALF OF SECTION 25, TOWNSHIP 20
NORTH, RANGE 15 EAST;

TOGETHER WITH, ALL PROPERTY LOCATED TO THE NORTH OF THE
BONNEVILLE POWER ADMINISTRATION EASEMENT IN SECTION 26,
TOWNSHIP 20 NORTH, RANGE 15 EAST;

ALL SITUATE IN THE COUNTY OF KITTITAS, STATE OF WASHINGTON.

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EXHIBIT "B"



Kittitas Co Auditor

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Page: 17 of 18
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AUDITORS NOTE Portions of this document poor quality for imaging

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EXHIBIT 12

Kittitas County
Department of Public Works

VARIANCE REQUEST

To be completed by applicant

Name: Becky Andrus

Date of application: 05/18/07

▪ Developer

Agent for Developer

Address: 140 Bigbuck Ridge Rd
Cle Elum, WA 98922

Daytime phone: 509-304-7015

Associated Project/Development: Tax parcel 20-15-26010-0009/0010 (25 acres total)

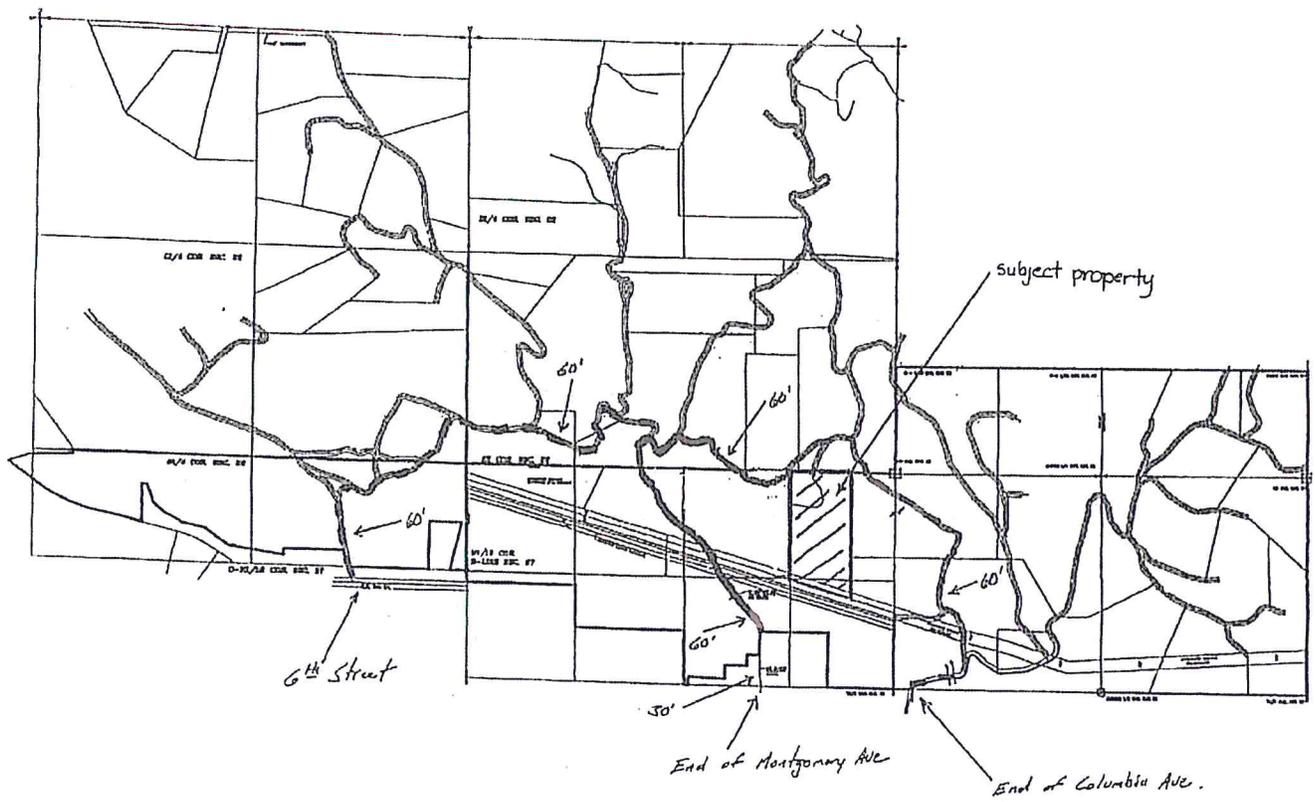
Request (be specific): Administrative determination related to Table 12-1 of the Kittitas County Road Standards, minimum easement width of 60'. A Preliminary Plat Application is being proposed for a 14 lot Performance Based Cluster Plat.

Reason for request: The existing primary access to the subject property is via Deer Creek Road (existing private road), from the end of Montgomery Avenue. In addition, there are two alternative private access routes connecting to Deer Creek Road from separate public right-of-ways (6th Street to the west and Columbia Avenue to the east). Both physically and legally exist as alternative and/or emergency access routes to the subject property and both within 60' easements in their entirety. Please refer to the attached map identifying all three access routes and corresponding easement and/or right-of-way widths. Deer Creek Road is located on a 30' easement for approximately 320 feet from the end of Montgomery Avenue; the remainder of Deer Creek Road is located within a 60' easement. The 320 foot portion of road is in the City of Cle Elum's Urban Growth. A design is being proposed by a previous developer for those improvements within the easement necessary to bring Deer Creek Road in full compliance with the applicable road standards. The remainder of Deer Creek Road will also be improved in full compliance with the applicable road standards. Please take into account that Deer Creek Road is an existing private road, established both legally and physically and has previously been approved and acknowledged by the county to serve adjacent subdivisions, short subdivisions and/or large lot subdivisions, all prior to and since adoption of the new road standards.

List of supporting documents attached: Property Map

Attach map.

Becky Andrus
Signature of applicant





KITTITAS COUNTY COMMUNITY DEVELOPMENT SERVICES

411 N. Ruby St., Suite 2, Ellensburg, WA 98926

CDS@CO.KITTITAS.WA.US

Office (509) 962-7506

Fax (509) 962-7682

"Building Partnerships – Building Communities"

STAFF REPORT BIG BUCK RIDGE PRELIMINARY PLAT LP-07-00040

TO: Kittitas County Hearing Examiner
FROM: Kittitas County Community Development Services Staff
RE: Big Buck Ridge Preliminary Performance Based Cluster Plat (LP-07-00040)
DATE: April 23, 2013

I. GENERAL INFORMATION

Requested Action: Wayne Nelson authorized agent for Becky Andrus, landowner, has submitted a performance based cluster plat application to create 14 one acre single family parcels and approximately eleven acres of open space. The plat proposes a group B water system and onsite individual septic systems. The subject property's zoning is vested as Residential 3.

Location: The subject property is 2 parcels, located approximately 1/2 mile north of the Yakima Avenue in the City of Cle Elum at 140 Big Buck Ridge Road (outside city limits), Cle Elum WA, in a portion of Section 26, Township 20N, Range 15E, WM in Kittitas County, bearing Assessor's map numbers 20-15-26010-0010 and 20-15-26010-0009.

II. SITE INFORMATION

Total Project Size: 25 acres
Number of Lots: 14
Domestic Water: Group B Community Water System
Sewage Disposal: Individual on-site septic systems
Power/Electricity: Puget Sound Energy
Fire Protection: Fire District 7
Irrigation District: None

Site Characteristics:

North: Light Development/Vacant

South: Power Lines; Undeveloped/Vacant

East: Undeveloped/Vacant

West: Subdivided Single Family under construction

The area is primarily covered in sparse forest; topography starts relatively flat on the north end of the parcels then steadily gains in slope (up to 33%) as it progresses to the south.

Access: The proposed project will have access from Bigbuck Ridge Road, a 60-foot private access easement. A second access route is required as conditioned by Kittitas County Public Works exhibit, number 5 (index document 65).

Zoning and Development Standards: The subject property is vested within the Rural-3 zoning district. The purpose and intent of the Rural-3 zone is to provide areas where residential development may occur on a low density basis. A primary goal and intent in siting R-3 zones will be to minimize adverse effects on adjacent natural resource lands. Applicable development standards set forth in KCC Chapter 17.30 include, but

are not limited to the following:

Lot Size: The minimum residential lot size shall be three acres in the Rural-3 zone. The overall density of any residential development shall not exceed one dwelling for each three acres, except as provided for in Kittitas County Code 16.09, Performance Based Cluster Platting.

Setbacks: There shall be a minimum front yard setback of twenty-five feet. Side yard and rear yard setbacks shall be 15 feet.

Preliminary Plats: The requirements of KCC Chapter 16.08.200, "Subdivision" means the division or re-division of land into five or more lots, tracts, parcels, sites or divisions for the purpose of sale, lease or transfer of ownership any one of which is less than 20 acres.

Performance Based Cluster Plats (PBCPs; KCC 16.09) : These types of subdivisions were originally integrated into County development regulations as an "innovative" planning technique to "protect critical areas, water resources, and resource lands" as well as "... foster appropriate densities while protecting the environment and maintaining the high quality of life in Kittitas County". Chapter 16.09 also mandated an annual review to "... check the effectiveness of the code in meeting the purpose and intent." PBCPs were integrated into County Code on November 1, 2005 (Ord. 2005-35); revised on August 16, 2006 (Ord. 2006-36) and again on July 19, 2007 (2007-22; the version applicable to this proposal). The chapter was modified again in 2010 (Ord. 2010-014) and the PBCPs were eliminated from code in 2013 (Ord. 2013-001) and replaced by "Cluster Plat" language which was accepted by the Growth Management Hearings Board as being compliant with the Growth Management Act (GMA).

III. ADMINISTRATIVE REVIEW

Deem Incomplete, Request for Additional Information, and Notice of Application: The application for the Big Buck Ridge Plat was submitted to Community Development Services (CDS) on June 20, 2007. On July 18, 2007, staff issued a letter of incomplete application, requiring an address list for all landowners within 300 feet of the proposal. The file indicates that the requested address list was submitted to CDS on July 23, 2007 (see index document 10, page 1 of the record) On August 16, 2007 staff sent a letter to the applicant indicating that a prior land use action (the Andrus rezone RZ-06-00023) mandated through a SEPA Mitigated Determination of Non-Significance that a Traffic Impact Analysis (TIA) be completed (as well as a road variance) before review of the application could continue. The letter did not indicate a precise determination as to the status of the application at that time. Current Staff has taken the position that the application was complete at that time based on the following:

KCC Chapter 15A.03.040(3): *"A project permit application is complete for the purposes of this title when it meets the procedural submission requirements of Kittitas County and is sufficient for continued processing even though additional information may be required or project modifications may be undertaken subsequently. The determination of completeness shall not preclude Kittitas County from requesting additional information or studies either at the time of the notice of completeness or subsequently if new information is required or substantial changes in the proposed action occur."*

The Plat Application Form (see index document 5, page 1) stipulates that a "Required Attachment" for a preliminary plat is an "Address list of all landowners within 300 feet of the site's tax parcel..." This "procedural submission requirement" as described above, was met by the applicant July 23rd, 2007 following Staff's Deem Incomplete and Request for Additional Information on July 18th, 2007.

KCC Chapter 15A.03.040(4): *"Within 14 days after an applicant has submitted to the permitting agency additional information identified by the permitting agency as being necessary for a complete application, the permitting agency shall notify the applicant whether the application is complete or what additional*

information is necessary...

The letter from Staff requesting the TIA was written and sent on August 16th, 2007; 24 days after the submission of the address list requested in the original Deem Incomplete letter. Convention dictates that a failure to respond or clarify the completeness of an application within the timeframes provisioned in chapter 15A amounts to a de facto declaration of a complete application. The request for the TIA was not a "procedural submission requirement".

KCC Chapter 15A.03.045(1): *"Once an application has been deemed complete, the Director may request the applicant to submit additional corrections, studies or other information on the proposed project. The Director shall set a reasonable deadline for the submittal of corrections, studies or other information when requested, and shall provide written notification of such requests to the applicant."*

The requirement for the TIA was determined by Current Staff to be an "additional correction, study or other information." as described above. No parameters for a delivery date of the study were provisioned in the letter.

In the wake of sweeping changes to the structure and make up of CDS through 2009 an inventory was done in early 2010 to determine the status of, and make appropriate notifications to, the large cache of outstanding and pending land use applications on file. On February 9th, 2010 the Interim Planning Manager notified Mrs. Andrus that a request to withdraw application or the TIA would need to be submitted within 60 days (April 10th, 2010) for the application to remain active. On February 16th, 2010, Mr. Andrus requested an extension of the timeline because of uncertainty related to water withdrawal requirements in the Upper County; an extension was granted on June 25th, 2010. The record contains a series of extension over the course of the next several years; additional 120 day extensions were granted by CDS on:

October 17, 2010
June 27, 2011
September 30, 2011
January 11, 2012
June 26, 2012
October 23, 2012

On February 20th, 2013, the Transportation Impact Analysis was submitted to Kittitas County Public works and was declared to meet concurrency requirements.

The Notice of Application for the preliminary plat application was issued on February 9th, 2015. 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 February 24th, 2015.

IV. COMPREHENSIVE PLAN

The Kittitas County Comprehensive Plan designates the subject property as Rural. Kittitas County has established the following goals and policies to guide future housing developments. These goals and policies were developed in response to existing housing conditions and identified needs within the county, and support the County Wide Planning Policies:

GPO 3.1 Provide a sufficient number of housing units for future populations in rural areas of Kittitas County.

GPO 3.6 Provide for future populations while protecting individual property rights.

GPO 3.17 Provide a sufficient number of housing units for future populations while maintaining the rural character of Kittitas County.

GPO 3.18 Provide sufficient housing units while maintaining environmental quality.

GPO 8.5 Kittitas County recognizes and agrees with the need for continued diversity in densities and uses on Rural Lands.

GPO 8.46 Residential development in rural lands must be in areas that can support adequate private water and sewer systems.

V. ENVIRONMENTAL REVIEW

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 March 25th, 2015. The appeal period ended on April 9, 2015 at 5:00 p.m. No appeals were filed.

VI. AGENCY AND PUBLIC COMMENTS

Applicable agencies, adjacent property owners, and interested parties have been given the opportunity to review this proposal. All comments have been included as Exhibits in the Hearing Examiner packet.

VII. PROJECT ANALYSIS

In review of this proposal it is important to consider the goals and policies of the comprehensive plan, applicable county code, public and agency comments, any identified environmental concerns and state and federal requirements. Identified below is planning staff's analysis and consistency review for the subject application.

Comprehensive Plan Consistency:

As conditioned the proposal is consistent with the goals and policies of the Kittitas County Comprehensive Plan at the time of submission. The proposed subdivision will be adequately served by rural levels of service. The lots will be served by a community water system and individual septic systems. Staff has conducted an administrative critical area review in accordance with KCC 17A and found critical areas which include possible steep slopes. Also of note for consideration is the existence of Bonneville Power Administration right of way on the south end of the parcel. No wetlands, classified streams or floodplain designations were identified in the proposal area. The proposal was identified as being within the designated coal mine area, but no mitigation measures are required by code.

Consistency with the provision of KCC 17.30, Rural 3 zoning (index document 78):

This proposal is consistent with the Kittitas County Zoning Code 17.30 at the time of submission. The purpose and intent of the R-3 zone at that time was to:

"... provide areas where residential development may occur on a low density basis. A primary goal and intent in siting R-3 zones will be to minimize adverse effects on adjacent natural resource lands."

The subject property is not at this time, nor was it at the time of application, near or adjacent to a resource land of any kind. Single family residences are permitted in both the current and the vested zones of these parcels. Cluster subdivisions were permitted outright in the R-3 zone at the time of application. Lot sizes of less than 3 acres were provisioned for under KCC 16.09 at the time of application.

Consistency with the provisions of KCC 16: Preliminary Plats and Performance Based Cluster Plats:

As conditioned, this proposal is consistent with the Kittitas County Subdivision Code for Preliminary Plats and Performance Based Cluster Plats. KCC Chapter 16.09 at the time of application (see index item 77) provided a means to increase densities beyond the maximum of what would normally be permitted for the R-3 zone based on public benefit rating system. The applicant in this case is using three public benefit categories to decrease the minimum lot size from three acres to one acre:

Designation of 11 acres of the 25 total acres as open space in perpetuity – In order to qualify for this provision found in the Public Benefit Rating System Chart (16.09.090) the applicant must dedicate a minimum of 40% of the base lot to perpetual open space. Open space, for the purposes of the chapter is defined as:

“...land used for outdoor active, passive and formal recreational purposes, land used for resource protection (including related structures such as barns on agriculturally productive land), land which is a common area for use by the public and/or residents of a cluster development, which is reserved for parks, walking paths or other natural uses, but not to include critical areas where development would otherwise be restricted, or dwellings or roadway surfaces, or building setbacks required by current codes, or areas otherwise encumbered by other federal, state, or local jurisdictions. In all cases, for purposes of this chapter, open space shall be of a functional nature and incorporate logical boundaries.

Germane to the utilization of this criteria will be the amount of designated open space outside of areas restricted from development by other provisions of federal, state, and local codes, regulations, and ordinances; as conditioned the proposal will be consistent with public benefits associated with this criteria.

Use of a Group B water system – Utilization of a group B water system provides a density bonus because it minimizes the need for individual wells. For the purposes of this chapter the system will need to be a:

“.. DOH approved water system that meets the requirements of WAC 246-290 or 246-291, or any water system that meets the definition of “Municipal water supplier” under RCW 90.03.015.

This water system will fall under the close scrutiny of the Washington State Department of Health and Kittitas County Public Health. As conditioned the proposal will be consistent with the public benefits associated with this criteria.

Development of active recreational facilities – The applicant has indicated in the proposal and the SEPA checklist that there will be private trails developed in conjunction with the plat connecting two of the three detached open space tracts to the internal private road. The south open space tract will also include a 20 foot trail easement; it is unclear where or how this trail will connect to adjacent properties or tracts either inside or outside the plat. For the purposes of this chapter active recreation is defined as including but not limited to:

“... ball fields, tennis courts, wheeled vehicle trails, outdoor riding arenas, etc.”

Consideration was given to the wide variety of “wheeled vehicles” which people must or choose to utilize in “active recreation.” As conditioned the trails proposed will provide increased opportunity for recreation to the eventual residents and guests of the plat and be consistent with public benefits associated with this criteria

Consistency with the provisions of KCC Title 12: Roads and Bridges:

As conditioned, the proposal is consistent with the provisions of KCC Title 12.

Agency Comments:

The following agencies provided comments during the comment period:

City of Cle Elum
Washington State Department of Health
Washington State Department of Ecology
Kittitas County Public Health Department.

These comments have been included in the record and conditions of approval have been crafted to address these agency concerns.

Public Comments:

Comments were received from the following members of the public representing themselves:

Kay Mulbeier
Gary Kasowski
Allen & Lan Jones
Liz Remeto
Christine Johnson
Adam Burnett
Roian Daly
Jan Thompson
Maren L. McDonald
Matt Clark
Kim Person
Joe Skvarla
Brian Rogers
Margaret Suman
Ken McKim
David McDuff
James Carmody
Bruce Higgs
Don Owens

Mr. James Carmody was retained by the Cle Elum Ridge Community and provided comments on their behalf.

These comments have been included in the record and consideration was integrated into the conditions of approval.

Post Comment Period Exhibits

The following individuals and agencies provided additional correspondence following the close of the comment period on February 24th, 2015 at 5:00 p.m.

Kittitas County Public Works Department
Washington State Department of Ecology
Karma Chapman

These correspondences have been included in the record and consideration was integrated into the conditions of approval.

VIII. RECOMMENDATION

As conditioned below, the application is not detrimental to the general public health, safety or welfare and meets intent and criteria associated with Title 12, Chapter 16.08, Chapter 16.09, Chapter 16.12 and Chapter 17.30 of the Kittitas County Code as well as the Kittitas County Comprehensive Plan. Staff recommends approval of the Big Buck Ridge Preliminary Plat LP-07-00040, subject to the following findings of fact and conditions outlined below.

Staff also feels compelled to recognize before the Hearings Examiner that the conditions outlined below may result in substantive changes to the plat as proposed. It is possible that the applicant may, after review of the comments, conditions, and initial testimony at the Public Hearing, wish to alter the plat to a degree which would require additional review by both staff and the public at large. At the discretion of the Hearings Examiner, a remand may be the preferred or appropriate action to take at this time.

Suggested Findings of Fact

1. Wayne Nelson authorized agent for Becky Andrus, landowner, has submitted a performance based cluster plat application to create 14 one acre single family parcels and approximately eleven acres of open space. The plat proposes a group B water system and onsite individual septic systems. The subject property’s zoning is vested as Residential 3.
2. The subject property is 2 parcels, located approximately 1/2 mile north of the Yakima Avenue in the City of Cle Elum at 140 Big Buck Ridge Road (outside city limits), Cle Elum WA, in a portion of Section 26, Township 20N, Range 15E, WM in Kittitas County, bearing Assessor’s map numbers 20-15-26010-0010 and 20-15-26010-0009.
3. Site Information

Total Project Size:	25 acres
Number of Lots:	14
Domestic Water:	Group B Community Water System
Sewage Disposal:	Individual on-site septic systems
Power/Electricity:	Puget Sound Energy
Fire Protection:	Fire District 7
Irrigation District:	None
4. Site Characteristics:
 - North: Light Development\Vacant
 - South: Power Lines; Undeveloped\Vacant
 - East: Undeveloped \Vacant
 - West: Subdivided Single Family under construction
5. The area is primarily covered in sparse forest; topography starts relatively flat on the north end of the parcels then steadily gains in slope (up to 33%) as it progresses to the south.
6. The proposed project will have access from Bigbuck Ridge Road, a 60-foot private access easement. A second access route is required as conditioned by Kittitas County Public Works exhibit, number 5.
7. The Comprehensive Plan designation is Rural.
8. The subject property is vested within the Rural-3 zoning district. The minimum lot size is one dwelling for each three acres, except as provided for in Kittitas County Code 16.09, Performance Based Cluster Platting.

9. The purpose and intent of the Rural-3 zone is to provide areas where residential development may occur on a low density basis. A primary goal and intent in siting R-3 zones will be to minimize adverse effects on adjacent natural resource lands.
10. The application for the Big Buck Ridge Plat was submitted to Community Development Services (CDS) on June 20, 2007. On July 18, 2007, staff issued a letter of incomplete application, requiring an address list for all landowners within 300 feet of the proposal. The list was provided on July 23, 2007; the application was de facto deemed complete on August 16, 2007 with the request for a traffic impact analysis. The notice of application was on February 9, 2015. 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 February 24, 2015.
11. An application was submitted to Community Development Services on August 17, 2011. The Notice of Application for the preliminary plat application was issued on November 17, 2011. 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 December 2, 2011.
12. 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 March 25, 2015. The appeal period ended on April 9, 2015 at 5:00 p.m. No appeals were filed.
13. As conditioned 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 community water system and individual septic systems. Staff has conducted an administrative critical area review in accordance with KCC 17A and found critical areas which include steep slopes.
14. As conditioned the proposal is consistent with the Kittitas County Zoning Code Title 17
15. As conditioned the proposal is consistent with the Kittitas County Subdivision Code for Preliminary Plats.
16. As conditioned the proposal is consistent with the Kittitas County Subdivision Code for Performance Based Cluster Plats.
17. This application is subject to the Kittitas County Road Standards, dated 9/6/05. As conditioned, the proposal is consistent with the provisions of KCC Title 12.
18. The following agencies provided comments during the comment period: Washington State Department of Health, Washington State Department of Ecology, and Kittitas County Public Health. Kittitas County Public Works submitted correspondence on March 16, 2015. These comments and correspondence have been considered as conditions of approval to address these agency concerns.

Suggested Conclusions:

1. As conditioned, the development meets the goals, policies and implementation recommendations as set forth in the Kittitas County Comprehensive Plan.
2. As conditioned, this proposal is consistent with applicable federal and state laws and regulations.
3. Public use and interest will be served by approval of this proposal as conditioned.

4. 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.

Suggested Conditions of Approval:

1. The project shall proceed in substantial conformance with the plans and application materials on file dated June 20, 2007 except as amended by the conditions herein.
2. A certificate of title of the property proposed to be platted shall be submitted with the final plat.
3. A note shall be placed on the final plat stating that any construction within areas of 33% or greater slope will require geotechnical engineering per IRC R403.7.7 and/or IRC 1805.3.1 or current adopted code.
4. The applicant is responsible for compliance with all applicable local, state and federal rules and regulations, and must obtain all appropriate permits and approvals.
5. All current and future landowners must comply with the International Fire Code.
6. 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.
7. Computer sheets shall be submitted with the final plat showing the closure of plat boundaries, blocks, lots or any tract. It is the responsibility of the Professional Licensed Surveyor (PLS) to ensure the lot closures are correct and accurate.
8. Individual onsite sewage systems will need to meet Kittitas County code requirements.
9. According to the Public Health Department, final plat approval will be conditioned upon:
 - a. written findings of adequacy of potable water supplies;
 - b. a well site inspection performed by KCPHD staff and the well drilled;
 - c. completion and submission of a Group B Public water system to the Washington State Department of Health (WSDOH);
 - d. a contract with an approved Kittitas County Satellite Management Agency;
 - e. the construction or bonding of all infrastructure including the well house and storage tanks;
 - f. issuance of a public water system ID number from WSDOH;
10. The Final Plat shall meet all requirements as listed in Chapter 16.20 of the Subdivision Code, as follows:

16.20.020 Final Plat General Information

- a. The final plat shall be drawn on polyester film in a neat and legible manner.
- b. The final plat shall be drawn to such a scale as to make a sheet eighteen inches by twenty-four inches. Should this size sheet unduly congest the drawing, the plat may be submitted on two or more sheets of the above dimensions. The perimeter of the subdivision shall be depicted with heavier lines than appear elsewhere on the plat. A marginal line shall be drawn completely around each sheet, leaving an entirely blank margin of one inch on the sides. The scale shall be one (1) inch equals two hundred (200) feet, or greater, unless otherwise approved by the director.
- c. All lettering shall be printed with permanent ink.
- d. Each sheet of the final plat shall contain the subdivisions name at the top of the sheet in large letters followed underneath with the section, township, range, county and state. The space for recording the receiving number is in the upper right hand corner, sheet numbers at the bottom of the sheets.
- e. It shall show all courses and distances necessary to re-stake any portion of said plat.

- f. Required monuments shall be shown together with a legend of monuments on the face of each plat sheet. (Ord. 2005-31, 2005)

16.20.040 Plat Drawing

- a. Section Data. All section, township, municipal and county lines lying within or adjacent to the subdivision;
 - b. Tie Monuments. The location of all monuments or other evidence used as ties to establish the subdivision's boundaries;
 - c. Plat Monuments. The location of all permanent control monuments found or established within the subdivision;
 - d. Boundaries. The boundary of the subdivision, with complete bearings and lineal dimensions in heavier lines;
 - e. Bearing and Distances. The length and bearings of all straight lines, the radii, arcs, and central angles of all curves;
 - f. Lot Dimensions. The length of each lot line, together with bearings and other data necessary for the location of any lot line in the field;
 - g. Road Names. The location, width, centerline, and name or names or number of all streets within and adjoining the subdivision;
 - h. Easements. The location and width, shown with broken lines, and description of all easements. Easements may be described in the plat restrictions in lieu of being shown on the plat drawings;
 - i. Lot Numbers. Numbers assigned to all lots and blocks within the subdivision;
 - j. Adjacent Owners. Names of owners of land adjacent to the subdivision, and the names of any adjacent subdivisions;
 - k. 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;
 - l. Vicinity Maps. A vicinity map showing the boundary of the plat in relation to the surrounding area such as adjacent subdivisions, rivers, creeks, roads or highways, canals, etc. Minimum area shown would be the section or sections containing the platted area with a scale of approximately 4" = 1 mile;
 - m. Contours. Contour lines are not shown on a final plat as required on the preliminary plat;
 - n. Miscellaneous Items. North arrow, scale and legend of monuments to be shown on open area of sheets;
 - o. Grid Coordinates. A tie shall be made and shown on the plat if plat is within one mile of any such monument.
 - p. Well location. The drawings shall be marked with a "w" indicating location of the well and a broken line showing the one hundred foot radius around such.
 - q. Ditches. Location of existing ditches apparent or of record. (Ord. 2005-31, 2005)
11. Timing of Improvements: This application is subject to 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 structures 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.
 12. 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.
 13. Stormwater: 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.

14. Grading Permit: A grading permit shall be required prior to beginning any site work. See KCC 14.05 for more information.
15. Second Access: A second access will be required 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 Marshal; 2) If the second access is to be used for ingress and egress, it must meet the same standards of the first access.

Documentation of a legal easement across the route of the second access will be required prior to final approval. The second access must be constructed and certified by an engineer licensed in the State of Washington prior to issuance of a building permit.

16. Private Road Improvements: Access 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 20', with 1' shoulders, for a total width of 22'.
 - b. Minimum centerline radius shall 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 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 2009 International Fire Code. Contact the Fire Marshal regarding any additional cul-de-sac requirements.

17. Joint-Use Driveway: A joint-used 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.
18. Single-Use Driveway: 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 or 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.
19. Plat Notes: Plat notes shall reflect the following:
- a. Entire private road shall achieve 95% compaction and shall be inspected and certified by a licensed engineer in the State of Washington specifying that the road meets current Kittitas County Road Standards prior to the issuance of building permit for this plat.
 - b. Entire private road shall be inspected and certified by a civil engineer licensed in the State of Washington specifying that the road meets Kittitas County Road Standards as adopted September 6, 2005, prior to the issuance of a building permit. Any future subdivision or land use action will be reviewed under the most current road standards.
 - c. 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.
 - d. Maintenance of the access is the responsibility of the property owners who benefit from its use.
 - e. An approved access permit will 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.
 - f. Any further subdivision or lots to be served by proposed access may result in further access requirements. See Kittitas County Road Standards.
 - g. A public utility easement 10 feet in width is reserved along all lot lines. The 10 foot easement shall abut the exterior plat boundary and shall be divided 5 feet on each side of interior lot lines. Said easement shall also be used for irrigation.
20. Plat Approvals: All plats must show the acceptance signature of the County Engineer. The acceptance block shall be as follows (per KCC 16.24.170):

EXAMINED AND APPROVED

This ____ day of _____, A.D., 20__.

Kittitas County Engineer

21. Private Road Maintenance Agreement: The applicant shall meet all applicable conditions of any pre-established or required Private Road Maintenance Agreements.
22. Lot Closure: It is the responsibility of the Professional Licensed Surveyor (PLS) to ensure the lot closures are correct and accurate.
23. 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.

24. Fire Protection: Contact the Kittitas County Fire Marshal regarding any additional access requirements for Emergency Response.
25. 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.
26. 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.
27. Washington Administrative Code (WAC) 173-400-040 requires that reasonable precaution be taken to prevent dust from leaving the site. Also, dust is prohibited from interfering unreasonable with the use and enjoyment of property, causing health impacts, or damaging property or business.
28. 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."
29. All applicable survey data and dedications shall be reflected pursuant to KCC 16.24: Survey Data-Dedications.
30. Both sheets shall reflect the Plat number: LP-07-00040.
31. An NPDES Construction Stormwater General Permit from the Washington State Department of Ecology is required for this project. 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.
33. No water right records associated with this property were found in the Central Regional Office. In Washington State, prospective water users must obtain authorization from the Department of Ecology before diverting surface water or withdrawing ground water, with one exception. Ground water withdrawals of up to 5,000 gallons per day used for single or group domestic supply, industrial purposes, stock watering 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.

On March 28, 2002 the Washington State Supreme Court ruled that 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 because in combination, the withdrawal will exceed the exemption criteria.

34. An internal looped trail shall be bonded for or constructed in conjunction with the plat infrastructure. It shall run parallel with, but in addition to, the entire length of the private road servicing the plat to the 10 foot easement depicted on the west lot line of lot 8; then north across the .41 acre open space tract where it will connect with the 10 foot trail easement along the north and west lot lines of lot 1 to the 1.50 acre open space tract; then north and east back to the private road easement. This active recreation trail shall be constructed of an approved hard surface to accommodate wheeled traffic and utilize standards in conformance with the ICC

A117.1-2009 manual for accessible and usable buildings and facilities.

35. Open space tracts shall be labeled with a unique identifier.
36. The face of the plat will depict accurate calculations for open space tracts which do not include areas covered by road easement or driveway, well head protection areas, utility right of way, critical area or region encumbered by other federal, state, or local jurisdiction (as per ordinance 2007-22).
37. The open space tracts shall be:
 - a. owned in a proportionate and un-severable manner as tenants in common by each lot owner; and
 - b. assessed, taxed, and foreclosed upon each building lot.
38. Based on comments received during the public comment period and other information submitted with this project permit application, A SEPA Mitigation Determination of Non-Significance (MDNS) was issued by Community Development Services on December 21, 2012. The following are the mitigation contained within the MDNS and shall be conditions of approval:

Water and Septic

1. The proposed plat is located within the upper county as defined in WAC 173-539A-090; the proposed group B water system shall be developed in complete compliance with the regulations and requirements of WAC 173-539A. The development will need to:
 - a. Have well site inspections.
 - b. Complete and submit a Group B water system workbook.
 - c. Contract with a Satellite Management Agency.
 - d. Complete or bond for infrastructure.
 - e. Obtain WSDOH approval and identification number.
 - f. Construct well(s) in accordance with the provisions of WAC 173-160. Wells must be located 100 feet from any known, suspected, or potential source of contamination.
 - g. File a well report with the Department of Ecology within thirty (30) days after the completion of the well.
2. On-site sewage systems shall be constructed in accordance with requirements and regulations in Kittitas County Code (KCC) 13.04 at the time of application (6/20/2007).

Transportation

3. KCC 12.12.010(6) requires private roads within the plat to be maintained by a legal entity made up of all benefitted property owners under the provisions of an acceptable and recorded Private Road Maintenance Agreement.
4. All parcels located within this project shall be required to join the existing Private Road Maintenance Agreement which is made up of all the benefitted property owners served by Deer Creek Road and other roadways within Section 23, Township 20 North, Range 15 East.

Stormwater

5. 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.

6. 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 for review to Public Works 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. Stormwater plans shall be submitted in accordance with KCC 12.06 and 12.08.

Cultural Resources and Historic Preservation

7. Should ground disturbing or other activities related to the proposed 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.

Light and Aesthetics

8. A plat note shall be affixed which states: All outdoor lighting shall be shielded and directed downward to minimize the effect to nearby residential properties.

Noise

9. Development and construction practices during building of 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.