

**KITTITAS COUNTY
LAND USE HEARING EXAMINER**

IN THE MATTER OF)	RECOMMENDED FINDINGS OF
)	FACT, CONCLUSIONS OF
Z-07-11 and SP-08-03)	LAW AND DECISION
Yakima River PUD Rezone and Short Plat)	

THIS MATTER having come on for hearing in front of the Kittitas County Hearing Examiner on March 12, 2009, the Hearing Examiner having taken evidence hereby submits the following Recommended Findings of Fact, Conclusions of Law and Decision as follows:

I. RECOMMENDED FINDINGS OF FACT

1. Terra Design Group and Jeff Slothower, authorized agent for Teanaway Ridge LLC, landowner, have submitted an application for a rezone from Rural-3 to PUD along with a Short Plat to subdivide approximately 86.58 acres into 4-lots. The proposed lot sizes range from 14.08 to 18.68 acres with one 28.37 acre Open Space Tract. (Staff report and application materials)
2. The land owner of record is Teanaway Ridge LLC, PO Box 808, Cle Elum, WA 98922. The authorized agent is Terra Design Group, Inc., PO Box 686, Cle Elum, WA 98922. (Application materials)
3. The project is proposed to be served by a Group A Public Water System and community septic areas transitioning to a reclaimed water system if effluent volumes allow as outlined in the SEPA MDNS Conditions. (Staff report)
4. The property is east of the junction of SR 970 and SR 10, Cle Elum, WA 98922 in Section 04, T19N, R16E, WM in Kittitas County. Map numbers 19-16-04020-0002, and 19-16-04050-0401. (Staff report)

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5. Site Information:

Total Project Size:	86.58 acres
Number of Lots:	4
Existing zoning district	Rural-3
Proposed zoning district	Planned Unit Development
Domestic Water:	Group A Public System
Sewage Disposal:	Community Septic transitioning to a reclaimed water system if effluent volumes allow as required in SEPA MDNS Conditions.
Power/Electricity:	PUD
Fire Protection:	Kittitas County Fire District #7
Irrigation District:	N/A

(Staff report)

6. Site Characteristics: The site is relatively flat on the northern portion of the property sloping down to the Yakima River. The site is a former church camp with structures that are proposed to be removed. There is a related flood plain and floodway on the site. (Application materials and Staff Report)

7. Surrounding Property:

North: BNSF Railroad and SR-10

South: Yakima River

East: Open Space

West: Residential

(Staff report)

8. The Comprehensive Plan designation is Rural. (Staff report)
9. The subject property is zoned Rural-3, which allows for a 3 acre minimum lot size. (Staff report)
10. Application for a rezone from Rural-3 to PUD was received on June 15, 2007. The application was deemed complete on July 13, 2007. A 4-lot Short Plat was received on February 5, 2008. The rezone application was amended and a new Notice of Application was sent out May 8, 2008. A corrected Notice of Application was sent out on May 22, 2008. The rezone application was amended for a second time on July 31, 2008. On September 16, 2008 an additional Notice of Application was sent out to include the revised concept map and a change in the number of rv sites. (Staff report)
11. In accordance with Kittitas County code 15A.030.110, this project was accurately

posted with the "Land Use Action" sign as provided by Community Development Services. The Affidavit of Posting was signed by the applicant and returned to the planner on April 17, 2008. (Staff report)

12. Kittitas County issued a Mitigated Determination of Nonsignificance (MDNS) regarding the project as described in the application on December 24, 2008 in accordance with WAC 197-11-355 (Optional DNS process). There were no appeals filed. (Staff report)
13. The following agencies provided comments during the comment period: Kittitas County Public Health, Kittitas County Public Works, Department of Archaeology and Preservation, Department of Ecology, Department of Transportation, Department of Natural Resources. (Staff report)
14. Surrounding landowners submitted comments during the comment period and these comments have been included as an exhibit in the Hearing Examiner packet and were considered in making the SEPA threshold determination. (Staff report)
15. Public and agency comments that were received were considered by the Hearing Examiner in rendering this Decision. (Hearing Examiner finding based on the record)
16. The entire Planning Staff file was admitted into the record at the public hearing. (Public hearing record)
17. The Kittitas County Community Development Services recommended approval of the rezone and short plat applications, as proposed in the applications, subject to the recommended conditions of approval. (Public hearing record)
18. Public hearing after due legal notice was held on March 12, 2009. Appearing and testifying on behalf of the applicant was Lindsay Ozbolt of Terra Design Group. Ms. Ozbolt testified that she was an agent authorized to appear and speak on behalf of the applicant. Ms. Ozbolt submitted Exhibit 1 which was admitted into the record. This exhibit was additional proposed conditions of approval. Ms. Ozbolt submitted to the record Exhibit 2 which was admitted into the record. This was a legal memorandum including 19 pages of photographs. Ms. Ozbolt submitted to the record Exhibit 3 which was admitted into the record. This was a written response to comments that had been made regarding the project. Ms. Ozbolt testified that the project had recently changed and was being modified to now include a maximum of 24 condominium units and a maximum of 160 RV sites. There was a discussion as to what volumes of water would trigger implementation of the reclaimed water facility. The reclaimed water facility would begin its planning process when use generated 8,000 gallons per day and that the project would be completed and opened when volume reaches 14,500 gallons per day. At 10,000 gallons per day they would

complete the planning process, at 12,000 gallons per day they would complete the engineering studies and at 14,000 gallons per day they would obtain the building permit and begin construction. There was no indication as to how this reclaimed water facility would be developed given the change of the development to up to 24 condominium units and up to 160 recreational vehicle units. (Public hearing record)

19. Also testifying on behalf of the applicant was Ed Sewall. Mr. Sewall provided testimony as to the Critical Area Study including the proposed flood storage pond which he indicated that the applicant would now take out of the proposal. He indicated that no development would occur within the buffers set for the Yakima River. (Public hearing record)
20. Also testifying on behalf of the applicant was Clint Perry, Director of Evergreen Valley Utilities. Mr. Perry's testimony indicated that in his opinion that the single-family residences would generate a maximum of 250 gallons per day and the RV sites would generate a maximum of 50 gallons per day towards the reclaimed water facility. He testified that it is necessary that there be at least 10,000 to 12,000 gallon-per-day flows in order to operate the water reclamation plant. He indicated that the gallon-per-day flow must be sustained year-round in order to properly operate a water reclamation plant facility. He testified that the 24 condominium units generating 250 gallons per day would reach 6,000 gallons per day and 160 RV units generating 50 gallons per day would reach 8,000 gallon-per-day usage for a total of 14,000 gallons per day based on full occupancy of the condominium units and RV sites. (Public hearing record)
21. It is recognized that the condominium units and recreational vehicle sites are vacation rental facilities and are not likely to be fully occupied 365 days per year. Accordingly, a gallon-per-day flow towards the proposed water reclamation facility would be less and possibly substantially less than that which is necessary to run the facility. (Hearing Examiner finding based on testimony of Clint Perry and application materials)
22. Mr. Perry testified that once water is processed through a water reclamation facility, that the water is available for multiple uses including irrigation and introduction into stream flows. (Public hearing record)
23. It is this proposed water reclamation facility that the applicant indicates would provide public benefit towards this project justifying approval of the rezone application. (Application materials and Ozbolt testimony)
24. Testifying in opposition to the project:

- 24.1 Traci Shalbutter: Ms. Shalbutter is attorney for neighboring property owner, Dr. Baron. Ms. Shalbutter testified that this change in the proposal by reducing condominium units and for the first time intimating that there may be up to 160 recreational vehicle units on site is a substantial, material change to the application. Ms. Shalbutter was of the opinion that no new residential structures could be constructed within the floodway as the floodway is not developable. Ms. Shalbutter also characterized the proposed parking lot (again for the condominium unit, not the revised RV park) for 139 parking spaces is a substantial parking lot, on par with the size of the parking lot of the Safeway Store in Cle Elum. Ms. Shalbutter offered legal argument on the various criteria for the rezone, arguing that the development of 160 recreational vehicle sites and 240 condominium sites is not rural in nature. She argued that there has been no change of circumstances that would warrant a rezone of this property. She argued that 160 recreational vehicle sites next to her client's 9-acre pond would be an adverse consequence that could not be mitigated and still keep with the rural character of the area. She offered argument that there is no public benefit because in reality with the recreational vehicle park, they will never reach the threshold gallon per day effluent required to meet the planning and building thresholds as well as maintaining the effluent flow to run the reclaimed water facility. Accordingly, she argued that there would be no public benefit. (Testimony of Traci Shalbutter at public hearing)
- 24.2 Robert Austin: Robert Austin testified that this development will have obvious impact on the Yakima River and further stated that the property is very wet and that there is a very high groundwater table creating a "mush" like ground on much of the water near the river. (Testimony of Robert Austin at public hearing)
- 24.3 Diedre Link: Diedre Link testified that she agreed with the letters from Fish & Wildlife. She agreed that the slough could be reclaimed by the river. She also indicated that there has been no traffic impact analysis now that there is proposed to be 160 RV sites and all of the traffic associated with that use. (Testimony of Diedre Link at public hearing)
- 24.4 William Myer: William Myer of the Washington State Department of Fish & Wildlife provided testimony regarding this project. He was testifying on behalf of the Washington State Department of Fish & Wildlife. He referenced the "reaches study" by Central Washington University. There has been a loss of flood plain due to recent development along the river and therefore there have been impacts on salmon recovery on the Yakima River. There was specific discussion about the slough on the applicant's property and that endangered species seek shelter and protection in sloughs such as the one on

the applicant's property. The impacts of 160 RV sites on this property have not been studied regarding its impacts on endangered species.

Mr. Myer further testified that there had been several flooding events through this property, in fact referencing 45 separate floods that have gone through this floodway. He indicated that the flooding event in January, 2009, was 9,000 cfs and that there have been multiple events in the recent past up to 12,000 cfs. He testified that the dams had not been put in until 1915 so any measurements of a 100-year flood are purely hypothetical. (Testimony of William Myer at public hearing)

- 24.5 Gayle Bush: Mr. Bush had been living on the Yakima River since 1993, approximately 12 miles west of this site. Mr. Bush is an avid fly fisherman and regularly floats the Yakima River. He testified that in his experience the area adjacent to the proposed recreational vehicle development is a primary holding area for Chinook salmon on their migration up the Yakima River for spawning. He indicated that he had received no notice or viewed any publication that this project was to be a 160 recreational vehicle unit. He correctly pointed out that there had been no specific environmental studies for a 160 recreational vehicle unit park. (Testimony of Gayle Bush at public hearing)
- 24.6 Bill Johnson: Bill Johnson has lived in Upper Kittitas County since 1981. He has been a river guide on the Yakima River. His primary concern is where the river flows do change, especially on the Yakima River and the Teanaway River, and that there would be obvious glare and lighting for the RV park that has not been adequately studied. (Testimony of Bill Johnson at public hearing)
- 24.7 Charles Bugni: Mr. Bugni testified that he is not necessarily for or against this project. He did have concerns regarding a 160-site RV park. He recognized in the past that there had been a mix of recreational vehicle and camping use on this property. Even with that mixed use, it was loud at night. He indicated that he is in the real estate business and that there is a large surplus of homes in Kittitas County. He had concerns that the recreational vehicles could turn into permanent residences for individuals on this site. His basic concern was that the magnitude of this development being 160 recreational vehicle sites is not of a rural nature consistent with the area. (Testimony of Charles Bugni at public hearing)
25. The initial sewage disposal plan stated in the application material primarily referenced sewage for the condominiums describing the sewage facilities as being either individual or community septic systems and possibly the reclaimed water

facility. There was no discussion of how sewage for up to 160 recreational vehicle sites would be managed. (Application materials and Hearing Examiner findings)

26. A complete review of the application materials leave the Hearing Examiner to find that because there is no specific description in the application of up to 160 recreational vehicle sites, that the application is therefore too vague for agencies, the public and the Hearing Examiner to adequately evaluate potential and actual environmental impacts related to those 160 recreational vehicle sites as well as the impacts upon adjoining and neighboring properties due to 160 recreational vehicle sites. (Application materials and Hearing Examiner findings)
27. The application materials do not adequately address potential traffic impacts related to a 160-site recreational vehicle park. The Hearing Examiner has insufficient information to make a determination as to how many average daily trips could be expected and whether or not the road system is adequate to handle this development and what, if any, mitigation measures would be necessary. (Hearing Finding based on review of application materials)
28. The change in the proposal identified at the open record public hearing, that being a change to up to 24 condominium units and up to 160 recreational vehicle sites, is a substantial and material change from the original application materials, that has not been adequately studied for environmental impacts, impacts on neighboring and adjoining property owners, and mitigation that may reduce or eliminate any adverse impacts. (Hearing Finding based on review of application materials and public testimony)
29. The Hearing Examiner has insufficient factual evidence upon which to make any of the required findings to justify the proposed rezone of this property, given the material change in the project. (Hearing Finding based on review of application materials and public testimony)
30. Based upon the material change of the application, the Hearing Examiner has insufficient factual information upon which to determine whether or not this project would be adequately served by water and sewer. The application materials emphasize the reclaimed water facility, which the Hearing Examiner cannot find is a viable option given the change in the proposed use of the property. (Hearing Finding based on review of application materials and public testimony)
31. At the conclusion of the open record public hearing, the Hearing Examiner left the record open for the purpose of soliciting additional public and agency comment. Those additional comments included:

- 1) March 16, 2009, letter from Martha Whitecoff

- 2) March 20, 2009, letter from Shalbuter Law
- 3) March 16, 2009, letter from Gayle Bush
- 4) March 19, 2009, letter from Frank Baron
- 5) March 25, 2009, letter from Lisa and Robert Austin
- 6) March 26, 2009, letter from Catherine Clerf
- 7) March 26, 2009, email from David Agee of BNSF Railroad
- 8) March 26, 2009, email from Bonnie Reay
- 9) March 26, 2009, email from Diedre Link
- 10) March 27, 2009, letter from Kittitas County Department of Public Works
- 11) March 27, 2009, letter from Department of Fish & Wildlife

All of the above-referenced submittals are admitted into the record. (Public hearing record)

32. Also submitted is an April 10, 2009, letter from the applicant's attorney, Jeff Slothower, with attachments identified as Exhibits A through H. This letter and the exhibits are also admitted into the record. (Public hearing record)
33. The Hearing Examiner finds it significant that the Washington Department of Fish & Wildlife is of the opinion that the scope and nature of the proposal has not been sufficiently disclosed and continues to evolve and therefore impairs their ability to adequately study the project and to offer their opinions not only on the viability of the project, but also as to mitigation measures that may be recommended. (WSDFW written comments and public testimony)
34. The fact that there were no appeals of the SEPA determination is irrelevant at this time because of the material change in the application identified within this recommendation. (Hearing Examiner finding of fact)
35. The Hearing Examiner cannot determine from the evidence and based on the material change in the proposal whether the proposal is appropriate in design, character and appearance with the goals and policies for the land use designation in which the proposed use is located. (Hearing Examiner finding based on the record)
36. The Hearing Examiner cannot determine from the evidence and based on the material change in the proposal whether the proposed use will not cause significant adverse impacts on the human or natural environments that cannot be mitigated by conditions of approval. (Hearing Examiner finding based on the record)
37. The Hearing Examiner cannot determine from the evidence and based on the material change in the proposal whether the proposal will be served by adequate facilities including access, fire protection, water, storm water control, and sewage disposal facilities. (Hearing Examiner finding based on the record)

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

II. RECOMMENDED CONCLUSIONS OF LAW

1. The Hearing Examiner has been granted authority to render this recommended decision.
2. Based on the material change in the proposal, the Hearing Examiner cannot determine from the evidence whether the development meets the goals, policies and implementation recommendations as set forth in the Kittitas County Comprehensive Plan.
3. Based on the material change in the proposal, the Hearing Examiner cannot determine from the evidence whether this proposal is consistent with applicable federal and state laws and regulations.
4. Based on the material change in the proposal, the Hearing Examiner cannot determine from the evidence whether public use and interest will be served by approval of this proposal.
5. Based on the material change in the proposal, the Hearing Examiner cannot determine from the evidence whether the proposal is consistent with Kittitas County Code Title 16 Subdivision, Title 17 Zoning, Title 17A Critical Areas, Title 15 Environmental, and Title 12 Roads and Bridges.
6. Based on the material change in the proposal, the Hearing Examiner cannot determine from the evidence whether the proposed use is consistent with the intent, purposes and regulations of the Kittitas County Code and Comprehensive Plan.
7. Based on the material change in the proposal, the Hearing Examiner cannot determine from the evidence whether the proposal does conform to the standards specified in Kittitas County Code.
8. Based on the material change in the proposal, the Hearing Examiner cannot determine from the evidence whether the use will comply with all required performance standards as specified in Kittitas County Code.
9. Based on the material change in the proposal, the Hearing Examiner cannot determine from the evidence whether the proposed use will not be contrary to the intent or purposes and regulations of the Kittitas County Code or the Comprehensive Plan.

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10. Based on the material change in the proposal, the Hearing Examiner cannot determine from the evidence whether this proposal does comply with Comprehensive Plan, the Shoreline Master Program, the zoning code and other land use regulations, and SEPA.
11. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.

III. RECOMMENDED DECISION

Based on the above Recommended Findings of Fact and Recommended Conclusions of Law, the Hearing Examiner hereby recommends that Application Z-07-11 and SP-08-03, Yakima River PUD Rezone and Short Plat, be **DENIED**.

Dated this 24th day of April, 2009.

KITTITAS COUNTY HEARING EXAMINER



Andrew L. Kottkamp

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