

**KITTITAS COUNTY
LAND USE HEARING EXAMINER**

IN THE MATTER OF)	RECOMMENDED FINDINGS OF
)	FACT, CONCLUSIONS OF
LP-08-00012)	LAW, DECISION AND
Donald Gerard)	CONDITIONS OF APPROVAL

THIS MATTER having come on for hearing in front of the Kittitas County Hearing Examiner on November 13, 2008, the Hearing Examiner having taken evidence hereby submits the following Recommended Findings of Fact, Conclusions of Law, Decision and Conditions of Approval as follows:

I. RECOMMENDED FINDINGS OF FACT

1. Chuck Cruse of Cruse & Associates, authorized agent for Donald Gerard, landowner, submitted a Preliminary Plat application to subdivide approximately 40.65 acres into 8-lots on land that is currently zoned Ag-5. (Application materials and staff report)
2. The applicant is Chuck Cruse of Cruse & Associates, authorized agent for Donald Gerard, PO Box 959, Ellensburg, WA 98926. (Application materials)
3. The proposed lot sizes range from 5.08 acres to 5.09 acres. The project is proposed to be served by individual wells and individual septic and drainfields. The daily groundwater withdrawal exemption of 5,000 gallons per day shall be shared between all 8 lots. (Application materials and comments of Department of Ecology)
4. The property is located north of the City of Ellensburg, north of Hungry Junction Road, west of Tipton Road, Ellensburg, WA 98926, and is located in a portion of Section 14, T18N, R18E, WM in Kittitas County. Map numbers 18-18-14057-0001, 0002, 0003, and 0004. (Application materials, Assessor's records and staff report)

LP-08-00012
Donald Gerard
Page 1 of 14

5. Site Information:

Total Project Size:	40.65 acres
Number of Lots:	8
Zoning district	Ag-5
Domestic Water:	Individual wells (one exemption)
Sewage Disposal:	Individual septic and drainfields
Power/Electricity:	PUD
Fire Protection:	Kittitas Valley Fire & Rescue (District #2)
Irrigation District:	Kittitas Reclamation District

(Application materials)

6. Site Characteristics: The site is relatively flat with an elevation gain of approximately 30 to 40 feet from the Southern edge of the property to the Northern edge. There are no designated critical areas located on the subject property. A Kittitas Reclamation District lateral runs to the south through lots 1 through 4, but the subject property does not have KRD irrigation water rights. (Staff report, application materials and KRD comments)

7. Surrounding Property:

North: Vacant
South: Residential
East: Vacant
West: Vacant

(Staff report)

8. The Comprehensive Plan designation is Rural. (Application materials and staff report)
9. The subject property is zoned Ag-5, which allows for a 5 acre minimum lot size. (Staff report)
10. A long plat application was submitted to Community Development Services on April 8, 2008 and was determined complete upon receipt of the required SEPA Checklist on June 6, 2008. (Application materials and staff report)
11. In accordance with Kittitas County code 15A.030.110, this project was accurately posted with the "Land Use Action" sign as provided by Community Development Services. The Affidavit of Posting was signed by the applicant and returned to the planner on June 6, 2008. (Staff report and file of record)

12. The Notice of Application was issued on June 9, 2008. Said notice was published in the official county newspaper of record and was also mailed to jurisdictional government agencies, adjacent property owners as required and other interested parties. The last day to submit written comments was June 24, 2008. (Staff report and file of record)
13. Kittitas County issued a Mitigated Determination of Nonsignificance (MDNS) on October 9, 2008 in accordance with WAC 197-11-355 (Optional DNS process). There were no appeals filed. (Staff report and file of record)
14. 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 individual wells all of which will share a single groundwater exemption of 5,000 gallons per day. Staff has conducted an administrative critical area review in accordance with KCC 17A and found that there are no identified critical areas on the subject property. (Staff report and Hearing Examiner findings)
15. This proposal is consistent with the Kittitas County Subdivision Code Chapter 16.12 for Preliminary Plats. (Hearing Examiner findings)
16. The Kittitas County Department of Public Works has identified that the project shall be served by a single private road, having a 60' wide easement and 20' wide road surface, beginning at Tipton Road and ending in a cul-de-sac. The road is required to meet all Kittitas County Road Standards as outlined in the memorandum issued by the Department of Public Works prior to issuance of a building permit. There shall be no direct access from Tipton Road to any individual lot. As conditioned, the proposal is consistent with the provisions of KCC Title 12. (Staff report and Public Works comments)
17. The following agencies provided comments during the comment period: Kittitas Reclamation District, Kittitas County Environmental Health, Washington State Department of Ecology, Kittitas County Department of Public Works, Washington State Department of Archaeology & Historic Preservation (2), and Yakama Nation. These comments have been included as conditions of approval to address the agency concerns. (Staff report)
18. One individual landowner 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 and file of record)

19. Public and agency comments that were received were considered by the Hearing Examiner in rendering this Decision and forming Conditions of Approval. (Hearing Examiner finding)
20. This Application was found to be Technically Complete as required by law. (Hearing Examiner finding)
21. The entire Planning Staff file was admitted into the record at the public hearing. (Hearing Examiner finding)
22. The Kittitas County Department of Land Services recommended approval of this preliminary plat, subject to the recommended conditions of approval. (Staff report and staff presentation at open record public hearing)
23. Public hearing after due legal notice was held on November 13, 2008. Appearing and testifying on behalf of the applicant was attorney Jeff Slothower. Mr. Slothower indicated that there were no objections to any of the proposed conditions of approval. However, he did suggest changes to two of the proposed conditions. First of all, he requested that the Hearing Examiner considering the allowance of an option of shared wells for multiple lots as opposed to one well per lot. Additionally, he requested that a condition related to maintenance of the private road be pursuant to a reciprocal easement agreement as opposed to a homeowners association. This is because there were only 8 lots being created and the applicant did not believe that a homeowners association was the most effective way to insure perpetual maintenance of the private road. (Hearing Examiner findings based upon argument of applicant's attorney)
24. Additionally, there was discussion concerning the need for a cultural resource survey on the subject property. The applicant submitted Exhibit 1 which was a July 21, 2008, letter from Gretchen Kaehler of the Department of Archaeology & Historic Preservation as well as an October 1, 2003, letter from Michael Houser, Architectural Historian of the Office of Community Development for the Office of Archeology and Historic Preservation to James Fisher, Bureau of Land Management, Spokane District. This document also included a Cultural Resource Site designation on the subject property. The Cultural Resource Site is essentially an old dump of farm household refuse dating from 1900 to approximately 1930. (Hearing Examiner finding based upon testimony presented at the open record public hearing)
25. What was not clear to the Hearing Examiner was whether or not the identification of this site was a result of a study of the entire subject property or simply was done for the purpose of identifying the site. (Hearing Examiner finding)
26. The Department of Archaeology & Historic Preservation originally requested that a full archaeological survey be performed on the site. However, they withdrew this

- request after being presented with this 2003 study. (Hearing Examiner finding and supplemental comment by DAHP)
27. The Yakama Indian Nation had requested a full archaeological study. They have not been presented with this Cultural Resource Site investigation report from 2003. (Hearing Examiner finding and Yakama Indian Nation comment)
 28. The applicant's attorney correctly pointed out that the report contained an outline of the subject property which appears to the Hearing Examiner to be an identification of the entire subject parcel. (Hearing Examiner finding based upon review of 2003 site study)
 29. While this report does not appear to be a cultural resource survey of which the Hearing Examiner is most familiar, the fact that the report does identify the entire subject property, and that the Department of Archaeology & Historic Preservation have withdrawn their request for an archaeological survey, the Hearing Examiner finds that an archaeological survey is not required for the applicant. However, if, during the course of construction, historical artifacts or potential historical artifacts are uncovered, the applicant and/or the applicant's agents or successors in interest shall immediately stop all work and report the findings to the Washington State Department of Archaeological & Historic Preservation as well as the Yakama Indian Nation. (Hearing Examiner finding based upon testimony at open record public hearing and Hearing Examiner's review of 2003 site study)
 30. No members of the public testified at the hearing. (Hearing Examiner finding)
 31. 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)
 32. 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)
 33. The proposal will be served by adequate facilities including access, fire protection, water, storm water control, and sewage disposal facilities. (Hearing Examiner finding)
 34. Any Conclusion of Law that is more correctly a Finding of Fact is hereby incorporated as such by this reference. (Hearing Examiner finding)

II. RECOMMENDED CONCLUSIONS OF LAW

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

III. RECOMMENDED DECISION

Based on the above Findings of Fact and Conclusions of Law, the Hearing Examiner hereby recommends that Application LP-08-00012, Donald Gerard, be **APPROVED** subject to the following Recommended Conditions of Approval.

IV. RECOMMENDED CONDITIONS OF APPROVAL

All Conditions of Approval shall apply to the applicant, and the applicant's heirs, successors in interest and assigns.

1. All conditions imposed herein shall be binding on the "Applicant," which terms shall include the owner or owners of the property, heirs, assigns and successors.
2. The project shall proceed in substantial conformance with the plans and application materials which were deemed complete on June 6, 2008 except as amended by the conditions herein.
3. The applicant is responsible for compliance with all applicable local, state and federal rules and regulations, and must obtain all appropriate permits and approvals.
4. All current and future landowners must comply with the International Fire Code and its Appendices.
5. It is the responsibility of the applicant to contact the Kittitas County Assessor's and Treasurer's offices to confirm all taxes are current prior to final plat approval.
6. Based on the comments received during the public comment period and other information submitted with this project permit application, a SEPA Mitigated Determination of Nonsignificance (MDNS) was issued by Community Development Services on October 9, 2008. The following are the mitigations contained within the MDNS and shall be conditions of approval:

I. Transportation

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

II. Water

- A. Activities such as road widening, stump pulling and clearing, grading and fill work and utility placements may require an NPDES Construction Stormwater Permit issued by the Department of Ecology prior to start of construction. This permit requires the preparation of a Stormwater Pollution Prevention Plan. It is the applicant's responsibility to contact the Department of Ecology.
- B. Withdrawals of groundwater on the subject property are subject to the rules and regulations adopted and administered by the Washington State Department of Ecology; this includes the use of water for

irrigation. Legally obtained water must be used on-site.

- C. The total daily groundwater withdrawal for the Gerard Preliminary Plat (LP-08-12) shall not exceed 5,000 gallons for the entire 8-lots combined, per requirement of Department of Ecology regulations. This allows for 625 gallons per lot, regardless of development status of each individual lot.
- D. Metering will be required on all residential well connections and metering results shall be recorded in a manner consistent with Kittitas County and Washington State Department of Ecology regulations.
- E. The approval of this division of land includes no guarantee that there is a legal right to withdraw groundwater within the land division. The approval of this division of land provides no guarantee that use of water under the groundwater exemption (RCW 90.44.050) for this plat or any portion thereof will not be subject to curtailment by the Department of Ecology or a court of law.
- F. Washington Administrative Code (WAC) 173-150 provides for the protection of existing rights against impairment, i.e. interruption or interference in the availability of water. If the water supply in your area becomes limited your use could be curtailed by those with senior water rights.

III. Irrigation

- A. The existing Kittitas Reclamation District irrigation ditch that runs through Lots 1 through 4 of the Gerard Preliminary Plat (LP-08-12) shall be protected in such a way that there is no interruption or diversion to the delivery of prescribed irrigation waters to the adjoining residents. The applicant shall work with the Kittitas Reclamation District to ensure compliance and provide documentation to Community Development Services from the KRD stating compliance prior to final approval.

IV. Light and Aesthetics

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

V. Noise

- A. Development and construction practices for this project shall only occur between the hours of 7:00am and 7:00pm to minimize the effect of construction noise on nearby residential properties.

VI. Public Safety

- A. Addresses of all new residences shall be clearly visible from both directions at the County road.
 - B. Any future development shall comply with the International Fire Code (IFC) and its Appendices.
 - C. The applicant shall consult with the local school district to determine the safest location for a school bus stop and said location shall be depicted on the final mylars.
 - D. A portion of the Gerard Preliminary Plat (LP-08-12) is located within the Inner Turning Zone boundary of the Airport Overlay Zone (KCC 17.58.050(1)(j)). *A plat note shall be added to the final mylars that states the following: This property is located within the Airport Overlay Zoning District in which a variety of airport aviation activities occur. Such airport activities may impact the use of your property.*
7. Soil logs need to be scheduled and dug at a mutually convenient time. The developer/owner shall provide soil logs as per Chapter 246-272 WAC or as amended. The information obtained will be recorded and placed in the plat file for future reference. The information obtained from these soil logs is for plat approval purposes only and does not constitute a site evaluation in conjunction with the issuance of a permit for any specific lot.
8. Proof of potable water must be shown prior to final plat approval.
9. For final approval of an individual well, the submittal of well logs or a hydrogeological report with documentation/evidence to support the claim regarding adequate availability of groundwater for the proposed number of potable water wells is required. This report shall be submitted by a Professional Engineer who practices in the field of hydrology or by a licensed Hydrogeologist.
10. All applicants for subdivision utilizing wells shall have a note placed on the face of the final mylar that states: "Kittitas County relies on its record that a supply of potable water exists. The approval of this division of land includes no guarantee or assurance that there is a legal right to withdraw groundwater within the land division."
11. The Final Plat shall meet all requirements as listed in Chapter 16.20 of the Subdivision Code; including content, format, etc. The following items will be

required on the Final Plat Submittal:

- a. **Adjacent Property Owners:** The adjacent property owners and surrounding properties shall be on the face of the final short plat. (K.C.C.16.20.040, 10, Plat drawing, Adjacent Owners).
 - b. **Surrounding Area:** All surrounding property shall be shown in dotted lines and letters with names of plats, roads, adjoining lots, canals, and etc., and if un-platted shall be so indicated. (K.C.C.16.20.040, 11, Plat drawing, Surrounding Area).
12. **Right of Way Dedication:** The applicant shall dedicate 30' of right of way for Tipton Road to Kittitas County. The Right of Way shall be 30' west of the section line for the extent of Tipton Road.
 13. **Access:** All access shall be from the private road. No direct access to Tipton Road shall be allowed.
 14. **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.
 15. **Private Road Improvements:** Access from Tipton Road to the cul-de-sac shall be constructed as a Low-Density Private Road. See Kittitas County Road Standards, 9/6/05 edition.
 - a. Access easements shall be a minimum of 60' wide. The roadway shall have a minimum width of 20', with 1' shoulders, for a total width of 22'.
 - b. Minimum centerline radius will be 60'.
 - c. The surface requirement is for a minimum gravel surface depth of 6".
 - d. Maximum grade is 12%.
 - e. Stopping site distance, reference AASHTO.
 - f. Entering site distance, reference AASHTO.
 - g. Maintenance of driveway approaches shall be the responsibility of the owner whose property they serve. The County will not maintain accesses.
 - h. Any further subdivision or lots to be served by proposed access may result in further access requirements.
 - i. All roads located within this development or roads that provide access to this development shall be constructed to current county road standards unless any other maintenance agreements, forest service road easements or state easements require higher road standards. The higher of the road standards shall apply.
 - j. All easements shall provide for AASHTO radius at the intersection of county road.

- k. A paved apron shall be constructed at the intersection of the proposed private intersection and the county road right of way.
16. Cul-de-Sac: A cul-de-sac turn around having an outside right-of-way easement diameter of at least 110 feet shall be constructed at the closed end of all dead-end roads serving 3 or more lots. The driving surface shall be at least 96 feet in diameter. Cul-de-sacs must also conform to the requirements specified by the 2006 International Fire Code. Contact the Fire Marshal regarding any additional cul-de-sac requirements.
17. 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 a building permit for this plat.
 - b. 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.
 - c. Maintenance of the access is the responsibility of the property owners who benefit from its use.
 - d. 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.
 - e. Any further subdivision or lots to be served by proposed access may result in further access requirements. See Kittitas County Road Standards.
 - f. 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.
18. 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

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

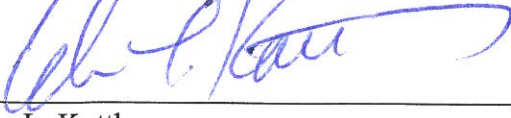
20. Lot Closure: It is the responsibility of the Professional Licensed Surveyor (PLS) to ensure the lot closures are correct and accurate.
21. Access Permit: An approved access permit shall be required from the Department of Public Works prior to creating any new driveway access or performing work within the county road right of way.
22. Addressing: Contact the Kittitas County Rural Addressing Coordinator at (509) 962-7523 to obtain addresses prior to obtaining a building permit. A parcel cannot receive a building permit or utilities until such parcel is identified with a 911 address.
23. Fire Protection: Contact the Kittitas County Fire Marshal regarding any additional access requirements for emergency response.
24. Mailbox Placement: The U.S. Postal Service requires that private roads with 6 or more residences install USPS approved Cluster Box Units (CBUs) at a safe location at the mouth of the private road. Contact your local post office for location and additional design requirements before beginning construction.
25. Private roads shall meet the following conditions:
 - a. Private roads shall meet the minimum access requirements of the International Fire Code as adopted by the County, and
 - b. Shall be designed and constructed in conformance with AASHTO Guidelines for Geometric Design of Very Low-Volume Local Roads (ADT < 400) 2001, as now exists or hereafter amended, and
 - c. Shall be inspected and certified by a licensed professional engineer for conformance with the above referenced standards. In the alternative, an applicant may request the private roadway to be inspected and subject to the approval of the Public Works Director. If certification by the public Works Director/County Engineer is desired, submission of road plans and necessary testing documentation that confirms compliance with Kittitas County Road Standards is required, and services will be performed on a reimbursable basis, and
 - d. Permanently established by an easement recorded with the Kittitas County Auditor or right-of-way, providing legal access to each affected lot, dwelling unit, or business, and
 - e. Will not result in land locking of existing or proposed parcels, and
 - f. Maintained either:
 - 1) By the developer or legally responsible owner or homeowners' association or other legal entity made up of all benefited property owners, under the provisions of an acceptable and recorded "Private Road Maintenance Agreement;" or

- 2) Pursuant to a perpetual reciprocal easement agreement including all of properties within this plat for all private roads of the plat up to the apron to the County Road.
 - g. Clearly described on the face of the plat, short plat, or other development authorization and clearly signed at street location as a private street or road, for the maintenance of which Kittitas County is not responsible and a disclosure statement of the same is filed with the County Auditor, and
 - h. The following note shall be placed on the face of the plat, short plat, or other development authorization:

Kittitas County will not accept private roads for maintenance as public streets or roads until such streets or roads are brought into conformance with current County Road Standards. This requirement will include the hard surface paving of any street or road surfaced originally with gravel.
26. A plat note discussing the spread of noxious weeds shall be shown on the plat and shall read: "Per RCW 17.10.140 Landowners are responsible for controlling and preventing the spread of noxious weeds, accordingly, the Kittitas County Noxious Weed Board recommends immediate reseeded of areas disturbed by development to preclude the proliferation of noxious weeds."
 27. Final mylar shall be submitted in accordance to KCC 16.20: Final Plats. All applicable survey data and dedications shall be reflected pursuant to KCC 16.24: Survey Data-Dedications.
 28. Both sheets shall reflect the Plat number LP-08-12.
 29. The Hearing Examiner hereby authorizes the applicant, subject to Department of Ecology approval, for the use of a single well to supply water to multiple households. Said wells must still be metered and monitored so that each household does not exceed the daily groundwater withdraw exemption of 5,000 gallons per day to be shared between all 8 lots.
 30. If, during the course of construction, historical artifacts or potential historical artifacts are uncovered, the applicant and/or the applicant's agents or successors in interest shall immediately stop all work and report the findings to the Washington State Department of Archaeological & Historic Preservation as well as the Yakama Indian Nation.

Dated this ____ day of November, 2008.

KITTITAS COUNTY HEARING EXAMINER



Andrew L. Kottkamp