

**KITTITAS COUNTY
LAND USE HEARING EXAMINER**

IN THE MATTER OF)	RECOMMENDED FINDINGS OF
)	FACT, CONCLUSIONS OF
LP-08-31)	LAW, DECISION AND
Alyssa Plat)	CONDITIONS OF APPROVAL

THIS MATTER having come on for hearing in front of the Kittitas County Hearing Examiner on December 10, 2009, the Hearing Examiner having taken evidence hereby submits the following Recommended Findings of Fact, Conclusions of Law, Decision and Conditions of Approval as follows:

I. RECOMMENDED FINDINGS OF FACT

1. Property Holdings & Speculation LC, landowner, has submitted a Preliminary Plat application to subdivide approximately 25.01 acres into 5 lots on land that is currently zoned Rural 5. (Staff report)
2. The applicant is Property Holdings & Speculations, LLC, 5603 N. Waterfront Drive, Tacoma, WA 98407. (Application materials)
3. The proposed lot sizes are approximately five acres in size. The project is proposed to be served individual domestic wells and individual onsite septic systems. (Staff report)
4. The property is located east of South Cle Elum Ridge Road and south of Westside Road, in Cle Elum, WA located in a portion of the South ½ of Section 9, T19N, R15E, WM. in Kittitas County. Map number: 19-15-09050-0002. (Staff report)

5. Site Information:
 - Total Project Size: 25.01 acres
 - Number of Lots: 5
 - Domestic Water: Individual wells
 - Sewage Disposal: Individual on-site septic system
 - Power/Electricity: Puget Sound Energy
 - Fire Protection: Fire District #7
 - Irrigation District: Not applicable(Staff report)
6. Site Characteristics: The area has recently been logged and is forested with areas of steep slopes. (Staff report)
7. Surrounding Properties:
 - a. North: Vacant, zoned Forest & Range
 - b. South: Vacant, zoned Forest & Range
 - c. East: Vacant, zoned Forest & Range & Rural 5
 - d. West: Vacant, zoned Forest & Range(Staff report)
8. The Comprehensive Plan designation is “Rural.” (Staff report)
9. The subject property is zoned Rural 5, which allows for one residential unit per 5 acres. (Staff report)
10. A long plat application was submitted to Community Development Services on November 19, 2008. The Notice of Application for the preliminary plat application was issued on October 26, 2009. This notice was published in the official county paper of record and was mailed to jurisdictional government agencies, adjacent property owners and other interested parties. The last day to submit written comments was on November 2, 2009. (Staff report)
11. In accordance with Kittitas County code 15A.030.110, this project was accurately posted with the “Land Use Action” sign as provided by Community Development Services. The Affidavit of Posting was signed on December 9, 2009 by the applicant and returned to Community Development Services, and is included as part of the record. (Staff report)
12. Kittitas County issued a Determination of Nonsignificance (DNS) on November 20, 2009 in accordance with WAC 197-11-355 (Optional DNS process). No appeals were filed. (Staff report)

13. The proposal is consistent with the goals and policies of the Kittitas County Comprehensive Plan. The proposed subdivision will be adequately served by rural levels of service. The lots will be served by individual domestic wells and individual onsite septic systems. (Staff report)
14. Staff has conducted and an administrative critical area review in accordance with KCC 17A and found that portions of the site have areas of 25-50% steep slopes. As conditioned, the proposed development is consistent with the provisions of KCC Title 17A. (Staff report)
15. The Department of Public Works has reviewed this proposal for consistency with KCC Title 12 Roads and Bridges. Several conditions have been applied to the second access and the construction of onsite private roads, as outlined in the November 4, 2009 memorandum issued by the Department of Public Works, which will be required prior to issuance of a building permit. As conditioned, the proposal is consistent with the provisions of KCC Title 12. (Staff report)
16. The following agencies provided comments during the comment period: Kittitas County Department of Public Works, Kittitas County Public Health Department and the Kittitas County Fire Marshal's Office. These comments have been included as conditions of approval to address these agency concerns. (Staff report)
17. Public and agency comments that were received were considered by the Hearing Examiner in rendering this Decision and forming Conditions of Approval. (Hearing Examiner finding based on the record)
18. This Application was found to be Technically Complete as required by law. (Staff report))
19. The entire Planning Staff file was admitted into the record at the public hearing. (Public hearing record)
20. The Kittitas County Community Development Services recommended approval of this permit, subject to the recommended conditions of approval. (Public hearing record)
21. Public hearing after due legal notice was held on December 10, 2009. The applicant was given notice of the hearing and did not appear. (Open record public hearing)
22. No member of the public testified at the hearing. (Hearing Examiner finding based on the record)

23. Supplemental materials were submitted by Staff at the hearing. This was Exhibit 1, a December 9, 2009, letter from Gwen Clear of the Washington State Department of Ecology, to Mr. Valoff. Also submitted was Exhibit 2, which is a December 10, 2009, letter from Dan Blanchard to Mr. Valoff. Exhibits 1 and 2 were admitted into the record. (Public hearing record)
24. The proposal is appropriate in design, character and appearance with the goals and policies for the land use designation in which the proposed use is located. (Hearing Examiner finding based on the record)
25. The proposed use will not cause significant adverse impacts on the human or natural environments that cannot be mitigated by conditions of approval. (Hearing Examiner finding based on the record)
26. The proposal will be served by adequate facilities including access, fire protection, water, storm water control, and sewage disposal facilities. (Hearing Examiner finding based on the record)
27. Any Conclusion of Law that is more correctly a Finding of Fact is hereby incorporated as such by this reference. (Hearing Examiner finding based on the record)

II. RECOMMENDED CONCLUSIONS OF LAW

1. The Hearing Examiner has been granted authority to render this recommended decision.
2. As conditioned, this proposal is consistent with the Kittitas County Subdivision Code Chapter 16.12 for Preliminary Plats.
3. As conditioned, the development meets the goals, policies and implementation recommendations as set forth in the Kittitas County Comprehensive Plan.
4. As conditioned, this proposal is consistent with applicable federal and state laws and regulations.
5. Public use and interest will be served by approval of this proposal.
6. As conditioned, the proposal is consistent with Kittitas County Code Title 16 Subdivision, Title 17 Zoning, Title 17A Critical Areas, Title 15 Environmental, and Title 12 Roads and Bridges.

7. As conditioned, the proposed use is consistent with the intent, purposes and regulations of the Kittitas County Code and Comprehensive Plan
8. As conditioned, the proposal does conform to the standards specified in Kittitas County Code.
9. As conditioned, the use will comply with all required performance standards as specified in Kittitas County Code.
10. As conditioned, the proposed use will not be contrary to the intent or purposes and regulations of the Kittitas County Code or the Comprehensive Plan.
11. As conditioned, this proposal does comply with Comprehensive Plan, the Shoreline Master Program, the zoning code and other land use regulations, and SEPA.
12. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.

III. RECOMMENDED DECISION

Based on the above Recommended Findings of Fact and Recommended Conclusions of Law, the Hearing Examiner hereby recommends that Application LP-08-31, Alyssa Plat, be **APPROVED** subject to the following Recommended Conditions of Approval.

IV. RECOMMENDED CONDITIONS OF APPROVAL

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

1. All conditions imposed herein shall be binding on the "Applicant," which terms shall include the owner or owners of the property, heirs, assigns and successors.
2. The project shall proceed in substantial conformance with the plans and application materials on file dated November 19, 2009 except as amended by the conditions herein.
3. The applicant is responsible for compliance with all applicable local, state and federal rules and regulations, and must obtain all appropriate permits and approvals.
4. It is the responsibility of the applicant to contact the Kittitas County Assessor's and Treasurer's offices to confirm all taxes are current prior to final plat approval.

Platting Standards, Building, and Zoning Code:

5. The following note shall be placed on the face of the final plat:
The placement of buildings and structures on or adjacent to ascending or descending slopes steeper than 1 unit vertical in 3 units horizontal (33.3-percent slope) shall conform to the building setback requirements of current adopted building codes (IRC Section R403.1.7 and IBC Section 1805.3.1). Alternate setbacks and clearances are permitted, subject to the approval of the building official. The building official is permitted to require an investigation and recommendation of a qualified engineer to demonstrate the requirements necessary to construct a building on or adjacent to ascending or descending slopes. Such an investigation shall include consideration of material, height of slope, slope gradient, load intensity and erosion characteristics of slope material.
6. 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.”*
7. Final mylars shall be submitted in accordance to KCC 16.20: Final Plats. All applicable survey data and dedications shall be reflected pursuant to KCC 16.24: Survey Data-Dedications.
8. Both final plat sheets shall reflect the Plat number: LP-08-00031.

Cultural Resources and Historic Preservation:

9. Archaeological resources are protected under state law (RCW 27.53.060, 27.44.040, 27.44.055); however no comments regarding cultural or archeological resources were received from the Department of Archaeology and Historic Preservation or the Yakama Nation indicating the presence of cultural or archaeological resources at this site. If items of possible cultural or historic significance are encountered during construction activities, work shall be immediately halted within the area a large enough perimeter established in order to maintain the integrity of the site. Kittitas County Community Development Services, the State Historic Preservation Office, and the Yakama Nation, as relevant, shall be immediately consulted.

Transportation and Infrastructure:

10. Second Access: A second access is required of this project. Prior to final approval, the applicant must submit a route that has easement or other access rights secured and recorded to Public Works for approval. The second access must conform to Kittitas County Road Standards and the second access requirements as clarified by the Board

of County Commissioners on April 2, 2007. The BOCC clarified KCRS 12.01.095(2) with the following requirements: 1) If the second access is restricted to emergency access only, it must meet or exceed the following requirements: 60' easement, 20' roadway width, BST/ACP surface, and a paved apron. Access restrictions such as gates or bollards must be approved by the Fire Marshall; 2) If the second access is to be used for ingress and egress, it must meet the same standards of the first access.

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

11. Timing of Improvements: This application is subject to the latest revision of the Kittitas County Road Standards, dated 9/6/05. The following conditions apply and must be completed prior to the issuance of a building permit for any of the residence within this plat. A Performance Bond or acceptable financial guarantee may be used, in lieu of the required improvements, per the conditions outlined in the current Kittitas County Road Standards.
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. Second Access: The second access route shall be shown on the final plat or within the vicinity map.
14. Improvements to South Cle Elum Ridge Road and Rocky Mountain Road: From Westside Road to the entrance to the Plat, access roads shall be constructed as High Density Private Roads that serve 40+ lots.
15. Emergency Turnaround: A cul-de-sac or hammerhead turn-around shall be constructed at the end of Rocky Mountain Road. A cul-de-sac shall have an outside right-of-way or easement diameter of at least 110 feet and the driving surface shall be at least 96 feet in diameter. Hammerheads and cul-de-sacs must also conform to the requirements specified by the 2006 International Fire Code. Contact the Fire Marshal regarding any additional turnaround requirements.
16. Joint-Use Driveway: A joint-use access shall serve no more than two tax parcels. See Kittitas County Road Standards, 9/6/05 edition.
 - a) Access easements shall be a minimum of 20' wide. The roadway width shall have a minimum width of 12'.

- b) The surface requirement is for a minimum gravel surface depth of 6”.
 - c) Maintenance of driveway approaches shall be the responsibility of the owner whose property they serve. The County will not maintain accesses.
 - d) Any further subdivision or lots to be served by proposed access may result in further access requirements.
17. Private Road Maintenance Agreement: The applicant shall meet all applicable conditions of any pre-established or required Private Road Maintenance Agreements.
18. Lot Closure: It is the responsibility of the Professional Licensed Surveyor (PLS) to ensure the lot closures are correct and accurate.
19. 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.
20. 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.
21. Fire Protection: Contact the Kittitas County Fire Marshal regarding any additional access requirements for Emergency Response.
22. 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.
23. Private roads shall meet the following conditions:
- a) Private roads shall meet the minimum access requirements of the International Fire Code as adopted by the County, and
 - b) Shall be designed and constructed in conformance with AASHTO Guidelines for Geometric Design of Very Low-Volume Local Roads (ADT < 400) 2001, as now exists or hereafter amended, and
 - c) Shall be inspected and certified by a licensed professional engineer for conformance with the above referenced standards. In the alternative, an applicant may request the private roadway to be inspected and subject to the approval of the Public Works Director. If certification by the public Works Director/County Engineer is desired, submission of road plans and necessary testing documentation that confirms compliance with Kittitas County Road Standards is required, and services will be performed on a reimbursable basis, and

- d) Permanently established by an easement recorded with the Kittitas County Auditor or right-of-way, providing legal access to each affected lot, dwelling unit, or business, and
- e) Will not result in land locking of existing or proposed parcels, and
- f) Maintained by the developer or legally responsible owner or homeowners' association or other legal entity made up of all benefited property owners, under the provisions of an acceptable and recorded "Private Road Maintenance Agreement", and
- g) Clearly described on the face of the plat, short plat, or other development authorization and clearly signed at street location as a private street or road, for the maintenance of which Kittitas County is not responsible and a disclosure statement of the same is filed with the County Auditor, and
- h) The following note shall be placed on the face of the plat, short plat, or other development authorization:

"Kittitas County will not accept private roads for maintenance as public streets or roads until such streets or roads are brought into conformance with current County Road Standards. This requirement will include the hard surface paving of any street or road surfaced originally with gravel."

Fire Marshal

- 24. All future development must comply with the 2006 International Fire Code, International Building Code, and Kittitas County Codes and all other development agreements.
- 25. All current and future land owners must comply with the 2006 International Fire Code.
- 26. No slope or grade for any road shall be greater than 12%.

Water and Stormwater:

- 27. No water right records associated with this property were found in the Department of Ecology Central Regional Office. WAC 173-593A, known as the Upper Kittitas County Emergency Ground Water Rule, withdraws all new appropriations of ground water within the upper Kittitas County during the pendency of a ground water study. The rule does allow for new uses of ground water if a building permit has been granted and vested prior to July 16, 2009, or for projects which are determined by Ecology to be water budget neutral.

The applicant shall apply to Ecology for a permit to appropriate public ground water or, if seeking to use the ground water exemption, shall submit to Ecology a request for determination that the proposed exempt use would be water budget neutral. The rule establishes a pathway for parties to develop water budget neutral projects by identifying water rights that can be placed into Ecology's trust water fight program to offset their consumptive use of ground water.

28. Final approval of this plat is conditions upon the developer/owner of the plat providing proof of water availability. Water availability can be provided through submittal of a water availability report with documentation and evidence to support the claim regarding adequate availability of groundwater for the proposed number of potable water wells.
29. Final approval of this plat is conditioned upon the applicant obtaining a Determination of Water Neutrality from the Washington State Department of Ecology. At final approval, if the applicant can show that under the then existing Upper Kittitas County Ground Water Rule such a determination is not required, then the applicant may be released from this condition. In order to secure such a release the applicant must prove that either the withdraw had already commenced before July 16th, 2009 or that the Upper Kittitas county Ground Water Rule has changed and that under the new rule the applicant is not required to obtain a Determination of Water Neutrality and the applicant has meet all the conditions that are required by the new rule.
30. The following notes shall be included on the final plat:
 - a. 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 ground water exemption (RCW 90.44.0550) for this plat or any portion thereof will not be subject to curtailment by the Department of Ecology of a court of law.
 - b. Metering will be required on all new residential well connections and metering results shall be recorded in a manner consistent with Kittitas County and Washington State Department of Ecology requirements.
31. Any surface water diversion will require application to the Department of Ecology for a water right permit.
32. Construction of any dam or dike which is capable of impounding water to a depth of 10 feet or more at any point, or will impound a volume of 10 acre feet or more at normal pool level, will require a reservoir permit from the Department of Ecology prior to construction.

33. If the proposal changes and one or more public water systems are proposed to supply some or all of the 9 lots, then the applicant must gain Department of Health approval of these systems before construction begins.
34. Note that additional valid water rights may be required for irrigation water. If irrigation is not available through an irrigation district, the Department of Ecology encourages the use of covenants to help property owners stay within the group water exemption criteria until a valid water right is obtained for irrigation.
35. An NPDES Construction Stormwater General Permit from the Washington State Department of Ecology is required if there is a potential for stormwater discharge from a construction site with more than one acre of disturbed ground. This permit requires that the SEPA checklist fully disclose anticipated activities including building, road construction and utility placements. Obtaining a permit is a minimum of a 38 day process and may take up to 60 days if the original SEPA does not disclose all proposed activities.
36. 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.

Wastewater

37. Soil Logs: Public Health staff has identified drainage issues on this site that may affect septic and lot layout. Soil log testing may result in requirements that lots are resized or reconfigured, or that the total number of lots must be reduced. Prior to final plat approval the applicant must contact Kittitas County Department of Health to schedule soil logs to be taken on the site in order to demonstrate the suitability of soils for onsite septic, as required by KCC 16.12.030.F.

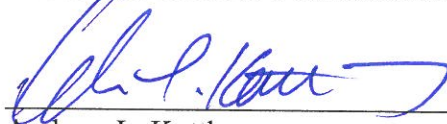
Air Quality

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

from interfering unreasonably with the use and enjoyment of property, causing health impacts, or damaging property or business.

Dated this 22nd day of December, 2009.

KITTITAS COUNTY HEARING EXAMINER



Andrew L. Kottkamp