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KITTITAS COUNTY LAND USE HEARING EXAMINER

IN THE MATTER OF)	RECOMMENDED FINDINGS OF
)	FACT, CONCLUSIONS OF
RZ-08-00011 and SP-08-00046)	LAW, DECISION AND
Nelsen Rezone and Short Plat)	CONDITIONS OF APPROVAL

THIS MATTER having come on for hearing in front of the Kittitas County Hearing Examiner on April 9, 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. John H. F. Ufkes, authorized agent for James Nelsen, landowner, submitted an application for a project related rezone from Forest & Range to AG-5 together with an application for a short plat proposing a total of 3 lots on approximately 20.00 acres of land. (Staff Report)
2. The applicant is Jim Nelsen, 33405 6th Ave. S., Federal Way, WA 98003. The authorized agent is Chris Cruse, P.O. Box 959, Ellensburg, WA 98926. (Application materials)
3. Two of the proposed lot sizes are 5.0 acres and the third is 10 acres in size. (Staff Report)
4. The project is proposed to be served by individual wells and individual septic systems. (Staff Report)
5. The subject property is located east of the City of Cle Elum, south of Highway 970, off of Lambert Road, Cle Elum, WA 98922, and is located in a portion of Section 31,

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T20N, R17E, WM, in Kittitas County. Map numbers 20-17-31052-0001 & 20-17-31052-0006.

6. Site Information:

Total Project Size:	20.00 acres
Number of Lots:	3 lots
Domestic Water:	Individual Wells
Sewage Disposal:	Individual Septic Systems
Power/Electricity:	Puget Sound Energy
Fire Protection:	Kittitas County Fire District #7
Irrigation District:	N/A

(Staff Report)

7. Site Characteristics: The site consists of rolling slopes. (Staff Report)

8. Surrounding Property:

North: Residential
South: Open Space/Timbered
East: Residential
West: Residential
(Staff Report)

9. The Comprehensive Plan designation is Rural. (Staff Report)

10. The subject property is zoned Forest & Range, which allows for a 20 acre minimum lot size. (Staff Report)

11. Applications for a rezone from Forest & Range to AG-5 and a 3-lot Short Plat were received on October 14 2008. (Staff Report)

12. 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 submitted to CDS on November 18, 2008. (Staff Report)

13. The Notice of Application for a rezone from Forest & Range to AG-5 and a 3-lot short plat was issued on November 25, 2008. (Staff Report)

14. Kittitas County issued a Determination of Nonsignificance (DNS) on March 6, 2009 in accordance with WAC 197-11-355 (Optional DNS process). There were no appeals filed. (Staff Report)

15. 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 and individual septic systems. (Staff Report)
16. This proposal is consistent with Kittitas County Code Title 16 Subdivisions. (Staff Report)
17. The Kittitas County Department of Public Works has conditioned the project and the conditions are included at Attachment "A". As conditioned, the proposal is consistent with the provisions of Kittitas County Code Title 12. (Staff Report)
18. The following agencies provided comments during the comment period: Kittitas County Public Health, Kittitas County Public Works, Department of Transportation. (Staff Report)
19. No comments were received from the public. (Staff Report)
20. 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)
21. This Application was found to be Technically Complete as required by law. (Staff Report))
22. The entire Planning Staff file was admitted into the record at the public hearing. (Public hearing record)
23. Also admitted into the record was Exhibit 1 which is a Department of Ecology metering comment dated April 6, 2009. (Hearing Examiner finding based upon public hearing)
24. The Kittitas County Community Development Services recommended approval of this permit(s), subject to the recommended conditions of approval. (Public hearing record)
25. Public hearing after due legal notice was held on April 9, 2009. Appearing and testifying on behalf of the applicant was John Ufkes. Admitted as Exhibit 2 to the hearing is an April 9, 2009, letter from Mr. Ufkes with attached Exhibits 1-3. (Public hearing record and Hearing Examiner finding based upon public hearing)

26. Admitted as Exhibit 3 to this hearing was the April 6, 2009, comment from Kittitas County Public Health. (Hearing Examiner finding based upon public hearing)
27. Admitted as Exhibit 4 to the hearing is a series of emails dated between March 19, 2009, and April 2, 2009, between Cruse and Associates and Holly Duncan and from Cathy Bambrick to Cruse and Associates. Exhibit 4 was admitted into the record which is a current well log for the subject property. (Hearing Examiner finding based upon public hearing)
28. Also testifying for the applicant was surveyor and authorized agent Chris Cruse. It was through Mr. Cruse that Exhibits 3 and 4 were admitted into the record. Mr. Cruse emphasized that the Yakama Nation and Washington State Department of Archeology had not commented on the project. (Hearing Examiner finding based upon public hearing)
29. Also appearing and testifying on behalf of the applicant was the applicant himself, Jim Nelsen. Mr. Nelsen indicated that he had owned the lot for the last six or seven years. (Hearing Examiner finding based upon public hearing)
30. No member of the public testified at this hearing. (Hearing Examiner finding based on the record)
31. The proposed amendment is compatible with the Comprehensive Plan as the proposed use will continue to be rural in nature. (Application materials)
32. The proposed zoning amendment bears a substantial relation to public health, safety and welfare because water will be provided from metered wells and the development of the property will economically benefit the County. (Application materials)
33. The proposed amendment has merit and value for Kittitas County. (Application materials)
34. Rural land uses have a variety of authorized uses and are located in a variety of topography and this continued rural use, coupled with the existing smaller lots in the area will allow improved road circulation all in compliance with the requirements of Kittitas County and the authorized road variance. (Application materials)
35. The change of circumstances are related to two previous rezones on neighboring property in the area. Additionally, the Swauk Prairie has over the years evolved from an agricultural use to more rural land use development, basically becoming more rural residential as opposed to agricultural. (Application materials)

36. There is adequate access to the property as determined by the approved road variance and there is sufficient water. The subject property is suitable for development in general conformance with the zoning standards for the proposed zone. (Application materials)
37. The proposed zoning amendment would not be materially detrimental to the use of properties in the immediate vicinity of the subject property as there are already rezones in the immediate vicinity that are consistent with this proposed rezone and this proposed rezone will continue and maintain the rural character in the surrounding properties. (Application materials)
38. Because there is no irrigation water delivered to the subject property, the proposed change in use would not adversely impact irrigation water deliveries to other neighboring properties. (Application materials)
39. 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)
40. 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)
41. 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)
42. 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, 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 Policy 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 Recommended Findings of Fact and Recommended Conclusions of Law, the Hearing Examiner hereby recommends that Application RZ-08-00011 and SP-08-00046, Nelsen Rezone and Short 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 which were submitted on October 18, 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 comment period and other information submitted with this project permit application, a SEPA Determination of Nonsignificance (DNS) was issued by Community Development Services on March 6, 2008. The following shall be conditions of approval:

I. Transportation

1. 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 used, in lieu of the required improvements, per the conditions outlined in the current Kittitas County Road Standards.
2. 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.
3. Lambert Road Improvements: Lambert Road shall be improved as required by Road Variance RV-08-23, which includes a 16' gravel road with turnouts as designated.

As a condition of the variance, a plat note shall be shown on the final plat stating that all new construction on the newly created lots shall have residential sprinkler systems until such time the road is improved to meet Kittitas County Road Standards.

4. Private Road Improvements: Access from Lambert 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.
5. Cul-de-Sac: A cul-de-sac turn-around having an outside right-of-way or easement diameter of at least 110 feet shall be constructed at the closed end of all dead-end roads serving 3 or more lots. The driving surface shall be at least 96 feet in diameter. Cul-de-sacs must also conform to the requirements specified by the 2006 International Fire Code. Contact the Fire Marshal regarding any additional cul-de-sac requirements.
6. 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.

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.
- 7. Private Road Maintenance Agreement: The applicant shall meet all applicable conditions of any pre-established or required Private Road Maintenance Agreements.
 - 8. Lot Closure: It is the responsibility of the Professional Licensed Surveyor (PLS) to ensure the lot closures are correct and accurate.
 - 9. 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.
 - 10. 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.
 - 11. Fire Protection: Contact the Kittitas County Fire Marshal regarding any additional access requirements for Emergency Response.
 - 12. Mailbox Placement: Mailboxes must be approved by U.S. Postal Service. Mailbox locations are site specific. Contact your local Post Office for location and design standards before beginning construction.

Current Kittitas County Road Standards, as adopted 9/6/05.

Chapter 12 – PRIVATE ROADS

12.12.010 General

Private roads shall meet the following conditions:

1. Private roads shall meet the minimum access requirements of the International Fire Code as adopted by the County, and
2. 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
3. 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
4. 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
5. Will not result in land locking of existing or proposed parcels, and
6. 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
7. 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
8. 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."

II. Air

- A. If the applicant plans to burn trees or debris from the property, the applicant shall obtain a burn permit from the Department of Ecology. Only natural unprocessed vegetation may be burned in an outdoor fire. It is the applicant's responsibility to contact the Department of Ecology regarding this permit.
- B. Washington Administrative Code (WAC) 173-400-040 requires that reasonable precautions be taken to prevent dust from leaving the project site. Additionally, dust is prohibited from interfering unreasonably with the use and enjoyment of property, causing health impacts or damaging property or business. As a result, the applicant shall be responsible for creating a site-specific Fugitive Dust Control Plan (FDCP) before starting this project. The plan shall be followed throughout the duration of any activity and construction of the project.

III. 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. Stormwater and surface runoff generated from this project shall be retained and treated onsite and shall not be allowed to flow into County road right-of-ways.
- C. Withdrawals of groundwater on the subject property are subject to the rules and regulations adopted and administrated by the Washington State Department of Ecology; this includes the use of water for irrigation. Legally obtained water must be used on-site.
- D. The Nelsen Short Plat shall be considered as one project and therefore shall be allowed one 5,000 gallon per day exemption to be divided between the 3 lots. The applicant shall utilize one or more individual wells and/or Group B water systems.
- E. All wells that are a part of the Nelsen Short Plat (SP-08-46) shall be metered and records documenting water usage shall be kept and made available to the public for inspection. The owner of the well shall be responsible for making usage readings.

- F. Water withdrawn from wells on the subject property shall only be used for the purposes allowed in RCW 90.44.050.
- G. 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.
- H. 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 90.44.050) for this plat or any portion thereof will not be subject to curtailment by the Department of Ecology or a court of law.
- I. A note on the face of the final plat shall read:

“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.”

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 to 7:00pm to minimize the effect of construction noise on nearby residential properties.

VI. Archaeology

- A. Prior to any ground disturbing activities on the subject property, the applicant shall consult with the Yakama Nation regarding the need for a professional archaeological survey to protect any and all archaeological resources. Proof of consultation shall be submitted to Community Development Services prior to final approval.

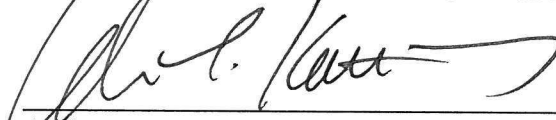
- B. If, during consultation with the Yakama Nation, it is determined that an archaeological survey is required, a copy of the completed survey shall be submitted to Community Development Services prior to final approval.

VII. Public Safety

- A. The applicant shall create a safe passageway for a school bus stop. The local school district shall be consulted on its location and it shall be shown on the final mylars.
- B. Mail routes and boxes shall be approved by the local postmaster. Mailboxes shall not create site obstructions.

Dated this 21st day of April, 2009.

KITTITAS COUNTY HEARING EXAMINER



Andrew L. Kottkamp