

**KITTITAS COUNTY  
LAND USE HEARING EXAMINER**

<b>IN THE MATTER OF</b>	)	<b>DECISION ON ADMINISTRATIVE</b>
	)	<b>INTERPRETATION APPEAL</b>
<b>SE-21-00006</b>	)	
<b>Nunnally Holdings, LLC-</b>	)	
<b>Administrative Interpretation</b>		

THIS MATTER having come on for hearing in front of the Kittitas County Hearing Examiner on September 20, 2021, the Hearing Examiner having taken evidence hereby submits the following Findings of Fact, Conclusions of Law and Decision:

**I. FINDINGS OF FACT**

1. On June 4, 2021, Kittitas County Community Development Services Director, Dan Carlson, issued an Administrative Interpretation that the Applicant was required to submit an application for a plat alteration.
2. On June 16, 2021, Kittitas County received a Notice of Appeal of this Administrative Determination.
3. On September 20, 2021, the Hearing Examiner conducted an open record public hearing on this appeal.
4. Admitted into the record were the following exhibits:
  - 4.1 Ex. 1 SEPA Checklist;
  - 4.2 Ex. 2 Receipt;
  - 4.3 Ex. 3 Grading Permit Documents;
  - 4.4 Ex. 4 Request for Updated Checklist and Applicant's Submittal;
  - 4.5 Ex. 5 NOA Affidavit of Mailing and Publication;
  - 4.6 Ex. 6 Comments;
  - 4.7 Ex. 7 Application on Hold Letter – Jeremy Johnson 4-20-21;
  - 4.8 Ex. 8 Correspondence;
  - 4.9 Ex. 9 SE 21-00006 Nunnally-Administrative Determination 6-4-21;
  - 4.10 Ex. 10 Notice of Appeal – 6-16-21;
  - 4.11 Ex. 11 Briefing Schedule Email 6-17-21;
  - 4.12 Ex. 12 Appellant Brief;
  - 4.13 Ex. 13 Declaration of Chris Cruse dated July 21, 2021, with exhibits A-E;

- 4.14 Ex. 14 Declaration of Travest Story dated July 20, 2021, with attachment A and exhibits A and B.
  - 4.15 Ex. 15 Declaration of Vic Jansen dated July 21, 2021, with attachments A-D;
  - 4.16 Ex. 16 Declaration of David Taylor dated July 8, 2021, with attachments A-E;
  - 4.17 Ex. 17 August 20, 2021 County brief with attachments/exhibits 1-11;
  - 4.18 Ex. 18 September 20, 2021 County brief;
  - 4.19 Ex. 19 September 20, 2021 Statement/Declaration of Dan Carlson, with exhibit A;
  - 4.20 Ex. 20 Appellant's Reply Memorandum dated September 30, 2021; and
  - 4.21 Ex. 21 Second Declaration of Chris Cruse dated September 30, 2021.
5. Appearing at this hearing on behalf of the Appellants was James Carmody. Mr. Carmody was not sworn in as a witness and did not provide testimony.
  6. Appearing for Kittitas County was Deputy Prosecuting Attorney, Neil Caulkins. Mr. Caulkins was not sworn in as a witness and did not provide testimony.
  7. Because of the submission by Kittitas County of Exhibits 18 and 19, the Hearing Examiner left the record open until September 30, 2021 for the Appellants to submit reply materials. The Appellants timely submitted Exhibits 20 and 21.
  8. This appeal involves property located within Kittitas County. Twelve lots were created in 2002 under the then existing and allowed administrative segregation process. This process was repealed in 2014. These 12 lots, as well as the proposed access road, were shown on a record of survey dated December 2002, submitted by Eastside Consultants, Inc.
  9. On December 4, 2020, Nunnally Holdings, LLC, current owner of the property, filed an application for a grading permit (GP-20-000020). The purpose of this grading permit was to construct a private roadway to serve 13 (instead of the original 12) contiguous parcels in Kittitas County.
  10. As Appellant correctly points out, lots 1-12 were created through an exempt segregation and boundary line adjustment process and were reflected in a Record of Survey filed with Kittitas County Auditor on December 31, 2012. Lot 13 was separately created.
  11. On April 20, 2021, the Kittitas County Planning Department notified the Appellant that a plat amendment application would be required to approve the change of access. This resulted in the aforementioned Administrative Interpretation issued on June 4, 2021.
  12. This Administrative Interpretation determined that the creation of lots through the exempt segregation and boundary line adjustment process is considered to be a subdivision pursuant to RCW 58.17. The Interpretation further determined that Kittitas County Code 16.04.010 provides that "every division" of property within the unincorporated area of Kittitas County, shall proceed in compliance with Kittitas Code Title 16, the remainder of the Kittitas County Code and RCW 58.17.
  13. RCW 58.17.215 states that anyone interested in altering a subdivision or any portion thereof,

shall submit an application for alteration to the County and that the application shall be processed according to the procedures contained therein.

14. This Administrative Interpretation determined that the proposed access change related to this prior division of land would be an alteration to a subdivision because altering the access is altering “any portion of a subdivision”.
15. In its appeal, the Appellant requests that the Hearing Examiner determine that the grade permit application and the future construction of a private roadway serving pre-existing lots created by the exemption process does not require the submission of a plat alteration application.
16. Kittitas County’s basic position is that RCW 58.17.020(1) and KCC 16.08.200 defined a “subdivision” as division of land into 5 or more lots. Because the administrative segregation created 12 lots, it is included in the definition of a subdivision under both County and State law. The County’s position is that the combination of words, “any subdivision” and “any portion thereof” applies to all divisions of land, clearly makes these code provisions applicable to any and all divisions of land creating five or more lots.
17. The alteration of this previous creation of lots, by moving the access points and access roadway, and changing a cul-de-sac into a hammerhead, result in an alteration to this “subdivision” requiring a plat alteration application.
18. The Appellant’s general position is that because there was no “plat” created by this prior division of land, which by definition, there could be no requirement for an alteration of a “plat”.
19. Further, the Appellant argues that the creation of the lots through boundary line adjustment followed by the exempt segregation process is not a “subdivision” because the Appellant did not create the lots through a formal subdivision process, and that RCW 58.17.040 excludes from the requirements of a subdivision lots created by the exempt lot segregation process coupled with a boundary line adjustment.
20. The Hearing Examiner has considered all the evidence in the record in rendering this Decision.
21. The definition of “subdivision” in RCW 58.17.020(1) applies to any and all divisions or subdivisions of land into five or more lots. The sole exception relates to a “short subdivision” as defined in RCW 58.17.020(6). This definition of “subdivision” is all-inclusive. It does not exclude lots created by the exempt segregation process.
22. RCW 58.17.040 does not reference lots created by the exempt lot segregation process. Therefore, the Hearing Examiner finds that the provisions of 58.17.040 do not operate to exclude lots created by the lot segregation process from the definition of subdivision set forth in RCW 58.17.020(1).
23. Past actions of Kittitas County related to subdivisions of land through the exempt segregation

process do not prohibit the County from taking the position currently subject of the Administrative Interpretation.

24. Of note, the 12 lots originally created, in part, by the exempt segregation process (that were set forth in the record of survey), were created by segregating four parcels.
25. Changing the access points and road configuration originally set forth in the record of survey, as well as adding a 13<sup>th</sup> lot to the project, does amount to an alteration of that subdivision of land, as depicted in the record of survey, requiring the Appellant to proceed pursuant to the plat alteration process.
26. There is no other process in the RCW or KCC for the Applicant to amend this subdivision (regardless of the process used to create the subdivision), except by means of a plat alteration.
27. The Appellants stated at the hearing that they were not relying on any “vesting” argument to support their position.
28. Any Conclusion of Law that is more correctly a Finding of Fact is hereby incorporated as such by this reference.

## **II. CONCLUSIONS OF LAW**

1. The Hearing Examiner has been granted authority to render this decision.
2. The creation of lots through the exempt lot segregation process does constitute a subdivision of lands as defined by RCW 58.17.020(1).
3. RCW 58.17.215 requires that “any subdivision” of land that is seeking alteration “to any portion thereof” must obtain a plat amendment.
4. The Applicant’s desire to amend the record of survey adding a new lot to the lots created through the exempt segregation process, and materially changing the access points and the roadway depicted on that record of survey, is an alteration of a subdivision, as defined by the Revised Code of Washington and Kittitas County Code) requiring the Applicant to proceed through the plat alteration process.
5. Past actions and/or non-action by Kittitas County related to lots created by the exempt lot segregation process do not prevent Kittitas County from taking the position set forth in the Administrative Interpretation at issue in this appeal.
6. The Appellant may develop the property consistent with the record of survey, showing lot locations, dimensions, and the access roadway.
5. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.



### III. DECISION

Based on the above Findings of Fact and Conclusions of Law, the Hearing Examiner hereby **AFFIRMS**, in all respects, the Kittitas County Community Development Services Director's Administrative Interpretation dated June 4, 2021.

Dated this 13 day of October, 2021.

KITTITAS COUNTY HEARING EXAMINER



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Andrew L. Kottkamp

This Decision is subject to appeal pursuant to the Kittitas County Code and the Revised Code of Washington.