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KITTTITAS COUNTY LAND USE HEARING EXAMINER

IN THE MATTER OF)	RECOMMENDED FINDINGS OF
)	FACT, CONCLUSIONS OF
P-06-06)	LAW, DECISION AND
Marion Performance Based Cluster Plat)	CONDITIONS OF APPROVAL

THIS MATTER having come on for hearing in front of the Kittitas County Hearing Examiner on July 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. Chad Bala of Terra Design Works, Inc., authorized agent for Fowler Creek Trust, landowner, for an application for a 12-lot Performance Based Cluster Plat pursuant to Kittitas County Code 16.09 on approximately 18.02 acres of land that is zoned Agriculture-3. (Staff Report)
2. The contact person/authorized agent is Chad Bala, TerraDesign Works, Land Planning Consultants, PO Box 462, Roslyn, WA 98941. (Application materials)
3. The proposed lot sizes range from 0.66 acres to 1.05 acres with 4.54 acres to be designated open space. The project is proposed to be served by a Group "B" public water system and community on-site septic systems. (Staff Report)
4. The property is located south of Nelson Siding road and west of the City of Cle Elum and Golf Course road, on Nelson Siding road, Cle Elum, WA 98922 located in SE ¼ Section 27, T20N. R14E, W.M., in Kittitas County. Map number 20-14-27040-0014. (Staff Report)

5. Site Information:

Total Project Size:	18.02 acres
Number of Lots:	12
Zoning district	Agriculture-3
Domestic Water:	Group "B" community water system
Sewage Disposal:	Community on-site septic system
Power/Electricity:	Puget Sound Energy
Fire Protection:	Fire District #7
Irrigation District:	Kittitas Reclamation District

(Staff Report)
6. Site Characteristics: The area is lightly forested and has been in agriculture for over 25 years.
7. Surrounding Property:

<u>North:</u>	Residential
<u>South:</u>	Residential
<u>East:</u>	Residential
<u>West:</u>	Residential

(Staff Report)
8. The Comprehensive Plan designation is Rural. (Staff Report)
9. The subject property is zoned Agriculture-3, which allows for one residential unit per 3 acres. (Staff Report)
10. A complete long plat application was submitted to Community Development Services on February 6, 2006. The Notice of Application for the preliminary plat application was issued on February 22, 2006. 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. (Staff Report)
11. Based upon review of the submitted application materials including an environmental checklist, correspondence received during this 15 day comment period and other information on file with Community Development Services, a Mitigated Determination of Non-Significance (MDNS) was issued on March 22, 2006. The appeal period ended on April 6, 2006 at 5:00 p.m. No appeals were filed. (Staff Report)
12. 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 a Group B community water system and community on-site septic systems. Staff has conducted and an administrative critical

area review in accordance with KCC 17A and found a small wetland on the project site. (Staff Report)

13. This proposal is consistent with the Kittitas County Subdivision Code Chapter 16.09 for Performance Based Cluster Platting. (Staff Report)
14. All roads are required to meet all Kittitas County Road Standards as outlined in the Marcy 21, 2006 memorandum issued by the Department of Public Works. As conditioned, the proposal is consistent with the provisions of KCC Title 12. (Staff Report)
15. The following agencies provided comments during the comment period: Department of Ecology, Kittitas County Department of Public Works and Environmental Health. These comments have been included as conditions of approval to address these agency concerns. (Staff Report)
16. 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)
17. This Application was found to be Technically Complete as required by law. (Hearing Examiner finding based on the record)
18. The entire Planning Staff file was admitted into the record at the public hearing. (Public hearing record)
19. The Kittitas County Community Development Services recommended approval of this permit, subject to the recommended conditions of approval. (Public hearing record)
20. Public hearing after due legal notice was held on July 9, 2009. Appearing and testifying on behalf of the applicant was Chad Bala of Terra Design Group. Mr. Bala testified that he was an agent authorized to appear and testify on behalf of the applicant. Mr. Bala clarified the staff report in that the water supply would be a Group B well and that the septic would be a group septic system. He also stated that a prior boundary dispute litigation had been resolved. He stated that the homeowners association would own and control the open space. He testified that the applicant had no objection to any of the proposed conditions of approval. (Open record public hearing testimony)
21. No member of the public testified in favor of the project. (Hearing Examiner finding based on the record)

22. Admitted into the record were the following exhibits:
- 22.1 Exhibit 1, submitted by staff, is a letter received July 8, 2009, from Randy and Teresa McFadden.
 - 22.2 Exhibit 2, admitted into the record, is an aerial photograph with the parcel outlined.
 - 22.3 Exhibit 3, admitted into the record, were comments submitted by the applicant.
 - 22.4 Exhibit 4, admitted into the record, is an easement agreement dated June 17, 2009.
 - 22.5 Exhibit 5, which was admitted into the record, were written comments from Roger Olsen and Karen Watland.
(Open record public hearing record)
23. Testifying in opposition to the project was Roger Olsen. He testified consistent with his written statements which were admitted into the record as Exhibit 5. His concerns related to access roads, the water system, and the use of the open space. He also had concern over cluster points for connectivity. He had questions regarding the project meeting the criteria for “increased” recreation. The property already has existing trails and a riding arena and did not feel that there would be any “increase” of recreation. (Open record public hearing testimony)
24. Also testifying in opposition to the project was Larry Schiferl. His main concern was the Kittitas Reclamation District lateral down the west side of the proposed road. It is his understanding that this adjacent property would be developed and that the road would connect with that new project. (Open record public hearing testimony)
25. At the end of the public testimony, the Hearing Examiner kept the record open until July 16, 2009, and indicated that he would render his Recommended Decision on or before July 30, 2009. (Open record public hearing)
26. On July 16, 2009, the applicant’s representative submitted a 4-page letter in response to the comments contained in Exhibit 1. (Hearing Examiner finding based on the record)
27. Performance based cluster plats are awarded density bonuses based upon satisfaction of certain criteria. (Staff Report)
28. The project is entitled to 25 points because 25% of the land is placed into open space for perpetuity. (Staff Report)
29. The project is entitled to 25 points by developing a Class B water system. (Staff Report)

30. The project is entitled to 25 points by creating wider easements than are required for multi-modal transportation. (Staff Report)
31. The project is entitled to 10 points by developing a community septic system. (Staff Report)
32. The applicant is entitled to 10 points by providing active recreation via trail system within the open space in the nature of horse riding facilities. (Staff Report)
33. The applicant is entitled to 10 points by providing passive recreation as a result of development within a location on the trail system for picnicking, bird watching and other sightseeing activities within the wooded area within the open space. These facilities will be open for the residents of the development. (Staff Report)
34. The applicant is entitled to 105 points resulting in 100% bonus density. (Staff Report)
35. 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 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 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. 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. Performance based cluster subdivisions are entitled to bonus densities, up to 100%, based upon satisfaction of various criteria contained within the Kittitas County Code.
6. This project is entitled to 100% bonus density.
7. 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.
8. As conditioned, the proposed use is consistent with the intent, purposes and regulations of the Kittitas County Code and Comprehensive Plan.
9. As conditioned, the proposal does conform to the standards specified in Kittitas County Code.
10. As conditioned, the use will comply with all required performance standards as specified in Kittitas County Code.
11. 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.
12. As conditioned, this proposal does comply with Comprehensive Plan, the Shoreline Master Program, the zoning code and other land use regulations, and SEPA.
13. 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 P-06-06, Marion Performance Based Cluster 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 February 6, 2006 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.
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. 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.
7. Proof of potable water must be shown prior to final plat approval.
8. 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).
9. 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 or improvements bonded for prior to the issuance of a building permit for any of the structures within the proposed plat.
10. Private roads serving any of the lots within this development shall be inspected and certified by a licensed professional engineer for conformance with the current Kittitas

County Road Standards. Kittitas County Public Works shall require this Road Certification to be completed, prior to the issuance of a Building Permit for any of the residence within the proposed plat.

11. Access for Lots 3 thru 12 shall be via a minimum 40' access easement or a 60' easement as shown on the face of the preliminary plat.

Access shall be constructed as a High-Density Private Road and serve 3 to 14 tax parcels. (See current Kittitas County Road Standards)

- a. Access Easements shall be improved to a minimum of 40'. The roadway width shall be 20', with 1' shoulders = 22' total width.
 - b. All easements shall provide for AASHTO radius at the intersection with a County Road.
 - c. Minimum centerline radius will be 60'.
 - d. Surface requirement 6" gravel surface.
 - e. Maximum Grade 8% flat, 12% rolling or mountainous.
 - f. Stopping Site Distance, reference AASHTO.
 - g. Entering Site Distance, reference AASHTO.
 - h. A paved apron shall be constructed at the intersection of the proposed private intersection and the County road right of way.
 - i. Maintenance of driveway approaches shall be the responsibility of the owner whose property they serve. The County will not maintain accesses.
 - j. Any further subdivision or lots to be served by proposed access may result in further access requirements. See Kittitas County Road Standards.
 - k. All roads located within this development and/or providing access to this development shall be constructed to current county road standards. Any other maintenance agreements, forest service road easements, city or state easements may require higher road standards. The higher of the road standards shall apply.
12. Access to lots 1 & 2 shall be constructed to serve no more than two parcels. (See current Kittitas County Road Standards)
 - a. Access Easements shall be improved to a minimum of 20'. The roadway width shall be 12', 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. See Kittitas County Road Standards.
 13. 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.

14. It is the responsibility of the Professional Licensed Survey (PLS) to ensure the lot closures are correct and accurate.
15. According to KCRS 12.11.010 Mailbox(s) shall be “break-away” design and be approved by the U.S. Postal Services. See WSDOT Standard Drawings H-12 sheet 1-3.
16. The diameter of the cul-de-sac should be shown on the face of the preliminary plat. (See current Kittitas County Road Standards)
 - a. Cul-de-sac design, reference AASHTO.
 - b. Contact Fire Marshall regarding any additional cul-de-sac requirements.
17. Contacting 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.
18. Contact the Kittitas County Fire Marshall regarding any additional access requirements for Emergency Response.
19. Private roads shall meet the following conditions:
 - a. Private roads shall meet the minimum access requirements of Section 902 – FIRE DEPARTMENT ACCESS – 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.”
20. 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 reseeding of areas disturbed by development to preclude the proliferation of noxious weeds.”
21. 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.
22. Both sheets shall reflect the Plat number: P-06-06.

Dated this 24th day of July, 2009.

KITTITAS COUNTY HEARING EXAMINER



Andrew L. Kottkamp