

**KITTITAS COUNTY
LAND USE HEARING EXAMINER**

IN THE MATTER OF)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
CU-19-00005)	CONDITIONS OF APPROVAL
WDFW Durr Road)	AND DECISION

THIS MATTER having come on for hearing in front of the Kittitas County Hearing Examiner on October 22, 2020, the Hearing Examiner having taken evidence hereby submits the following Recommended Findings of Fact, Conclusions of Law and Decision:

I. FINDINGS OF FACT

1. Washington State Department of Fish and Wildlife are proposing a project that will enhance an existing target shooting location with recreation, safety, and ADA improvements. The project site is approximately three acres, located at the convergence of three parcels totaling 640 acres. This project is being proposed in phases.
2. Location: Parcels 12412, 12413, and 063533 located at Durr Road, Ellensburg, WA. In the NW1/4 of Section 10, T16N, R18 E.W.M., Kittitas County .
3. Site Information:

Total Property Size:	640 Acres (approximately 3-acre project site)
Number of Lots:	3
Domestic Water:	N/A
Sewage Disposal:	No facilities onsite
Power/Electricity:	N/A
Fire Protection:	Area Outside of Fire District Boundaries
Irrigation District:	N/A
4. Site Characteristics:

North: Privately owned and State-owned lands.
South: Primarily State-owned lands, largely undeveloped.
East: Primarily State-owned lands, largely undeveloped.
West: Primarily State-owned lands, largely undeveloped.
5. Access: The site is accessed from Durr Road, approximately four miles south of the city of Ellensburg.
6. The parcels involved in this proposal are in a land use designation of Commercial Agriculture and a zoning designation of Commercial Agriculture. These designations are described under the Resource Lands section in the Kittitas County Comprehensive Plan. The proposed project is

classified as a "Shooting Range." Shooting Ranges are an allowed use within the Commercial Agriculture Zone subject to a Conditional Use permit and consistency with footnote #23 in KCC 17.15.050.1. The property has been utilized for recreational shooting for years and the proposal will implement ADA accessibility and provide safety improvements.

7. A conditional use permit application for the Durr Road Shooting Range (CU-19-00005) was submitted to Kittitas County Community Development Services department on November 21, 2019. The application was deemed complete on December 19, 2019. The site was posted in accordance with KCC 15A.03.110 on January 8, 2020.
8. A notice of application for the Durr Road Shooting Range Conditional Use Permit (CU-19-00005) was mailed and/or emailed to adjacent landowners located within 500 feet of any portion of the boundary of the proposal's contiguous tax parcels and applicable agencies. Notice was given to and published in the official newspaper of record for Kittitas County, and notice was posted to the Kittitas County Website on January 8, 2020, all in conformance with the Kittitas County Project Permit Application Process (Title 15A).
9. The Kittitas County Comprehensive Plan has established specific goals and policies associated with resource lands. The following goals and policies guide activities on Commercial Agriculture lands throughout the County. These goals and policies were developed in response to identified needs within the county, and support the County Wide Planning Policies:
 - 9.1 RR-G2: "Opportunities should exist for traditional rural lifestyle and rural based economies."
 - 9.1.1 Shooting ranges have historically been a common part of a rural lifestyle. Several ranges were established throughout Kittitas County prior to permitting requirements. The proposed project would create a safer and more accessible shooting range environment.
 - 9.2 RR-P120: "Kittitas County recognizes that new residents may not understand the rural living differences encountered in Kittitas County; therefore, the County supports the efforts of educational opportunities and agencies to educate on rural living and agriculture activities of long term significance."
 - 9.2.1 Shooting ranges have historically been a common part of rural living. Large parcel sizes and ample open space in the Commercial Agriculture zone suit activities like shooting ranges well. The safety improvements being proposed will help to provide a safer opportunity for this traditionally rural recreational activity.
 - 9.3 RR-P127: "The County Should provide for flexible use of agricultural lands that are located in areas of limited or no irrigation."
 - 9.3.1 The proposed project will operate on three parcels without irrigation access. The Shooting Range use is an example of a flexible use of agriculture lands without irrigation.
 - 9.4 This application is consistent with the goals, policies, and objectives of the Kittitas County Comprehensive Plan as outlined above.
10. Critical areas on the project parcels include some hazardous slope and a type 9 stream and two small wetlands in the north-east corner of parcel 12412. The wetlands are positioned approximately 3,300 feet from the project site, far exceeding the wetland setback requirement

under KCC17A. Several Type 9 (unknown) streams are located on the parcels. The closest type 9 stream is approximately 600 feet from the project area, exceeding the 100 foot setback requirement. Some hazardous slope exists on the south west portion of parcel 063533, far removed from the project site. The project, as proposed, will not impact any critical areas on the parcels.

11. Washington State Department of Fish and Wildlife issued a Determination of Nonsignificance (DNS) for this project on October 7, 2019 under the name "Wenas Wildlife Area Target Shooting Improvements and Management." The determination was not appealed. For purposes of processing this application, CDS has adopted the determination issued by WDFW through a letter dated January 6, 2020. No further environmental review is required.
12. Applicable agencies, adjacent property owners, and interested parties have been given the opportunity to review this proposal. All comments are on file and available for public review. The following parties provided comment during the comment period:
 - 12.1 Kittitas County Public Health Department: Kittitas County Public Health submitted comments stating they had no concerns with the project as it does not propose any water or septic systems.
 - 12.2 Kittitas County Public Works: Kittitas County Public Works submitted comments describing thresholds for future traffic concurrency studies should the range visits increase and addressing requirements should future structures be erected. KCPW also provided a letter stating that they had approved the projects stormwater design plan.
13. Public Comments (all comments are available for public review through Kittitas County Community Development Services):
 - 13.1 Arlan Kummer. Mr. Kummer provided a copy of an incident report submitted to the Washington State Department of Natural Resources in 2009, describing reckless endangerment by recreational shooters that had strayed from the traditional shooting area and fired weapons in the general direction of his home. Mr. Kummer did not provide any additional comments but wanted the County to be aware of this safety issue.
14. In review of this proposal it is important to consider the goals and policies of the comprehensive plan, applicable county code, public and agency comments, any identified environmental concerns and state and federal requirements.
15. The proposal is consistent with the goals and policies of the Kittitas County Comprehensive Plan. The following Comprehensive Plan goals and policies apply to this proposal: RR-G2, RR-P120, and RR-P127.
16. Provided the applicant follows and maintains the goals and policies, they will be in compliance with the Kittitas County Comprehensive Plan. The applicant is proposing upgrades to an existing recreation shooting range which is consistent with the Rural Resource Lands goals and policies as described in the Kittitas County Comprehensive Plan. Therefore, the County and applicant are in compliance with the Comprehensive Plan.
16. KCC 17.60A.015 provides the following review criteria to be considered in a conditional use analysis:

- 16.1 The proposed use is essential or desirable to the public convenience and not detrimental or injurious to the public health, peace, or safety or to the character of the surrounding neighborhood.
- 16.1.1 Applicant Response: “The proposed use is essential and desirable to the public. The area is currently used for recreational target shooting and the intent is to improve the site by adding safety features and parking to improve safety and reduce habitat damage. The project is located on state land internal to the Wenas Wildlife Area managed for fish and wildlife habitat and compatible recreation. Recreational target shooting has a long history in the area and this will enhance that opportunity and improve conditions.”
- 16.1.2 The proposed site has functioned as a shooting range for years. There have been safety concerns in the area related to the shooting range (See Index #16). The applicant is proposing to add safety improvements as part of their project. This action would help to ensure a safer target shooting area for the Kittitas County residents that frequent the existing shooting range. The Hearing Examiner finds that the proposed use is consistent with KCC17.60A.015(1
- 16.2 The proposed use at the proposed location will not be unreasonably detrimental to the economic welfare of the county and that it will not create excessive public cost for facilities and services by finding that:
- a. The proposed use will be adequately serviced by existing facilities such as highways, roads, police and fire protection, irrigation and drainage structures, refuse disposal, water and sewers, and schools; or
 - b. The applicant shall provide such facilities; or
 - c. The proposed use will be of sufficient economic benefit to offset additional public costs or economic detriment.
- 16.2.1 Applicant Response: “The proposed use will not be detrimental to the economic welfare of the county and will not result in excessive public costs. The site will be maintained by the Washington State Department of Fish and Wildlife, the area is accessed by county roads that are already used by the public for the proposed activity and use is not likely to significantly increase.”
- 16.2.2 The Hearing Examiner agrees that the proposal should not have any notable impact on public services and facilities. The proposed use is adequately serviced by existing facilities. The Hearing Examiner does not anticipate any significant impacts added to public facilities or services that would require mitigation. The Hearing Examiner agrees that the proposed use is consistent with KCC17.60A.015(2).
- 16.3 “The proposed use of shooting ranges, complies with the county development standard for areas zoned commercial agriculture. WDFW followed the design criteria in zoning code 23.”
- 16.3.1 Applicant Response: “The proposed use of shooting ranges, complies with the county development standard for areas zoned commercial agriculture. WDFW followed the design criteria in zoning code 23.”
- 16.3.2 The project has been reviewed by the Hearing Examiner for compliance with footnote #23 of Title 17.12.050.1, which provides specific criteria for a shooting range in a Commercial Agriculture Zone. The criteria established in footnote #23 are examined in more detail below. As conditioned, the project proposal is consistent with development standards for a Shooting Range use within Kittitas

- County. The Hearing Examiner finds that the proposed use is consistent with KCC17.60A.015(3).
- 16.4 The proposed use will mitigate material impacts of the development, whether environmental or otherwise.
- 16.4.1 Applicant Response: “The proposed use is designed to mitigate impacts. The use is already existing, the proposal will implement improvements to reduce those impacts and provide a safer location that protects the adjacent wildlife habitat.”
- 16.4.2 The Hearing Examiner has reviewed the application to identify material impacts of development. Due to the use already existing, the Hearing Examiner views the improvements proposed as having a beneficial impact on the safety and accessibility of Kittitas County citizens. Any impacts with the potential of negative material impacts (such as spent cartridge contamination) have been addressed in the conditions (condition #3) of this decision. The Hearing Examiner finds that the project, as conditioned, mitigates material impacts of the development. The Hearing Examiner finds that the proposed use is consistent with KCC17.60A.015(4).
- 16.5 The proposed use will ensure compatibility with existing neighboring land uses.
- 16.5.1 Applicant Response: “The site is surrounded by public land, nearby private land is zoned agriculture and no residences are nearby. The orientation of improvements are designed to reduce the threat to private property by directing shooting in a safe direction.”
- 16.5.2 Most of the land surrounding the proposed site is state owned, undeveloped land without irrigation. The proposed project, as conditioned, is anticipated to be compatible with and have no detrimental impact on neighboring land uses. The Hearing Examiner finds that the project, as conditioned, ensures compatibility with existing neighboring land uses in accordance with KCC17.60A.015(5).
- 16.6 The proposed use is consistent with the intent and character of the zoning district in which it is located.
- 16.6.1 Applicant Response: “The proposed use is consistent with the intent and character of the zoning district and is a permitted use in the zoning district.”
- 16.6.2 Kittitas County Code 17.15.050.1 allows shooting ranges in the Commercial Agriculture zoning designation with a conditional use permit. The Commercial Agriculture zone allows for uses associated with a traditional rural lifestyle within this zone. The Hearing Examiner finds that the proposed use is consistent with KCC17.60A.015(6).
- 16.7 For conditional uses outside of Urban Growth Areas, the proposed use:
- 16.7.1 Is consistent with the intent, goals, policies, and objectives of the Kittitas County Comprehensive Plan, including the policies of Chapter 8, Rural and Resource Lands;
- 16.7.2 Preserves “rural character” as defined in the Growth Management Act
- 16.7.3 Requires only rural government services; and
- 16.7.4 Does not compromise the long term viability of designated resource lands.
- 16.7.5 Applicant Response: “The project is outside of Urban Growth Areas, it is consistent with the intent, goals, policies and objectives of the Kittitas County Comprehensive Plan, including the policies outlined in Chapter 8. In addition, the project preserves the rural character of the property as defined

in RCW 36.70A.030(15) and will require only rural government services which would be limited to emergency services. Finally, the project does not compromise the long-term viability of the land which are designated as Commercial Agriculture and are owned and managed by WA Department of Fish and Wildlife to fish and wildlife habitat.”

- 16.7.6 The Hearing Examiner finds that the project, as conditioned, is consistent with the Comprehensive Plan as described above in the “Comprehensive Plan” section of this Project Analysis. The project is consistent with the definition of rural character as defined in the Growth Management Act, RCW 36.70A.030(20), by preserving open spaces with visual landscapes and fostering a traditional rural lifestyle. The proposed project will not require rural government services beyond that already existing and does not compromise the long-term viability of the lands involved. The Hearing Examiner finds the proposes use consistent with KCC 17.60A.015(7).
- 16.7.8 Kittitas County The Hearing Examiner finds the application, as conditioned, consistent with KCC 17.60A Conditional Uses, as described above.

17. Consistency with KCC 17.15.050.1, Footnote #23:

- 17.1 Kittitas County Code 17.15.050.1, Footnote #23 outlines specific review considerations to be observed by the Hearings Examiner when making a determination regarding a shooting range conditional use in the Commercial Agriculture Zone. The Hearing Examiner has examined these items and offers the following analysis:
 - 17.1.1 The general health, safety, and welfare of surrounding property owners, their livestock, their agricultural products, and their property.
 - 17.1.2 The proposed project site is a three (3) acre area within three parcels totaling 640 acres. The project parcels are largely surrounded by undeveloped state-owned lands without irrigation. No agriculture or livestock will be impacted by the use. The closest residence is over two miles away from the site.
- 17.2 Adherence to the practices and recommendation of the “NRA Range Sourcebook.”
 - 17.2.1 The applicant describes utilizing the NRA range standards and the input of the Yakima Training Center Range Officer in the design of the project. A condition is included in this decision to ensure consistency with the NRA Range Sourcebook.
- 17.3 Adherence to the practices and recommendations of the “EPA Best Management Practices for Lead at Outdoor Shooting Ranges.”
 - 17.3.1 The applicant has stated that WDFW will be responsible for maintenance of this site, including lead management. A condition is included in this decision to ensure consistency with the EPA Best Management Practices for Lead at Outdoor Shooting Ranges.
- 17.4 Proposed shooting ranges in areas designated as agricultural land of long-term commercial significance shall comply with RCW 36.70A.177(3) as currently existing or hereafter amended and shall be limited to lands with poor soils or those unsuitable for agriculture.

- 17.4.1 The proposed shooting range improvements comply with RCW 36.70A.177(3)(b)(ii). The proposed use is located outside of the general area already developed for buildings and residential uses and the three (3) acre project site is not being converted to a non-agriculture use, as the use is preexisting. The project parcels are outside of irrigation district boundaries. The proposed project will assist in providing more structure, accessibility and safety to this existing use.
 - 17.4.2 The Hearing Examiner finds the application, as conditioned, consistent with KCC 17.17.15.050.1, Footnote #23, as described above.
- 18. Consistency with the provisions of the KCC Title 17A, Critical Areas:
 - 18.1 Critical areas on the project parcels include some hazardous slope and a type 9 stream and two small wetlands in the north-east corner of parcel 12412. The wetlands are positioned approximately 3,300 feet from the project site, far exceeding the wetland setback requirement under KCC17A. Several Type 9 (unknown) streams are located on the parcels. The closest type 9 stream is approximately 600 feet from the project area, exceeding the maximum 100-foot setback requirement. Some hazardous slope exists on the south west portion of parcel 063533, several hundred feet removed from the project site. The project, as proposed, will not impact any critical areas on the parcels. The Hearing Examiner finds the proposed project consistent with Title 17A, Critical Areas.
- 19. Consistency with the provisions of the KCC Title 14.04, Building Code:
 - 19.1 Any future buildings must be consistent with International Building Codes.
- 20. Consistency with the provisions of KCC Title 12, Roads and Bridges:
 - 20.1 As conditioned, the proposal is consistent with the provisions of KCC Title 12.
- 21. Consistency with the provisions of KCC Title 20, Fire and Life Safety:
 - 21.1 As conditioned, the proposal is consistent with the provisions of KCC Title 20.
- 22. The following agencies provided comments during the comment period:
 - 22.1 Kittitas County Public Works
 - 22.2 Kittitas County Public Health Department
- 23. All comments are available for public review through Kittitas County Community Development Services.
- 24. The Hearing Examiner received one public comment from Arlan Kummer.
- 25. An open record public hearing after due legal notice was held on October 22, 2020 via video conferencing due to the ongoing Covid-19 pandemic.
- 26. Admitted into the record were the following Exhibits:
 - 26.1 Exhibit 1. Pre-Application;
 - 26.2 Exhibit 2. Application;
 - 26.3 Exhibit 3. Project Narrative;
 - 26.4 Exhibit 4. SEPA - DNS;

- 26.5 Exhibit 5. SEPA Checklist;
 - 26.6 Exhibit 6. Site Plans;
 - 26.7 Exhibit 7. Receipt;
 - 26.8 Exhibit 8. Deemed Complete;
 - 26.9 Exhibit 9. Affidavit of Posting;
 - 26.10 Exhibit 10. Adoption of SEPA DNS;
 - 26.11 Exhibit 11. CDS Staff Maps;
 - 26.12 Exhibit 12. Notice of Application;
 - 26.13 Exhibit 13. Affidavit of Mailing and Publication;
 - 26.14 Exhibit 14. KC Public Health Comments;
 - 26.15 Exhibit 15. KC Public Works Comments;
 - 26.16 Exhibit 16. Arlan Kummer Comments;
 - 26.17 Exhibit 17. Notice of Public Hearing;
 - 26.18 Exhibit 18. Affidavit of Mailing & Publication (NOPH);
 - 26.19 Exhibit 19. Notice of Public Cancelled;
 - 26.20 Exhibit 20. Correspondence;
 - 26.21 Exhibit 21. Notice of Virtual Public Hearing;
 - 26.22 Exhibit 22. Affidavit of Mailing & Publication (Virtual Public Hearing);
 - 26.23 Exhibit 23. Staff Report;
 - 26.24 Exhibit 24. Staff PowerPoint presentation.
27. Appearing and testifying on behalf of the applicant was Ross Hoffman. Mr. Hoffman testified that he is an agent of the applicant and authorized to testify on their behalf. Mr. Hoffman testified that the area was heavily used and that they were still seeking funding for the improvements. He testified that there was no objection to any of the proposed conditions of approval.
28. The following members of the public testified at the hearing:
- 28.1 Kevin Kummer. Mr. Kummer testified that he is the brother of Arlan Kummer who provided written testimony. The Kummer family owns property on either side of Durr Road. He stated that the shooting in this area is simply out of control. There is trespassing, massive littering on both sides of Durr Road, there are noise issues. He stated that Fish and Wildlife did not clean up the area and that their property values were going down. He testified as to damaged fences and other property. His testimony was that his family was opposed, not only to this project, but to the shooting area in general.
 - 28.2 Larry Leach. Mr. Leach represented the Department of Natural Resources. He indicated that DNR was a neighboring landowner. He stated that the improvements with this project would provide environmental benefits and would reduce the risk of wildfire.
 - 28.3 Norm Peck. Mr. Peck testified that he was a member of the Citizen's Advisory group. He stated that he is an expert in environmental clean-up of shooting ranges and that, with the improvements, there would be positive environmental impacts.
 - 28.4 Bill Essman. Mr. Essman is president of the Kittitas County Field and Stream club and was on the Wenus Target Committee. He stated that this project would definitely improve what the Kummer's are going through. He did state that the Kittitas County

Field and Stream club did pick up two tons of trash in one day during their 2019 clean-up day.

29. The Kittitas County Hearing Examiner considered all evidence within the record in rendering this decision.
30. 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. 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 17 Zoning, Title 17A Critical Areas, Title 14.04 Building Code, Title 12 Roads and Bridges, and Title 20 Fire and Life Safety.
6. 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, CU-19-00005 is hereby **APPROVED** subject to the following Conditions of Approval.

IV. CONDITIONS OF APPROVAL

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

1. The project shall proceed in substantial conformance with the plans and application materials on file with CDS dated November 21, 2019 and subsequent information included in the complete file index except as amended by the conditions herein.
2. The applicant shall adhere to the practices and recommendations of the NRA Range Sourcebook.
3. The applicant shall adhere to the Best Management Practices established in the EPA Best Management Practices for Lead at Outdoor Shooting Ranges.
4. The applicant is responsible for all applicable local, state and federal rules and regulations and must obtain all appropriate permits and approvals.

5. The site is accessed from Durr Road which receives minimal maintenance. If future traffic visits should exceed 9 peak hour vehicle trips, a Transportation Impact Analysis shall be required.
6. A grading permit is required for any dirt work exceeding 100 cubic yards of material prior to any ground disturbance.
7. All development, design and construction shall comply with International Fire Code requirements.
8. It is a proponent's responsibility to demonstrate compliance with the approval conditions of a conditional use permit. Compliance with all conditions must be demonstrated in writing to Kittitas County CDS prior to Final Conditional Use Permit issuance. Final approval of a Conditional Use Permit is required within 5 years of the approval date pursuant to KCC 17.60A.090.

Dated this 27th day of October, 2020.

KITTITAS COUNTY HEARING EXAMINER



Andrew L. Kottkamp

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