

# Douglas County Hearing Examiner

Andrew L. Kottkamp, Hearing Examiner

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<b>IN THE MATTER OF</b>	)	<b>FINDINGS OF FACT,</b>
	)	<b>CONCLUSIONS OF LAW,</b>
P-08-02	)	<b>DECISION AND</b>
AUSA Bar LLC	)	<b>CONDITIONS OF APPROVAL</b>

THIS MATTER having come on for hearing in front of the Douglas County Hearing Examiner on July 23, 2009, the Hearing Examiner having taken evidence hereby submits the following Findings of Fact, Conclusions of Law, Decision and Conditions of Approval as follows:

## I. FINDINGS OF FACT

1. The applicant is AUSA Bar LLC, PO Box 476, Murietta CA.
2. General Description: AUSA Bar LLC has submitted a 57 lot, 402 acre major cluster subdivision. Proposed residential lot sizes range from 1.0 acre to 1.69 acres. The average lot size is 1.27 acres. The project is proposed to be served by a new public water system and on-site septic.
3. Location: The subject property is located on the south side of SR 173 in the vicinity of the intersection of SR 173 and Grange Rd. The property is further described as being located within Sections 29 and 30, Township 30 North, Range 25 East, W.M., in Douglas County, Washington. The Douglas County Assessor Numbers for the subject property are 30253010001, 30252930007, 30252930002, 30252930009, 30253040001, 30252920004, 30252920002, and 30252930008.
4. Site Information:

Total Project Size:	402 acres
No. of lots	57
Domestic Water:	New Public Water System
Sewage Disposal:	On Site Septic Systems
Power/Electricity:	Douglas County PUD
Fire Protection:	Douglas-Okanogan County Fire District #15
Telephone Service:	Verizon

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5. Site Characteristics: Approximately 100 acres of the northern portion of the site is located on gently to moderately sloping historic alluvial terrace below steep slopes rising of to the southwest. The southern portion of this site is steep mountainous area that has areas of exposed bedrock and incised drainage areas. The lower portion of the site is currently in orchard. Outbuildings are located on the lower portion of the site.
6. Surrounding Property: To the north, Single Family Homes, orchards, vacant land; to the south, Bluffs, vacant land; to the east, Single family homes, orchard, vacant land; to the west, Bluffs, Vacant land.
7. The applicant has submitted a plan to phase the final approval into 3 separate phases.
8. The Comprehensive Plan Designation is Rural Resource 5 Acres and Rural Resource 20 acres.
9. The subject property is located in the RR-5 and RR-20 zoning districts which allow for cluster subdivisions as permitted uses.
10. RCW 58.17.110(2) requires that appropriate and adequate provisions be made for streets or roads, alleys or other public ways.
11. Soil mapping from the USDA Natural Resource & Conservation Service indicate the presence of steep and severe building soils on the subject property. The applicant submitted a geologic hazard area risk assessment from Bill Christman PE dated March 31, 2007; an engineering geologic hazard assessment from Nelson Geotechnical Associates, Inc dated January 15, 2009; and a supplemental letter preliminary geotechnical engineering from Nelson Geotechnical Associates, Inc dated June 18, 2009.
12. The applicant submitted a Limited Phase 2 Environmental Site Assessment, dated August 2006 from Hammond Collier Wade & Livingstone. The assessment reviewed the potential for residual contaminants in the soil from orchard spraying. This assessment determined that the soil samples did not result in levels above environmental requirements. The report did recommend that the area where dump piles, salamander heat pots and equipment were stored be retested after the material was removed.
13. After removing the equipment and debris in this area, the applicant had soil removed in this area and the ground retested. This retesting was documented in a report from Hammond Collier Wade & Livingstone dated November 14, 2008. The report determined that the site is free of petroleum product and that the remediation of the

area meets or exceeds the state Model Toxics Control Act clean up standards for a non-industrial site.

14. The WDFW Priority Habitat and Species map for the subject property indicate the presence of bald eagle nesting sites and talus slope habitats on the property. The applicant submitted a talus slope habitat evaluation from Grette & Associates dated February 16, 2007. This evaluation determined that the subject property did not contain the necessary characteristics to be classified as talus slope habitat. The application submitted a critical species evaluation from Grette & Associates dated March 13, 2007. The evaluation determined that all of the residential lots are at least 410 feet outside of the 1,000 foot buffer established around the nesting sites.
15. The subdivision will access SR 173 via a new private road.
16. A Traffic Impact Study from Bill Christman PE, dated July 5, 2007 was submitted for the proposal. This study recommended that the applicant have an intersection plan for the new roads connecting to SR 173 be designed by an engineer and approved by WSDOT.
17. Due to the inability to further connect the road system, Transportation has approved the construction of a permanent cul-de-sac and the end of the A-Line local access street. Final approval of the turn-around will be by the Douglas County Fire Marshall and the County.
18. Douglas County Transportation has determined that the subject property is surrounded by mountainous areas to the south and west and SR 173 to the north and east. This location precludes connectivity to existing or future county road networks. In accordance with DCC 12.52.020(B) the internal roadways shall be private rather than public.
19. The internal streets shall be full width streets, designed and constructed in accordance with Figure 3-3 Rural Local Access Road, AADT over 400. The intersections of the interior road system with SR-173 will be constructed in accordance with the afore referenced standard with final review and acceptance by the County and WSDOT.
20. The reserve lot size is 78% of the original parcels.
21. The project meets the Cluster Division standards found in DCC 18.16.046.
22. In order to meet the state requirements for Enhanced 911 service, all lots within this plat will be addressed prior to final plat approval.

23. Comments from reviewing agencies have been considered and addressed where appropriate.
24. The applicants and Douglas County signed a mitigation agreement establishing the mitigation conditions relative to the environmental impact of the project. Douglas County issued a Mitigated Determination of Nonsignificance on July 6, 2009 pursuant to WAC 197-11-340(2). A comment period commenced on July 7, 2009 and ended on July 21, 2009.
25. Surrounding property owners were given the opportunity to comment on the proposals, can request a copy of the decision, and can appeal the decision subject to the requirements outlined in DCC Title 14.
26. Proper legal requirements were met and surrounding property owners were given the opportunity to comment on the proposal at a public hearing.
27. Purveyors who responded to the project have indicated that adequate utilities/services are or can serve this project.
28. Section 17.24.150 of the Douglas County Code requires that every subdivision shall be served by a water supply system approved and installed to meet the requirements and standards of the Chelan Douglas Health District.
29. In response to comment by Yakima Tribes, the applicant submitted an archaeological survey of the subject property by Rain Shadow Research Inc, dated July 2008. The report was referred to the Yakima Tribes, Colville Tribes and WA Dept of Archaeology and Historic Preservation. No comment was received to this referral.
30. This Application was found to be Technically Complete as required by law.
31. The entire Planning Staff file was admitted into the record at the public hearing. Admitted into the record as Exhibit 1 to the hearing is a July 21, 2009, comment from William Gould of Washington State Department of Transportation to Steve Neuenschwander of Douglas County Land Services.
32. The Douglas County Department of Land Services recommended approval of this preliminary plat, subject to the recommended conditions of approval.
33. Public hearing after due legal notice was held on July 23, 2009. Appearing and testifying on behalf of the applicant was David Stipe. Mr. Stipe testified that he was an agent authorized to appear and speak on behalf of the applicant. Mr. Stipe presented the following exhibits that were admitted into the record:

- 33.1 Exhibit 2: Letter from City of Brewster to A.U.S.A. Bar LLC;
- 33.2 Exhibit 3: Letter from Gebbers Farms
- 33.3 Exhibit 4: Letter from Triangle Shell Food Mart to A.U.S.A. Bar LLC.

Mr. Stipe testified that all of the proposed conditions of approval were acceptable to the applicant. Mr. Stipe further testified that the applicant would conform with all of the requirements in the reserve lot management plan. He specifically pointed out that the reserve lot will be placed in homeowner association ownership. There is no requirement that the orchard remain. However, the reserve lot is intended to remain as open and/or recreational space for the development.

- 34. Testifying in opposition to the project was Roberta Oliver. Ms. Oliver testified as to her concerns related to animals, both domestic and farm, on the 1-acre lots. Additionally, she had a concern whether or not there would be privacy fencing and/or protective fencing for neighbors to the development. She also had concerns about whether or not the internal road would access the transfer station.
- 35. Mr. Stipe offered some clarification. He indicated that fencing would only be as required by the Code. Further, he confirmed that the internal road would not continue on to the transfer station.
- 36. 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.
- 37. The proposed use will not cause significant adverse impacts on the human or natural environments that cannot be mitigated by conditions of approval.
- 38. The proposal will be served by adequate facilities including access, fire protection, water, storm water control, and sewage disposal facilities.
- 39. 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 will not adversely affect the general public, health, safety and general welfare.
- 3. As conditioned, the development meets the goals, policies and implementation recommendations as set forth in the Douglas County Countywide Comprehensive Plan.

4. As conditioned, this proposal is consistent with applicable federal and state laws and regulations.
5. Public use and interests will be served by approval of this proposal.
6. As conditioned, the proposal is consistent with Title 17 “Subdivision”, Title 18 “Zoning”, Title 19 “Environment”, and Title 20 “Development Standards”, of the Douglas County Code.
7. As conditioned, the proposed use is consistent with the intent, purposes and regulations of the Douglas County Code and Comprehensive Plan.
8. As conditioned, the proposal does conform to the standards specified in Douglas County Code.
9. As conditioned, the use will comply with all required performance standards as specified in Douglas County Code.
10. As conditioned, the proposed use will not be contrary to the intent or purposes and regulations of the Douglas 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. DECISION**

Based on the above Findings of Fact and Conclusions of Law, Application P-08-02, AUSA Bar LLC, is hereby **APPROVED** subject to the following Conditions of Approval.

### **IV. CONDITIONS OF APPROVAL**

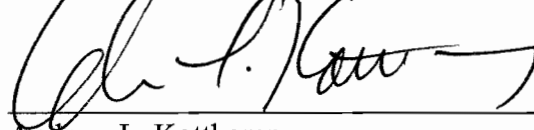
All Conditions of Approval shall apply to the applicant, and the applicant’s heirs, successors in interest and assigns.

1. 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 of file dated January 25, 2008 and amended on March 4, 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. A plat certificate showing parties of interest from a title company must be submitted with the blue-line drawings.
5. The final plat map shall clearly reference the discrepancies in the record data regarding the incorrect call out to the quarter corner.
6. The final plat map shall be submitted by a land surveyor licensed in the State of Washington, and shall comply with the standards set forth in Title 17 of the Douglas County Code.
7. All parties having an ownership interest in the subject property shall acknowledge the plat.
8. Prior to final plat approval for each phase, Douglas County Land Services must find that the conditions of approval contained within the Mitigated Determination of Nonsignificance, issued July 6, 2009 for the Reserve at Lake Pateros Subdivision, have been met.
9. Preliminary approval of Phase 1 shall expire 5 years from the date of Notice of Action by the Douglas County Hearing Examiner. Preliminary approval of each subsequent phase shall expire 5 years from the date of final approval of the previous phase. Final plat approval after the expiration will require the submittal of a new preliminary application and approval based on applicable documents and codes in effect at the time of re-application.

Dated this 27<sup>th</sup> day of July, 2009.

DOUGLAS COUNTY HEARING EXAMINER



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Andrew L. Kottkamp

**Any aggrieved party or agency of record may request a reconsideration of this Hearing Examiner's decision. Motions for reconsideration must be filed with the Department within ten (10) days from the date of issuance as defined by RCW 36.70C.040(4)(a). Unless otherwise provided, the filing of a motion for reconsideration shall not stop or alter the running of the period provided to appeal the Hearing Examiners decision to Superior Court. Motions for reconsideration are governed by Douglas County Code 2.13.150.**

**Anyone aggrieved by this decision has twenty-one (21) days from the issuance of this decision, to file an appeal with Douglas County Superior Court, as provided for under the Judicial Review of Land Use Decisions, RCW 36.70C.040(3). The date of issuance is defined by RCW 36.70C.040 (4)(a) as "(t)hree days after a written decision is mailed by the local jurisdiction or, if not mailed, the date on which the local jurisdiction provides notice that a written decision is publicly available" or if this section does not apply, then pursuant to RCW 36.70C.040(3) (c) "...the date the decision is entered into the public record." Anyone considering an appeal of this decision should seek legal advice.**