

**BOARD OF COUNTY COMMISSIONERS  
COUNTY OF KITTITAS  
STATE OF WASHINGTON**

**ORDINANCE NO. 2014-008**

**REVISIONS OF KITTITAS COUNTY CODE 15A, PERMIT APPLICATION PROCESS  
FOR  
THE PURPOSE OF APPEAL OF AN ADMINISTRATIVE DECISION**

**WHEREAS,** this ordinance, revising the Kittitas County Code, contains two sections of findings and an attachment for such amendment, as follows:

Section I - Procedural Findings  
Section II - Final Decision and Signatures  
Attachment A Proposed Changes to the Ordinance

**SECTION I  
PROCEDURAL FINDINGS**

**WHEREAS,** A State Environmental Policy Act (SEPA) threshold determination was issued by Kittitas County for a conditional use permit allowing a rock crushing operation and was subsequently appealed by Ellensburg Cement in 2010; and

**WHEREAS,** The appeal was subject to the Kittitas County administrative appeal process which permitted no new evidence or testimony to be received in connection with the SEPA appeal and permitted only written arguments from the appellant and the applicant of the conditional use permit; and

**WHEREAS,** Kittitas County subsequently held an open record public hearing on the applicant's conditional use permit where additional information was received including that from the appellant of the threshold determination; and

**WHEREAS,** The Court of Appeals held that Kittitas County erred in not hearing testimony regarding the threshold determination through an open record process; and

**WHEREAS,** The Washington State Supreme Court affirmed the Court of Appeals decision; and

Amendment to Kittitas County Code, Title 15A  
Requiring Open Public Hearing for Administrative Decisions

Ordinance No. 2014-008  
July 1, 2014

- WHEREAS,** In order to meet the Supreme Court decision, the Board of County Commissioners declared an emergency to provide ordinance changing the procedure, and requested expedited review by the Department of Commerce of Washington State; and
- WHEREAS,** The Department of Commerce of Washington State granted that expedited review via email on May 1, 2014; and
- WHEREAS,** Kittitas County on March 31, 2014 rendered a Determination of Non-Significance (DNS) for proposed amendments to the Kittitas County Code and published such determination within the official local newspaper per WAC 197-11 allowing public comment on the determination until April 15, 2014, and issued a Final Determination of Non-Significance on April 18, 2014 with an appeal date ending May 2, 2014; and
- WHEREAS,** After due public notice, the Kittitas County Community Development Services scheduled a public hearing to be held before the Kittitas County Planning Commission on March 25, 2014; and
- WHEREAS,** The Planning Commission, after hearing the proposal and public testimony, made recommendation to the Board of County Commissioners that the proposed amendment be adopted; and
- WHEREAS,** After proper public notice, the Kittitas County Community Development Services scheduled a public hearing to be held before the Board of County Commissioners on June 17, 2014 to consider the recommendation from staff, the recommendation of the Planning Commission and any public comments or testimony regarding the matter; and
- WHEREAS,** After the public hearing and consideration of the proposal to change the administrative process, the Board of County Commissioners approved the proposed amendment to Title 15A of the Kittitas County Code to change the administrative appeal process.

## SECTION II - FINAL DECISION AND SIGNATURES

**BE IT ORDAINED** that the Board of County Commissioners, after due deliberation, hereby approves the revisions to the Kittitas County Title 15A requiring open public meetings for appeal of administrative land use decisions and open public meetings before the Hearing Examiner making final decision on appeal of a project-related SEPA decision; and

**BE IT FURTHER ORDAINED** the Prosecutor's Office is charged with preparing and submitting the necessary clean updated versions of the development code to Information Services, incorporating all the amendments authorized herein, so that they can be placed on the County web page, and that the Prosecutor's Office is hereby authorized to make any correction necessary to remedy scrivener's errors such that Information Services of Kittitas County may update the on-line code and comprehensive plan without additional Board action.

**NOW, BE IT FURTHER ORDAINED** that the Board of County Commissioners, after due deliberation, hereby approves the adoption of the amendments to Kittitas County as attached hereto, and incorporated

by reference and orders the amendments to become effective upon signature by the Board of County Commissioners.

Adopted this 1ST day of JULY, 2014, at Ellensburg, Washington.



Julie A. Kjorsvik  
Julie A. Kjorsvik

**BOARD OF COUNTY COMMISSIONERS  
KITTITAS COUNTY, WASHINGTON**

Paul Jewell  
Paul Jewell, Chairman

Gary Berndt  
Gary Berndt, Vice-Chairman

Obie O'Brien  
Obie O'Brien, Commissioner

**APPROVED AS TO FORM:**

Greg Zempel WSBA #19125  
Greg Zempel WSBA #19125

**ATTACHMENT A**

**AMENDMENT TO KITTITAS COUNTY CODE, TITLE 15A**

**JULY 1, 2014**

#### 15A.04.210 Appeals.

1. The county establishes the following administrative appeal procedures under RCW 43.21C.075 and WAC 197-11-680:
  - a. An administrative appeal relating to a FEIS or DNS for a nonexempt action that does not require a public hearing shall be heard by the board of county commissioners Hearing Examiner.
  - b. An administrative appeal relating to a FEIS or DNS for a nonexempt action that requires a public hearing shall be combined with and heard by the recommending reviewing body for the underlying action.
  - c. Administrative appeals relating to a DS shall be heard by the Hearing Examiner.
  - d. For any appeal under this subsection, the county shall provide for a record in compliance with KCC 15A.07.
2. The county shall give official notice under WAC 197-11-680(5) whenever it issues a permit or approval for which a statute or ordinance establishes a time limit for commencing judicial appeal. (Ord. 2011-013, 2011).
3. Subsequent appeals of SEPA determinations, after the Open Record appeal to either the Hearing Examiner or board of county commissioners, shall be made to Superior Court, or hearings board, as appropriate, as part of an appeal of the associated decision, and shall be timely if made to the appropriate appellate body within the time limits for the appeal of the associated decision.

#### 15A.01.040 Roles and responsibilities.

The regulation of land development is a cooperative activity including many different elected and appointed bodies and county staff. The specific responsibilities of these bodies is set forth below and outlined in Table A at the end of this title.

1. **Applicant.** An applicant is expected to read and understand the county comprehensive plan and code and be prepared to fulfill the obligations placed on the applicant. Pre-application conferences are available to anyone who wishes to discuss such obligations prior to submittal.
2. **Community Development Services Director.**
  - a. The Community Development Services Director (CDS Director) is responsible for the administration of portions of KCC Title 15, Environmental Policy, Title 15A, Project Permit Application Process, Title 16, Subdivisions, Title 17, Zoning, Title 17A, Critical Areas, and the shoreline master program.
  - b. Upon request or as determined necessary, the CDS Director shall interpret the meaning or application of the provisions of said titles and issue a written administrative

interpretation. Requests for interpretation shall be written and shall concisely identify the issue and desired interpretation.

- c. Administrative land use decisions on certain zoning conditional uses, and variances from the standards and dimensional regulations of the zoning code, KCC Title 17, such as setback and yard restrictions.

3. **Board of County Commissioners.** In addition to its legislative responsibilities under KCC Title 15B, the board shall review and act on the following subjects pursuant to this title:

- a. Recommendations of the Hearing Examiner or Planning Commission. Decision-making process by the board shall consist of a public meeting or meetings wherein the board reviews the written record transmitted from the Hearing Examiner for Quasi-judicial matters and the Planning Commission for Legislative matters and issues a written decision in resolution or ordinance form. During such meeting(s), appropriate county staff will present the record to the board, providing information as necessary to ensure county code compliance. No new comment or information will be allowed by the board during the decision-making process.

- b. Appeals of administrative SEPA actions regarding an action without an underlying permit.

c. Open record appeal of administrative SEPA actions when the board of county commissioners hears the appeal of the associated administrative permit decision.

d. Appeals of administrative determinations such as short plats, variances, and code interpretations.

- ~~e. Open record appeals of administrative SEPA actions when the board of county commissioners makes decision on, or hears appeals of, the underlying action.~~

- ~~d. Closed record appeals of administrative SEPA actions, exclusive of Hearing Examiner SEPA appeal decisions.~~

4. **Hearing Examiner.** The Hearing Examiner shall review and made recommendations to the board of county commissioners on the following applications and subjects:

- a. All Quasi-judicial review processes including:

- i. applications for preliminary plats
- ii. Rezone applications.

- b. Other actions requested or remanded by the board of county commissioners.

- c. Development agreements.

- ~~d. Appeals of administrative determinations on certain zoning conditional users, and variances from the standards and dimensional regulations of the zoning code, KCC Title 17, such as setback and yard restrictions.~~

~~e. d.~~ Conditional use permits pursuant to the zoning code, KCC Title 17.

~~f. e.~~ Shoreline permits, including variances, conditional uses, and shoreline substantial development permits pursuant to the shoreline master program.

~~g.~~ In the case of an open record appeals of administrative SEPA actions when the Hearing Examiner makes a recommendation to the board of county commissioners on ~~decision on, or~~ hears appeals of, the underlying action permit, the Hearing Examiner shall decide the SEPA appeal.

#### **15A.04.020 Appeal of SEPA Actions.**

1. Appeals shall be of the governmental action together with its accompanying environmental determinations. Kittitas County shall consolidate an appeal of procedural issues made under Chapter 43.21C RCW and Chapter 15.04 KCC (such as a decision to require particular mitigation measures or to deny a proposal) with a hearing or appeal on the underlying governmental action by providing for a single simultaneous hearing before one hearing body to consider the agency decision on a proposal and any environmental determinations made, with the exception of the appeal, if any, of a threshold determination of significance.
2. Appeals of environmental determinations made or lacking under Chapter 43.21C RCW or Chapter 15.04 KCC shall be commenced within 10 working days to the Kittitas County board of commissioners, with appropriate administrative fee. Such appeals shall be filed pursuant to Chapter 15A.07 KCC. The agency shall give official notice stating the date and place for commencing an appeal. If there is no time period for appealing the underlying governmental action, and a notice of action under RCW 43.21C.080 is used, appeals shall be commenced within the time period specified by RCW 43.21C.080.
3. Appeals on SEPA procedures shall be limited to review of a final threshold determination and final EIS. These appeals may occur prior to an agency's final decision on a proposed action. Appeal of the intermediate steps under SEPA (e.g., lead agency determination, scoping, draft EIS adequacy) shall not be allowed.
4. Kittitas County shall provide for only one ~~administrative~~ appeal of a threshold determination or of the adequacy of an EIS. Successive ~~administrative~~ appeals on these issues shall be to Superior Court or Hearing Board, as appropriate ~~not be allowed~~. (Ord. 2000-07; Ord. 98-10, 1998)

#### **15A.05.020 Procedures for hearings.**

Public hearings shall be conducted in accordance with the hearing body's rules of procedure and shall serve to create or supplement an evidentiary record upon which the body will base its decision. The chair shall open the public hearing and, in general, observe the following sequence of events:

1. Staff presentation, including submittal of any administrative reports. Members of the hearing body may ask questions of the staff.

2. Applicant presentation, including submittal of any materials. Members of the hearing body may ask questions of the applicant. Questions to the staff shall be posed by the chair at its discretion.
3. Testimony or comments by the public germane to the matter. Questions directed to the staff or the applicant shall be posed by the chair at its discretion.
4. Rebuttal, response or clarifying statements by the staff and the applicant.
5. The evidentiary portion of the public hearing shall be closed and the hearing body shall deliberate on the matter before it. (Ord. 2000-07; Ord. 98-10, 1998)

**15A.07.010 Appeal of determination or decision.**

1. An appeal of an administrative land use decision shall be filed with the board of county commissioners within 10 working days of the date of the decision.
2. Appeals shall contain a written, concise statement identifying:
  - a. The decision being appealed;
  - b. The name and address of the appellant and his interest(s) in the matter;
  - c. The specific reasons why the appellant believes the decision to be wrong. The appellant shall bear the burden of proving the decision was wrong;
  - d. The desired outcome or changes to the decision;
  - e. The appeals fee.

The appeal shall contain only the above listed material, and shall not contain or attempt to introduce new evidence, testimony, or declaration.

3. Upon the filing of a timely appeal, the administrator shall, in consultation with the appropriate hearing body chair pursuant to KCC 15A.01.040, set the time and place at which the matter will be considered and establish a briefing schedule for the parties. The officer from whom the appeal is being taken shall forthwith transmit to the reviewing body and the parties all of the records pertaining to the decision being appealed. The appellant's brief and supporting declarations shall be due no sooner than 15 days after having received the administrative record and no later than 30 days prior to the hearing date. Briefing and supporting declarations from the County and any other Respondents shall be due 10 working days prior to the hearing date. There shall be no response or rebuttal briefing by any party. All parties submitting briefing with or without supporting declarations have the responsibility to deliver copies of such documents to the hearing body and all other parties within the time limits set herein. ~~The officer from whom the appeal is being taken shall forthwith transmit to the reviewing body and the parties all of the records pertaining to the decision being appealed. Briefing shall be limited to legal argument based upon the documents comprising the record that formed the basis for the administrative decision on appeal that have been transmitted to the parties by said officer.~~ (Ord. 2010-008; Ord. 2000-07; Ord. 98-10, 1998)



**15A.07.020 Procedures for Administrative appeals.**

1. Administrative appeals shall serve to provide argument and guidance for the body's decision. The deciding body shall conduct the appeal as an open record hearing. ~~No new evidence or testimony shall be given or received. The briefing shall not contain new evidence, testimony, or declarations, but shall consist only of legal arguments based upon the documents comprising the record as transmitted to the parties by the relevant officer.~~ The parties to the appeal shall submit timely written statements or arguments to the decision-making body.
2. The hearing body shall deliberate on the matter in public after closing the open record portion of the ~~in the manner of a closed record~~ hearing and reach its decision on the appealed matter.
3. A written decision by the hearing body shall be issued within 30 days of the close of the Administrative Hearing. (Ord. 2010-008; Ord. 2000-07; Ord. 98-10, 1998)

**Table A**

	<b>Step 1 Public Comment Period</b>	<b>Step 2 Open Record Hearing</b>	<b>Step 3 Decision</b>	<b>Step 4 <u>Open Record</u> Appeal</b>	<b>Step 5 Judicial Appeal*</b>
Site Plan Review:	15 days	None	Staff	BCC	Sup. Court
Zoning Variance:	15 days	None	Staff	<del>BCC HE</del>	Sup. Court
Permitted Administrative Uses <sup>5</sup> :	15 days	None	Staff	BCC	Sup. Court
Short Plats:	15 days	None	Staff	BCC	Sup. Court
<del>Segregations</del> /Lot Line Adjustments:	None	None	Staff	BCC	Sup. Court
SEPA Actions: Appeals of threshold determinations:	15 days	None	Staff	HE	Sup. Court
SEPA Actions: The exercise of substantive SEPA authority and adequacy of an EIS <sup>1</sup> :	15 days	None	Staff	HE/BCC <sup>2</sup>	Sup. Court
Independent administrative rulings:	None	None	Staff	<del>BCC HE</del> <sup>3</sup>	Sup. Court
Zoning Conditional Uses (Administrative):	15 days	None	Staff	<del>BCC HE</del>	Sup. Court
Zoning Conditional Uses (Hearing):	15 days	HE	BCC	None	Sup. Court
Long Plats:	15 days	HE	BCC	None	Sup. Court
Shorelines Substantial Development/Cnd. Use:	15 days	HE	BCC	None	Shorelines Board
Shoreline Setback Variance:	15 days	HE	BCC	None	Shorelines Board

Site-Specific Rezone to Zoning Map (Including PUD) <sup>4</sup> :	30 days	HE	BCC	None	Sup. Court
Development Agreement	30 days	<del>HE</del> BCC	BCC	None	Sup. Court