



1 BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD

2 EASTERN REGION

3 OF THE STATE OF WASHINGTON

4
5 CONSERVATION NORTHWEST
6 and KARL FLACCUS,

Prosecutor NC, GZ
Commissioners MB, JK
Department SM, DC
Insurance BC

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Petitioners,

Case No. _____

vs.

KITTITAS COUNTY,

Respondent.

PETITION FOR REVIEW

COMES NOW Petitioners Conservation Northwest and Karl Flaccus to submit this Petition for Review to the Growth Management Hearings Board as authorized by Chapter 36.70A RCW, the Growth Management Act (GMA).

I. PETITIONER AND ATTORNEY

Petitioners Conservation Northwest and Karl Flaccus have as their address:

Conservation Northwest
1829 10th Ave W, Suite B
Seattle, WA 98119
(206) 970-1434
jsyrowitz@conservationnw.org
kflaccus@yahoo.com

Petitioners are represented by:

Wyatt Golding
Ziontz Chestnut
2101 Fourth Ave., Suite 1230

1 Seattle, WA 98121
2 206-448-1230
3 wgolding@ziontzchestnut.com
4

5 and

6
7 Meriel L. Darzen
8 Maura C. Fahey
9 Crag Law Center
10 3141 E Burnside St
11 Portland, OR 97214
12 (503) 525-2725
13 meriel@crag.org
14 maura@crag.org

15 **II. ACTION FOR WHICH REVIEW IS SOUGHT**

16 On December 20, 2022, the Kittitas County Board of Commissioners
17 adopted Ordinance No. 2022-017, “Revisions of Kittitas County Code and
18 Comprehensive Plan as Part of the 2022 Annual Comprehensive Plan Amendment
19 Cycle” (hereinafter “Ordinance”). The County published its Notice of Decision on
20 December 27, 2022. RCW 36.70A.290(2). A true and correct copy of the
21 Ordinance (without exhibits) is attached hereto as Exhibit 1.

22 Petitioners specifically request review of the portion of the Ordinance that
23 approves and adopts Amendment Nos. 22-25, CP-22-00005 and RZ-22-00005,
24 which are a comprehensive plan amendment and zone change for the property
25 located at tax parcels 808335, 818335, 828335, 838335, on Snoqualmie Pass
26 northeast of the I-90 Exit 54 in Section 15, T.22N, R.11E, W.M.; Kittitas County
27 parcel map numbers 22-11-15020-0001, 22-11-15020-0002, 22-11-15020-0003,
28 22-11-15010-0002 (“Property”). The appealed decisions change the Property from

1 a Forest and Range zoning designation to Rural Recreation, and from a land use
2 designation of Rural Working Lands to Rural Recreation. On October 13, 2022, the
3 County issued its SEPA Determination of Non-Significance (“DNS”) for the plan
4 amendment and zone change. The Board of Commissioners denied Petitioners’
5 local appeal of the County’s SEPA DNS.

6 The decisions increase the allowed density of the Property by reducing the
7 minimum lot size from 20 acres to 5 acres, allowing up to 30 residential units to be
8 developed within the Property as well as other recreational uses and activities that
9 are incompatible with the area’s natural resource management objectives. The
10 Property contains several critical areas including extensive floodplains, multiple
11 wetland systems, Tier 2 channel migration zones, creeks and Type F (fish) streams,
12 a Rural Conservancy shoreline designation, and is encompassed within a
13 Washington Department of Fish and Wildlife designated Priority Habitat and
14 Species area. The Property and surrounding area provide habitat for
15 threatened, endangered, and candidate species such as Bull Trout (*Salvelinus*
16 *confluentus*), Western Toad (*Anaxyrus boreas*), Northern Spotted Owl (*Strix*
17 *occidentalis*), and Gray Wolf (*Canis lupus*). The Property is part of a mapped
18 Biodiversity and Areas Corridor which has been the focus of monumental public
19 investment to improve habitat connectivity and species permeability in the
20 Snoqualmie Pass area north and south of Interstate 90.

21 The County’s DNS was based on a SEPA Checklist that failed to disclose
22 any environmental impacts of the reasonably likely future development that is
23 authorized by the rezone and that would follow logically and probably from the

1 rezone, and instead deferred any discussion of impacts to an unspecified future
2 review process. The Checklist and DNS failed to identify the threatened and
3 endangered species known to be on or adjacent to the Property and thus, did not
4 consider any impacts to those species or their habitat. The Checklist and DNS also
5 failed to acknowledge the critical areas on the Property and did not consider
6 potential impacts from the reasonably likely future development on those areas.
7 The DNS does not include any measures to mitigate potential impacts from future
8 development of the Property.

9 The County's decision is inconsistent with the County's Comprehensive Plan
10 policies and code provisions that protect natural resources, critical areas and
11 shorelines and promote habitat connectivity. The County did not adopt any
12 substantive conditions of approval to ensure protection of critical areas and wildlife
13 habitat from future development of the Property.

14 Petitioners appeal the aforementioned rezone, comprehensive plan
15 amendment, and DNS to this Board.

16 **III. ISSUES PRESENTED FOR REVIEW**

17 **Growth Management Act**

18 **1. Inconsistency with the Comprehensive Plan.** Does the Ordinance violate
19 RCW 36.70A.070 (preamble), RCW 36.70A.130(1)(d), WAC 365-195-500,
20 and/or KCC 17.98.020.6(a) because it is inconsistent with the Kittitas County
21 Comprehensive Plan, including but not limited to Comprehensive Plan Policies
22 RR-P17, NE-G1, NE-G4, NE-P7, NE-P18, Goal 7, the applicable Shoreline

1 Management Plan, Subarea D Land Use Plan, and the comprehensive plan goals
2 and recommendations relating to Open Space and Critical Areas?

3 **2. Invalid Rezone of Resource Land.** Does the Ordinance violate RCW
4 36.70A.067, WAC 365-190-040, WAC 365-190-060, and/or KCC 17.98.020.6
5 (c), (d), (e), or (f) because the County failed to demonstrate that the designation
6 of the land from Forest and Range to Rural Recreation meets the applicable
7 criteria and/or adequately takes into consideration the relevant circumstances of
8 the Property and surrounding property and land uses?

9 **3. Failure to Protect Critical Areas and Wetlands.** Does the Ordinance violate
10 WAC 365-190-080, WAC 365-190-090, WAC 365-190-130, WAC 365-196-
11 485(1)(a)-(c) and (4)(a)-(c), WAC 365-196-830 and/or KCC 17A.02.330
12 because it fails to protect wetlands, watercourses, listed species and critical
13 areas and is inconsistent with and/or fails to comply with the applicable criteria
14 in these provisions?

15 **State Environmental Policy Act**

16 **4. Failure to Consider Impacts at the Earliest Possible Time.** Is the Ordinance
17 and the County's corresponding SEPA Determination of Non-Significance
18 (DNS) clearly erroneous and in violation of RCW 43.21C.030, RCW
19 43.21C.031(1), WAC 197-11-055, KCC Chapter 15.04 and other applicable law
20 because the County determined that as a non-project proposal, approval of the
21 Ordinance did not require a complete threshold determination and/or
22 preparation of an environmental impact statement?

23

1 **5. Clearly Erroneous Threshold Determination.** Is the Ordinance and the
2 County's corresponding SEPA Determination of Non-Significance (DNS)
3 clearly erroneous and in violation of RCW 43.21C.030, RCW 43.21C.031(1);
4 RCW43.21C.060; WAC 197-11-060; WAC 197-11-080; WAC 197-11-100;
5 WAC 197-11-310; WAC 197-11-315; WAC 197-11-330; WAC 197-11-335;
6 WAC 197-11-340, and/or KCC Chapter 15.04 because the County failed to
7 adequately consider the direct, indirect, and cumulative probable adverse
8 environmental effects of the Ordinance?

9 **6. Failure to Identify Conflict with Applicable Law.** Is the Ordinance and the
10 County's corresponding SEPA Determination of Non-Significance (DNS)
11 clearly erroneous and in violation of WAC 197-11-330(e)(iii) because it fails to
12 identify conflict with local, state, or federal laws or requirements for the
13 protection of the environment, including but not limited to the Growth
14 Management Act, Shoreline Management Act, and the Kittitas County
15 Comprehensive Plan?

16 **7. Failure to Require Adequate Mitigation or Prepare an Environmental**
17 **Impact Statement.** Is the Ordinance and the County's corresponding SEPA
18 Determination of Non-Significance (DNS) clearly erroneous and in violation of
19 RCW 43.21C.030, RCW 43.21C.031(1); RCW43.21C.060; WAC 197-11-055;
20 WAC 197-11-060; WAC 197-11-080; WAC 197-11-100; WAC 197-11-310;
21 WAC 197-11-315; WAC 197-11-330; WAC 197-11-335; WAC 197-11-340,
22 and/or KCC Chapter 15.04 because the County failed to impose conditions
23 necessary to justify a mitigated determination of non-significance, failed to

1 make a determination of significance, and failed to prepare an environmental
2 impact statement?

3 **IV. STANDING**

4 Petitioners Conservation Northwest and Karl Flaccus have standing to
5 challenge the Ordinance.

6 Conservation Northwest is a non-profit conservation organization based in
7 Washington State. CNW's mission is to protect, connect and restore wildlands and
8 wildlife from the Washington Coast to the British Columbia Rockies. For over 25
9 years, Conservation Northwest has partnered with natural resource agencies,
10 stakeholders, and Tribes to identify, plan, fund, and implement landscape-scale
11 watershed restoration investments to address the barrier effects of I-90 and connect
12 and enhance habitat to provide migratory corridors for fish and wildlife in the
13 Snoqualmie Pass area – an area identified as a Connectivity Emphasis Area in the
14 Snoqualmie Pass Adaptive Management Area Plan and critically important for
15 wildlife movement (USFS 1997). Conservation Northwest spearheaded the
16 Cascades Conservation Partnership and the I-90 Wildlife Bridges Coalition to
17 reconnect Washington's north and south Cascades by protecting and restoring
18 habitat and establishing wildlife crossings under and over I-90. Conservation
19 Northwest continues to work with the USFS, WSDOT, WDFW and others to
20 protect and restore critical wildlife areas that invite safe wildlife travel through
21 Washington's Cascade Mountain Range.

22 The proposed rezoning and associated development will undermine the
23 investments of the I-90 Wildlife Bridge Coalition, and thus harm Conservation

1 Northwest's deep interest in protecting, connecting, and restoring wildlife
2 populations in the area. Conservation Northwest has affected and aggrieved
3 members that reside and/or visit Kittitas County who are directly and adversely
4 procedurally and substantively affected by the rezone due to reduced ability to see
5 wildlife, harm to their efforts to restore wildlife and wildlife habitat, reduced
6 quality of life, and loss of opportunity to participate in the required environmental
7 review.

8 Karl Flaccus has been a cabin owner in the Gold Creek Valley for 22 years.
9 He cares deeply about Gold Creek Valley and its ecology and environment. He
10 frequently visits the Property and plans to do so in the future and he will be
11 directly adversely affected and aggrieved by the changes to the Property resulting
12 from the Ordinance. Mr. Flaccus is also a member of Conservation Northwest.
13 Both Conservation Northwest and Mr. Flaccus participated at the local level in the
14 public hearing process and raised these issues in detail.

15 Petitioners' interest in the decision stems from past, present, and future work
16 on conservation projects in the area, and expectation that Kittitas County will
17 adhere to the law, Kittitas County's own Comprehensive Plan, and science.

18 **V. ESTIMATED LENGTH OF HEARING**

19 Petitioners estimate that the hearing on the merits for this matter will last
20 four hours, unless the Board determines that testimony is appropriate, which would
21 result in a longer hearing.

22 **VI. RELIEF SOUGHT**

23 Petitioners respectfully request that the Board find and declare that the

1 Ordinance fails to comply with the goals and requirements of the Growth
2 Management Act and its implementing regulations and the State Environmental
3 Policy Act and its implementing regulations.

4 Petitioners request that the Board issue a Final Decision and Order
5 remanding the matter to Kittitas County for action consistent with the Growth
6 Management Act and the State Environmental Policy Act.

7 In addition, Petitioners request that the Board make a determination of
8 invalidity for the Ordinance on the grounds that the challenged action substantially
9 interferes with the fulfillment of the goals of the Growth Management Act.

10 **CERTIFICATION**


11 Petitioners have read this Petition for Review and certify its contents to be
12 true to the best of their knowledge.

13 Dated February 22, 2023.

14 ZIONTZ CHESTNUT

15
16 /s/ Wyatt F. Golding
17 Wyatt F. Golding
18 Of Attorneys for Petitioner
19

20 CRAG LAW CENTER

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22 _____
23 Meriel L. Darzen
24 Maura C. Fahey
25 Of Attorneys for Petitioners
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CERTIFICATE OF SERVICE

I hereby certify on penalty of perjury under the laws of the State of Washington that on February 22, 2023, I caused the foregoing Petition for Review and attached Exhibit 1 to be served via FedEx Overnight Delivery to the following person at the following address:

Kittitas County Auditor
205 W 5th Ave, Suite 105
Ellensburg, WA 98926

Dated this 22 day of February, 2023.

ZIONTZ CHESTNUT
/s/Cara Hazzard

Cara Hazzard, Paralegal
2101 Fourth Ave., Suite 1230
Seattle, WA 98121-2331
Tel. (206) 448-1230; Fax (206) 448-0962

.. ..

EXHIBIT 1

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

ORDINANCE

NO. 2022 - 017

**REVISIONS OF KITTITAS COUNTY CODE AND COMPREHENSIVE PLAN
AS PART OF THE 2022 ANNUAL COMPREHENSIVE PLAN AMENDMENT CYCLE.**

Whereas, this ordinance, revising Kittitas County Code and Comprehensive Plan, contains four sections of findings, as follows:

- Section I - Procedural Findings
- Section II - Board of County Commissioners Findings
- Section III - Final Decision and Signatures
- Exhibits A-T - Changes to Kittitas County Code and Comprehensive Plan

**SECTION I
PROCEDURAL FINDINGS**

- Whereas,** Kittitas County opted into the Growth Management Act, RCW 36.70A, voluntarily on December 27, 1990, through Resolution 90-138; and
- Whereas,** The Kittitas County GMA Comprehensive Plan was originally adopted on July 26, 1996 by the Kittitas County Board of County Commissioners; and
- Whereas,** Kittitas County Code 15B.03.030 indicates that any interested person, including applicants, citizens, county commission and board members, and staff of other agencies may suggest plan or development regulation amendments for annual consideration by the Kittitas County Planning Commission and Board of County Commissioners; and
- Whereas,** Kittitas County Code 15B.03.030 requires amendments to the comprehensive plan or development regulations that are docketed by June 30th must be approved or denied by the Board of County Commissioners on or before December 31st of that same calendar year; and
- Whereas,** Kittitas County Community Development Services docketed a list of suggested changes to the Kittitas County Code and Comprehensive Plan and made these proposals readily available for review by the public in Community Development Services and within the County's official website; and
- Whereas,** Kittitas County submitted its proposed docketed items on October 19, 2022 to the Department of Commerce as required by statute and received a letter of receipt on October 19, 2022 that the docket proposal had been received and was sent to other agencies for comment; and
- Whereas,** Comments were received from state agencies and members of the public; and
- Whereas,** Kittitas County filed its overall docket SEPA checklist and SEPA checklist for five citizen-initiated comprehensive plan amendments and rezone applications on September 8, 2022 and issued a Determination of Non-significance (DNS) for the annual docket items on September 8, 2022 through authority of WAC 197-11-340; and
- Whereas,** One timely SEPA appeal was received for the Mardee Lake comprehensive plan amendment and rezone applications (CP-22-00005 & RZ-22-00005); and
- Whereas,** Due public notice was placed upon the County official website and in the Northern Kittitas County Tribune on October 27, 2022 and November 3, 2022, and in the Daily Record on October 27, 2022 and November 3, 2022 regarding the Planning Commission public hearing; and
- Whereas,** The Planning Commission conducted a public hearing on November 8, 2022 and November 9, 2022 to hear testimony and take public comment on the items considered for amendment and after deliberation made recommendations to the Board of County Commissioners, taking due consideration of the public benefit involved in the proposals; and

- Whereas,** After due notice and publication on official website and in the Northern Kittitas County Tribune on November 3, 2022 and November 10, 2022, and in the Daily Record on November 3, 2022 and November 10, 2022, the Kittitas County Board of County Commissioners held an open public hearing on November 29, 2022; and
- Whereas,** After deliberation, the Board of County Commissioners made decisions on each docket item presented; and
- Whereas,** Following the decisions on the docket items the Kittitas County Board of Commissioners instructed County staff to prepare an ordinance for their signature to adopt changes to the Kittitas County Code and Comprehensive Plan; and
- Whereas,** The Kittitas County Board of County Commissioners considered enabling documents before the public on December 20, 2022.

SECTION II – BOARD OF COUNTY COMMISSIONERS FINDINGS

General Findings:

The Kittitas County Board of County Commissioners held a public hearing on November 29, 2022, to hear testimony and accept written comments regarding proposed amendments to the Kittitas County Code and Comprehensive Plan. All members of the public who wanted to testify were allowed to speak or submit written correspondence into the record.

The docketed items discussed during the Board of County Commissioners public hearing included:

2022 Proposed AMENDMENTS to Kittitas County Code and Comprehensive Plan				
<i>Number</i>	<i>Applicant Name</i>	<i>Project Description</i>	<i>Planning Commission Recommendation</i>	<i>Staff Recommendation</i>
22-01	Kittitas County	Amend KCC 17.11, 17.08, 17.15, 17.16, 17.22, 17.24, 17.32, 17.36, 17.40, 17.44, 17.48, and 17.52 to implement Interlocal Agreement (ILA) between Kittitas County and the City of Ellensburg regarding development in the Ellensburg Urban Growth Area (Resolution 2022-013).	The Planning Commission unanimously recommended approval of the amendments as proposed and recommended that comments from Steve Willard be forwarded to the Board of County Commissioners for consideration.	Staff recommended approval of the amendment as proposed.
22-02	Kittitas County CDS Staff	Amend KCC 17.08 to add definitions of “Construction Business and Trades” and “Contractor Yard” and amend KCC 17.15 to add “Contractor Yard” to land use tables.	The Planning Commission unanimously recommended denial of the amendment as proposed.	Staff recommended approval of the amendment as proposed.

22-03	Kittitas County CDS Staff	Housekeeping amendments to KCC Title 15, 16, and 17.	The Planning Commission unanimously recommended approval of the amendment as proposed.	Staff recommended approval of the amendment as proposed.
22-04	Kittitas County CDS Staff	Amend KCC 17.08 to update definitions of "Accessory dwelling unit," "Accessory living quarters," and "Guesthouse."	The Planning Commission unanimously recommended approval of the amendment as proposed.	Staff recommended approval of the amendment as proposed.
22-05	Kittitas County CDS Staff	Amend KCC 17.08.195 to redefine "Daycare facilities" and amend KCC 17.15.070.1 and KCC 17.15 to allow daycare facilities in Residential, Residential 2, and Urban Residential zoning districts.	The Planning Commission unanimously recommended approval with a minor amendment and recommended these provisions be extended to the Rural 5 and Rural 3 zoning districts.	Staff recommended approval of the amendment as proposed.
22-06	Commissioner Osiadacz	Amend KCC 17.44.060 to increase maximum building height in the Highway Commercial Zone to 40 feet and remove the reference to "stories."	The Planning Commission unanimously recommended approval of the amendment as proposed	Staff recommended approval of the amendment as proposed.
22-07	Commissioner Wright	Amend KCC 12.05 to allow for vesting of exiting driveway accesses established prior to county road access permits.	The Planning Commission unanimously recommended approval of the amendment as proposed	Staff recommended approval of the amendment as proposed.
22-08	Commissioner Wright	Amend KCC 16.12.040 to allow for lots smaller than the zoning minimum lot size in Commercial Ag, Ag 5, and Ag 20 zones where a residence has existed for at least five years and where the lot has not been divided for at least 15 years.	The Planning Commission recommended approval as originally proposed but with a minor amendment, by a vote of 4 to 0 with one abstention.	Staff recommended a revision of the proposed amendment that would perpetually limit the remainder lot's use to agricultural purposes.
22-09	Kittitas County CDS Staff	Amend KCC 17.08 to exclude retaining walls of up to four feet in height from structural setbacks when necessary for access permits and to allow for a maximum 18-inch structural	The Planning Commission unanimously recommended approval of the amendment as proposed	Staff recommended approval of the amendment as proposed.

		encroachment into setbacks.		
22-10	WITHDRAWN			
22-11	Kittitas County CDS Staff	Amend KCC 17.80.010 to clarify that alterations or expansions of nonconforming residential structures shall not increase their nonconformity.	The Planning Commission unanimously recommended approval of the amendment as proposed.	Staff recommended approval of the amendment as proposed.
22-12	Kittitas County CDS Staff	Amend 17.16.080, 17.18.080, 17.28.060, 17.28A.060, 17.29.070, 17.31.070, and 17.56.060 to remove "to the main building" language.	The Planning Commission unanimously recommended approval of the amendment as proposed.	Staff recommended approval of the amendment as proposed.
22-13	WITHDRAWN			
22-14	Kittitas County CDS Staff	Amend KCC Title 15A Table A to include Reasonable Use and Public Agency and Utility Exception that were adopted with new critical areas ordinance in 2021.	The Planning Commission unanimously recommended approval with the proposed staff revision.	Staff recommended approval of the amendment with one minor revision.
22-15	Kittitas County Solid Waste	New Chapter 8.21 that would expand recycling and yard waste services in Kittitas County.	The Planning Commission unanimously recommended approval of the amendment with revisions.	Staff recommended approval of the amendment with revisions as proposed by Waste Management.
22-16	WITHDRAWN			
22-17	Kittitas County CDS Staff	Amend KCC 17.08 to clarify which lot lines and yards are considered "front."	The Planning Commission unanimously recommended approval of the amendment as proposed.	Staff recommended approval of the amendment as proposed.
22-18	Kittitas County CDS Staff	Amend KCC 17.84.010(4) to add definition of "substantial construction."	The Planning Commission unanimously recommended approval of the amendment with revision to allow extensions when conditions are outside of applicant's control.	Staff recommended approval of the amendment as proposed.
22-19	Kittitas County CDS Staff	Amend KCC 17.08.290 to provide limitations for employees and customers for home occupations.	The Planning Commission unanimously recommended denial of the amendment.	Staff recommended approval of the amendment as proposed.

22-20	Kittitas County Prosecutor and CDS Staff	Amend KCC 17.15.060(1) to be consistent with WAC 365-196-550(3)(a).	The Planning Commission unanimously recommended approval of the amendment as proposed.	Staff recommended approval of the amendment as proposed.
22-21 CP-22-00001 RZ-22-00001	Citizen Request – Fiorito Brothers	Comprehensive Plan Amendment from Rural Working to Commercial Agriculture and Rezone from Agriculture 20 to Commercial Agriculture.	The Planning Commission unanimously recommended approval of the proposed comprehensive plan amendment and rezone.	Staff recommended approval of the proposed comprehensive plan amendment and rezone.
22-22 CP-22-00002 RZ-22-00002	Citizen Request – Thorp Landing	Comprehensive Plan Amendment from Rural Working to Rural Residential and Rezone from Agriculture 20 to Agriculture 5.	The Planning Commission unanimously recommended approval of the proposed comprehensive plan amendment and rezone.	Staff recommended approval of the proposed comprehensive plan amendment and rezone.
22-23 CP-22-00003 RZ-22-00003	Citizen Request – Flying A Land	Comprehensive Plan Amendment from Rural Working to Rural Residential and Rezone from Agriculture 20 to Agriculture 5.	The Planning Commission unanimously recommended approval of the proposed comprehensive plan amendment and rezone.	Staff recommended approval of the proposed comprehensive plan amendment and rezone.
22-24 CP-22-00004 RZ-22-00004	Citizen Request – Teaway Ridge	Comprehensive Plan Amendment from Rural Working to Rural Residential and Rezone from Forest & Range and Rural 5 to Rural 5.	The Planning Commission unanimously recommended approval of the proposed comprehensive plan amendment and rezone.	Staff recommended approval of the proposed comprehensive plan amendment and rezone.
22-25 CP-22-00005 RZ-22-00005	Citizen Request – Mardee Lake	Comprehensive Plan Amendment from Rural Working to Rural Recreation and Rezone from Forest & Range to Recreation.	The Planning Commission recommended approval of the proposed comprehensive plan amendment and rezone by a vote of 4 to 1.	Staff recommended approval of the proposed comprehensive plan amendment and rezone.
22-26	WITHDRAWN			

22-01 Kittitas County Proposal:

Amend KCC 17.11, 17.08, 17.15, 17.16, 17.22, 17.24, 17.32, 17.36, 17.40, 17.44, 17.48, and 17.52 to implement Interlocal Agreement (ILA) between Kittitas County and the City of Ellensburg regarding development in the Ellensburg Urban Growth Area (Resolution 2022-013).

The proposed amendments would implement Resolution 2022-013.

The Board of County Commissioners held a public hearing on November 29, 2022, and **approved the request with AMENDMENTS** by a 3-0 vote, finding that:

- I. The Planning Commission recommended approval as presented by staff to the Board of County Commissioners with a vote of 5-0.
- II. Public testimony was received for this proposal.
- III. The change meets the Growth Management Act and the objectives of the Comprehensive Plan.

22-02 Kittitas County Proposal:

Amend KCC 17.08 to add definitions of “Construction Business and Trades” and “Contractor Yard” and amend KCC 17.15 to add “Contractor Yard” to land use tables

The proposed amendment to KCC 17.08 and KCC 17.15 would allow contractor yards by conditional use permit in the Ag 5, Rural 5, Ag 20, and Forest & Range zones and by administrative conditional use permit in the General Commercial and Highway Commercial zones. Contractor yards would be a permitted use in General Industrial zones. Contractor yards would be permitted in Light Industrial zones but would require an administrative conditional use permit when abutting a residential zoning district. Standards for contractor yards would be added to each land use table to minimize impacts to adjacent uses.

The Board of County Commissioners held a public hearing on November 29, 2022, and **denied the request as presented** by a 3-0 vote, finding that:

- I. The Planning Commission recommended denial as presented by staff to the Board of County Commissioners with a vote of 5-0.
- II. Public testimony was received for this proposal.
- III. The change meets the Growth Management Act and the objectives of the Comprehensive Plan.

The Board of County Commissioners remanded this item for community outreach and to bring recommendations as a part of the 2023 Annual Docket.

22-03 Kittitas County Proposal:

Housekeeping amendments to KCC Title 15, 16, and 17.

The proposed amendments to KCC Title 15, 16, and 17 would revise the definition of “Family” for compliance with SB 5235 and correct typos and incorrect references.

The Board of County Commissioners held a public hearing on November 29, 2022, and **approved the request as presented** by a 3-0 vote, finding that:

- I. The Planning Commission recommended approval to the Board of County Commissioners with a vote of 5-0.
- II. No public testimony for this proposal was received.
- III. The change meets the Growth Management Act and the objectives of the County’s Comprehensive Plan.

22-04 Kittitas County Proposal:

Amend KCC 17.08 to update definitions of "Accessory dwelling unit," "Accessory living quarters," and "Guesthouse."

This amendment would amend these definitions to clarify that these uses contain an installed cook source.

The Board of County Commissioners held a public hearing on November 29, 2022, and **approved the request as presented** by a 3-0 vote, finding that:

- I. The Planning Commission recommended approval to the Board of County Commissioners with a vote of 5-0.
- II. No public testimony for this proposal was received.
- III. The change meets the Growth Management Act and the objectives of the Comprehensive Plan.

22-05 Kittitas County Proposal

Amend KCC 17.08.195 to redefine "Daycare facilities" and amend KCC 17.15.070.1 and KCC 17.15 to allow daycare facilities in Residential, Residential 2, and Urban Residential zoning districts.

Daycare facilities serving less than 13 people in a 24-hour period would be permitted outright, and daycare facilities serving 13 or more people in a 24-hour period would require a conditional use permit.

The Board of County Commissioners held a public hearing on November 29, 2022, and **approved the Planning Commission recommendation** by a 3-0 vote, finding that:

- I. The Planning Commission recommended approval with a minor revision and recommended that these provisions be extended to the Rural 5 and Rural 3 zoning districts by a vote of 5-0.
- II. Public testimony was received for this proposal.
- III. The change meets the Growth Management Act and the objectives of the Comprehensive Plan.

21-06 Kittitas County Proposal:

Amend KCC 17.44.060 to increase maximum building height in the Highway Commercial Zone to 40 feet and remove the reference to "stories."

Currently the maximum height is two and one-half stories, or 35 feet, whichever is less. The amendment would remove the references to stories, which are not a standard unit of measurement, and would increase the overall height limit from 35 feet to 40 feet.

The Board of County Commissioners held a public hearing on November 29, 2022, and **approved the request as presented** by a 3-0 vote, finding that:

- I. The Planning Commission recommended approval to the Board of County Commissioners with a vote of 5-0.
- II. No public testimony for this proposal was received.
- III. The change meets the Growth Management Act and the objectives of the Comprehensive Plan.

22-07 Kittitas County Proposal:

Amend KCC 12.05 to allow for vesting of existing driveway accesses established prior to county road access permits.

The proposed amendment to KCC 12.05 would allow for vesting of existing driveway accesses established prior to county road access permits.

The Board of County Commissioners held a public hearing on November 29, 2022, and **approved the request as presented** by a 3-0 vote, finding that:

- I. The Planning Commission recommended approval of the proposal to the Board of County Commissioners with a vote of 5-0.
- II. No public testimony for this proposal was received.
- III. The change meets the Growth Management Act and the objectives of the Comprehensive Plan.

22-08 Kittitas County Proposal:

Amend KCC 16.12.040 to allow for lots smaller than the zoning minimum lot size in Commercial Ag, Ag 5, and Ag 20 zones.

This amendment would allow for lots smaller than the zoning minimum lot size in Commercial Ag, Ag 5, and Ag 20 zones where a residence has existed for at least five years and where the lot has not been divided for at least 15 years.

The Board of County Commissioners held a public hearing on November 29, 2022, and **approved the request with AMENDMENTS** by a 3-0 vote, finding that:

- I. The Planning Commission recommended approval to the Board of County Commissioners with a vote of 4-0 with one abstention.
- II. Public testimony was received for this proposal.
- III. The change meets the Growth Management Act and the objectives of the Comprehensive Plan.

22-09 Kittitas County Proposal:

Amend KCC 17.08 to exclude retaining walls of up to four feet in height from structural setbacks when necessary for access permits and to allow for a maximum 18-inch structural encroachment into setbacks.

The overhang encroachment amendment would codify current practice. The retaining wall amendment would remove setback requirements for retaining walls for access permits which logically need to be located within required setbacks.

The Board of County Commissioners held a public hearing on November 29, 2022, and **approved the request as presented** by a 3-0 vote, finding that:

- I. The Planning Commission recommended approval to the Board of County Commissioners with a vote of 5-0.
- II. No public testimony for this proposal was received.
- III. The change meets the Growth Management Act and the objectives of the Comprehensive Plan.

22-10 WITHDRAWN

22-11 Kittitas County Proposal:

Amend KCC 17.80.010 to clarify that alterations or expansions of nonconforming residential structures shall not increase their nonconformity.

Currently, this section of code does not allow nonconforming structures to be altered, expanded, etc., but this limitation does not apply to residential structures. The proposed amendment would still allow expansion of nonconforming residential structures but would not allow expansion that increased the nonconformity.

The Board of County Commissioners held a public hearing on November 29, 2022, and **approved the request as presented** finding that:

- I. The Planning Commission recommended approval to the Board of County Commissioners with a vote of 5-0.
- II. No public testimony for this proposal was received.
- III. The change meets the Growth Management Act and the objectives of the Comprehensive Plan.

22-12 Kittitas County Proposal:

Amend 17.16.080, 17.18.080, 17.28.060, 17.28A.060, 17.29.070, 17.31.070, and 17.56.060 to remove "to the main building" language.

The proposed amendments would establish a standard setback requirement.

The Board of County Commissioners held a public hearing on November 29, 2022, and **approved the request as presented** by a 3-0 vote, finding that:

- I. The Planning Commission recommended approval to the Board of County Commissioners with a vote of 5-0.
- II. No public testimony for this proposal was received.
- III. The change meets the Growth Management Act and the objectives of the Comprehensive Plan.

21-13 WITHDRAWN

22-14 Kittitas County Proposal:

Amend KCC Title 15A Table A to include Reasonable Use and Public Agency and Utility Exception that were adopted with new critical areas ordinance in 2021.

The proposed amendment to KCC Title 15A Table would include Reasonable Use and Public Agency and Utility Exceptions that were adopted with new critical areas ordinance in 2021.

The Board of County Commissioners held a public hearing on November 29, 2022, and **approved the request with an AMENDMENT** by a 3-0 vote, finding that:

- I. The Planning Commission recommended approval with a staff-recommended revision to the Board of County Commissioners with a vote of 5-0.
- II. No public testimony for this proposal was received.
- III. The change meets the Growth Management Act and the objectives of the Comprehensive Plan.

**22-15 Kittitas County Proposal:
New Chapter 8.21 that would expand recycling and yard waste services in Kittitas County.**

The proposed amendment would create a new Chapter 8.21 that would expand recycling and yard waste services in Kittitas County.

The Board of County Commissioners held a public hearing on November 29, 2022, and **approved the request with revisions as presented** by a 3-0 vote, finding that:

- I. The Planning Commission recommended approval to the Board of County Commissioners with a vote of 5-0.
- II. Public testimony was received for this proposal.
- III. The change meets the Growth Management Act and the objectives of the Comprehensive Plan.

22-16 WITHDRAWN

**22-17 Kittitas County Proposal:
Amend KCC 17.08 to clarify which lot lines and yards are considered "front."**

The proposed amendment to KCC 17.08 would clarify which lot lines are considered front.

The Board of County Commissioners held a public hearing on November 29, 2022, and **approved the request as presented** by a 3-0 vote, finding that:

- I. The Planning Commission recommended approval to the Board of County Commissioners with a vote of 5-0.
- II. No public testimony was received for this proposal.
- III. The change meets the Growth Management Act and the objectives of the Comprehensive Plan.

**22-18 Kittitas County Proposal:
Amend KCC 17.84.010(4) to add definition of "substantial construction."**

The proposed amendment to KCC 17.84.010(4) would amend the variance criteria in KCC 17.84.010(4) to include a definition of "substantial construction." Currently, an approved variance becomes void after one year if no substantial construction has taken place, but "substantial construction" is not defined. The new definition would require one or more building inspection approvals in order to be considered "substantial construction."

The Board of County Commissioners held a public hearing on November 29, 2022, and **approved the request as recommended** by a 3-0 vote, finding that:

- I. The Planning Commission recommended approval to the Board of County Commissioners with a vote of 5-0 with a revision to allow extensions where conditions are outside of applicant's control.
- II. No public testimony for this proposal was received.
- III. The change meets the Growth Management Act and the objectives of the Comprehensive Plan.

22-19 Kittitas County Proposal:

Amend KCC 17.08.290 to provide limitations for employees and customers for home occupations.

The proposed amendment to KCC 17.08.290 would provide limitations for employees and customers for home occupations in order to limit impacts on surrounding residential uses.

The Board of County Commissioners held a public hearing on November 29, 2022, and **denied the request as presented** by a 3-0 vote, finding that:

- I. The Planning Commission recommended denial to the Board of County Commissioners with a vote of 5-0.
- II. No public testimony for this proposal was received.
- III. The change meets the Growth Management Act and the objectives of the Comprehensive Plan.

22-20 Kittitas County Proposal:

Amend KCC 17.15.060(1) to be consistent with WAC 365-196-550(3)(a).

The proposed amendment to KCC 17.15.060(1) would remove footnote 58 because it is in conflict with WAC 365-196-550(3)(a), which states, "Cities and counties may not use their comprehensive plan or development regulations to preclude the siting of essential public facilities. Comprehensive plan provisions or development regulations preclude the siting of an essential public facility if their combined effects would make the siting of an essential public facility impossible or impracticable."

The Board of County Commissioners held a public hearing on November 29, 2022, and **approved the request as presented** by a 3-0 vote, finding that:

- I. The Planning Commission recommended approval to the Board of County Commissioners with a vote of 5-0.
- II. No public testimony was received for this proposal.
- III. The change meets the Growth Management Act and the objectives of the Comprehensive Plan.

22-21 Citizen-Initiated Proposal:

Comprehensive Plan Amendment and Rezone

This amendment was proposed by a private citizen and has been assigned file numbers CP-22-00001 and RZ-22-00001. Fiorito Brothers Inc. is proposing a comprehensive plan land use map amendment from Rural Working to Commercial Agriculture and a rezone of 27.20 acres from Agricultural 20 to Commercial Agriculture to match surrounding properties. A comprehensive plan amendment (CP-22-00001), rezone application (RZ-22-00001), and SEPA checklist were submitted as part of the application packet. The processing of this non-project specific rezone is consistent with Kittitas County Code 15B.03 Amendments to Comprehensive Plan.

The Board of County Commissioners held a public hearing on November 29, 2022 and **approved the request as presented** by a 3-0 vote, finding that:

- I. The Planning Commission recommended approval to the Board of County Commissioners with a vote of 5-0.
- II. No public testimony for this proposal was received.
- III. The change meets the Growth Management Act and the objectives of the Comprehensive Plan.

**22-22 Citizen-Initiated Proposal:
Comprehensive Plan Amendment and Rezone**

This amendment was proposed by a private citizen and has been assigned file numbers CP-22-00002 and RZ-22-00002. Thorp Landing LLC is proposing a comprehensive plan land use amendment from Rural Working to Rural Residential and a rezone of 72.78 acres from Agricultural 20 to Agricultural 5. A comprehensive plan amendment (CP-22-00002), rezone application (RZ-22-00002), and SEPA checklist were submitted as part of the application packet. The processing of this non-project specific rezone is consistent with Kittitas County Code 15B.03 Amendments to Comprehensive Plan.

The Board of County Commissioners held a public hearing on November 29, 2022 and **approved the request as presented** by a 2-1 vote, finding that:

- I. The Planning Commission recommended approval to the Board of County Commissioners with a vote of 5-0.
- II. Public testimony was received for this proposal.
- III. The change meets the Growth Management Act and the objectives of the Comprehensive Plan.

**22-23 Citizen-Initiated Proposal:
Comprehensive Plan Amendment and Rezone**

This amendment was proposed by a private citizen and has been assigned file numbers CP-22-00003 and RZ-22-00003. Flying A Land LLC is proposing a comprehensive plan land use map amendment from Rural Working to Rural Residential and a rezone of 18 parcels, equaling 127.52 acres from Agriculture 20 to Agriculture 5 to match adjacent properties. The rezone will allow the current use of the property to be consistent and compatible with the zoning code, as well as allow future expansion of existing uses. A comprehensive plan amendment (CP-22-00003), rezone application (RZ-22-00003), and SEPA checklist were submitted as part of the application packet. The processing of this non-project specific rezone is consistent with Kittitas County Code 15B.03 Amendments to Comprehensive Plan.

The Board of County Commissioners held a public hearing on November 29, 2022 and **approved the request as presented** by a 3-0 vote, finding that:

- I. The Planning Commission recommended approval to the Board of County Commissioners with a vote of 5-0.
- II. No public testimony for this proposal was received.
- III. The change meets the Growth Management Act and the objectives of the Comprehensive Plan.

**22-24 Citizen-Initiated Proposal:
Comprehensive Plan Amendment and Rezone**

This amendment was proposed by a private citizen and has been assigned file numbers CP-22-00004 and RZ-22-00004. Teanaway Ridge LLC is proposing a comprehensive plan land use map amendment from Rural Working to Rural Residential and a rezone of 2 parcels, equaling 86.58 acres, from Forest & Range and Rural 5 to Rural 5 to match adjacent properties. The rezone will allow the current use of the property to be consistent and compatible with the zoning code, as well as allow future expansion of existing uses. A comprehensive plan amendment (CP-22-00004), rezone application (RZ-22-00004), and SEPA checklist were submitted as part of the application packet. The processing of this non-project specific rezone is consistent with Kittitas County Code 15B.03 Amendments to Comprehensive Plan.

The Board of County Commissioners held a public hearing on November 29, 2022 and **approved the request as presented** by a 3-0 vote, finding that:

- I. The Planning Commission recommended approval to the Board of County Commissioners with a vote of 4-0.
- II. Public testimony was received for this proposal.
- III. The change meets the Growth Management Act and the objectives of the Comprehensive Plan.

**22-25 Citizen-Initiated Proposal:
Comprehensive Plan Amendment and Rezone**

This amendment was proposed by a private citizen and has been assigned file numbers CP-22-00005 and RZ-22-00005. Terra Design Group Inc. (Chad Bala), agent for Mardee Lake Inc., is proposing a rezone and map amendment to four parcels (808335, 818335, 828335 and 838335) currently zoned Forest and Range with a Rural Working Land Use, rezoned to Rural Recreation zoning and land use designation. The rezone will allow the current use of the property to be consistent and compatible with the zoning code of rural recreation, as well as allow future expansion of existing uses. A comprehensive plan amendment (CP-22-00005), rezone application (RZ-22-00005), and SEPA checklist were submitted as part of the application packet. Kittitas County issued a Determination of Non-Significance (DNS) on September 8, 2022. A timely SEPA appeal was filed on October 27, 2022. The SEPA appeal was considered by the Board of County Commissioners prior to considering comprehensive plan amendment and rezone applications. The processing of this non-project specific rezone is consistent with Kittitas County Code 15B.03 Amendments to Comprehensive Plan.

Prior to considering the comprehensive plan amendment and rezone applications, the Board of County Commissioners conducted an appeal hearing and **denied the SEPA appeal**, finding that:

- I. No public testimony was taken for this proposal
- II. The comprehensive plan amendment and rezone do not have environmental impacts.
- III. The County's Critical Areas Ordinance and other environmental regulations would still apply to future development of the property.
- IV. The County's authority to conduct SEPA reviews would still apply to future development of the property.
- V. Upholding the appeal would have negative effects on future non-project comprehensive plan and rezone applications.

The Board of County Commissioners then held a public hearing on November 29, 2022 and **approved the request as presented** by a 3-0 vote, finding that:

- I. The Planning Commission recommended approval to the Board of County Commissioners with a vote of 4-1.
- II. Public testimony was received for this proposal.
- III. The change meets the Growth Management Act and the objectives of the Comprehensive Plan.

SECTION III - FINAL DECISION AND SIGNATURES

BE IT ORDAINED that the Board of Kittitas County Commissioners, after due deliberation, hereby approves amendments to KCC 17.11, 17.08, 17.15, 17.16, 17.22, 17.24, 17.32, 17.36, 17.40, 17.44, 17.48, and 17.52, as shown in **Exhibit A**.

BE IT FURTHER ORDAINED that the Board of Kittitas County Commissioners, after due deliberation, hereby approves housekeeping amendments to KCC Title 15, 16, and 17, as shown in **Exhibit B**.

BE IT FURTHER ORDAINED that the Board of Kittitas County Commissioners, after due deliberation, hereby approves amendments to the KCC 17.08, as shown in **Exhibit C**.

BE IT FURTHER ORDAINED that the Board of Kittitas County Commissioners, after due deliberation, hereby approves amendments to KCC 17.08 and 17.15, as shown in **Exhibit D**.

BE IT FURTHER ORDAINED that the Board of Kittitas County Commissioners, after due deliberation, hereby approves amendment to 17.44.060, as shown in **Exhibit E**.

BE IT FURTHER ORDAINED that the Board of Kittitas County Commissioners, after due deliberation, hereby approves amendment to KCC 12.05, as shown in **Exhibit F**.

BE IT FURTHER ORDAINED that the Board of Kittitas County Commissioners, after due deliberation, hereby approves amendments to KCC 16.12.040, as shown in **Exhibit G**.

BE IT FURTHER ORDAINED that the Board of Kittitas County Commissioners, after due deliberation, hereby approves amendments to KCC 17.08, as shown in **Exhibit H**.

BE IT FURTHER ORDAINED that the Board of Kittitas County Commissioners, after due deliberation, hereby approves amendments to KCC 17.80.010, as shown in **Exhibit I**.

BE IT FURTHER ORDAINED that the Board of Kittitas County Commissioners, after due deliberation, hereby approves amendments to KCC 17.16.080, 17.18.080, 17.28.060, 17.28A.060, 17.29.070, 17.31.070, and 17.56.060, as shown in **Exhibit J**.

BE IT FURTHER ORDAINED that the Board of Kittitas County Commissioners, after due deliberation, hereby approves amendments to Title 15A Table A, as shown in **Exhibit K**.

BE IT FURTHER ORDAINED that the Board of Kittitas County Commissioners, after due deliberation, hereby approves an amendment to KCC Title 8, creating a new KCC Chapter 8.21, as shown in **Exhibit L**.

BE IT FURTHER ORDAINED that the Board of Kittitas County Commissioners, after due deliberation, hereby approves amendments to KCC 17.08, as shown in **Exhibit M**.

BE IT FURTHER ORDAINED that the Board of Kittitas County Commissioners, after due deliberation, hereby approves amendments to KCC 17.84.010(4), as shown in **Exhibit N**.

BE IT FURTHER ORDAINED that the Board of Kittitas County Commissioners, after due deliberation, hereby approves amendments to KCC 17.15.060(1), as shown in **Exhibit O**.

BE IT FURTHER ORDAINED that the Board of Kittitas County Commissioners, after due deliberation, hereby approves a comprehensive map and rezone, as shown in **Exhibit P**.

BE IT FURTHER ORDAINED that the Board of Kittitas County Commissioners, after due deliberation, hereby approves a comprehensive map and rezone, as shown in **Exhibit Q**.

BE IT FURTHER ORDAINED that the Board of Kittitas County Commissioners, after due deliberation, hereby approves a comprehensive map and rezone, as shown in **Exhibit R**.

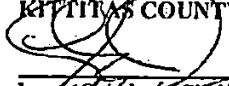
BE IT FURTHER ORDAINED that the Board of Kittitas County Commissioners, after due deliberation, hereby approves a comprehensive map and rezone, as shown in **Exhibit S**.

BE IT FURTHER ORDAINED that the Board of Kittitas County Commissioners, after due deliberation, hereby approves a comprehensive map and rezone, as shown in **Exhibit T**.

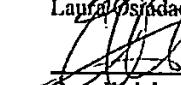
NOW, BE IT FURTHER ORDAINED that the Board of County Commissioners, after due deliberation, hereby approves the adoption of the 2022 Amendments to the Kittitas County Code as shown in Exhibits A through Q attached hereto and incorporated by reference. Information Services is hereby directed to make these changes to the regulations on the County website. The Community Development Services Director and Prosecuting Attorney are authorized to correct any scrivener's errors without Board approval.

Adopted this 20th day of December 2022, at Ellensburg, Washington.

**BOARD OF COUNTY COMMISSIONERS
KITITAS COUNTY, WASHINGTON**



Laura Osada, Chairman



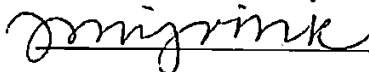
Cory Wright, Vice-Chairman



Brett Wachsmith, Commissioner



- Clerk of the Board- Julie Kjorsvik
- Deputy Clerk of the Board- Mandy Buchholz



APPROVED AS TO FORM:

Neil Caulkins, Deputy Prosecuting Attorney
signing for Gregory L. Zempel Prosecuting Attorney

**Exhibit T: Docket Item 22-25
Mardee Lake Inc.
(CP-22-00005 & RZ-22-00005)**

Land use and Rezone Proposal Rezone from Rural Working Land Use and Forest an Range Zoning to Rural Recreation Zoning and Land Use.

A proposal to change the land use and zoning designations of four parcels (808335, 818335, 828335 and 838335) from Rural Working Land Use and Forest and Range Zoning to Rural Recreation Zoning and Land Use. Parcel 808335 is adjacent to the north of parcels zoned Rural Recreation in the Rural Recreation land use designation. A comprehensive plan amendment (CP-22-00005), rezone application (RZ-22-00005), and SEPA checklist were submitted as part of the application packet. The processing of this non-project specific rezone and land use designation change is consistent with Kittitas County Code 15B.03 Amendments to Comprehensive Plan.

[The complete record for this specific proposal can be found on the county website at <https://www.co.kittitas.wa.us/cds/land-use/default.aspx> then navigate to "Rezones" and then selecting the "RZ-22-00005".]

Location

Tax parcels 808335, 818335, 828335 and 838335, located on Snoqualmie Pass northeast of the I-90 Exit 54 in Section 15, T.22N, R.11E, W.M.; Kittitas County Parcel map numbers 22-11-15020-0001, 22-11-15020-0002, 22-11-15020-0003 and 22-11-15010-0002.