

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD  
EASTERN REGION  
STATE OF WASHINGTON

PAULA J. THOMPSON, et al.,

Petitioners,

v.

KITTITAS COUNTY,

Respondent.

**CASE No. 23-1-0002c**  
**ORDER OF CONSOLIDATION AND**  
**NOTICE OF HEARING AND**  
**PRELIMINARY SCHEDULE**

**I. THE PETITIONS**

On February 12, 2023, Paula J. Thompson, John Boitano, David Fudacz, Jarred Fudacz, and Ryan Fudacz (Petitioners) filed a Petition for Review challenging Kittitas County's Ordinance No. 2022-17 (Revisions of Kittitas Country Code and Comprehensive Plan as Part of the 2022 Annual Comprehensive Plan Amendment Cycle), particularly Docket Item 22 (CP-22-0002 and RZ-22-00002) of Ordinance No. 2022-17. The Petition was assigned Case No. **23-1-0001**.

On February 24, 2023, Conservation Northwest and Karl Flaccus (Petitioners) filed a Petition for Review challenging Kittitas County's Ordinance No. 2022-17 (Revisions of Kittitas Country Code and Comprehensive Plan as Part of the 2022 Annual Comprehensive Plan Amendment Cycle), specifically Amendment Nos. 22-25, CP-22-00005 and RZ-22-0005. The Petition was assigned Case No. **23-1-0002**.

**II. CONSOLIDATION**

RCW 36.70A.290(5) provides:

The Board shall consolidate, when appropriate, all petitions involving the review of the same comprehensive plan or the same development regulation or regulations.

1 Pursuant to RCW 36.70A.290(5), the Board hereby consolidates Case Nos. **23-1-**  
2 **0001**, and **23-1-0002**. Both cases involve an appeal of comprehensive plan amendments  
3 adopted by Kittitas County in Ordinance No. 2022-17.  
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5 The case number for the new consolidated case will be **23-1-0002c**. The case will  
6 now be entitled **Thompson, et. al. v. Kittitas County**.

7 Rick Eichstaedt is the Presiding Officer. Cheryl Pflug and Deb Eddy will also serve on  
8 the panel to hear this matter.  
9

### 10 III. ISSUES

#### 11 **Thompson Petitioners, 23-1-0001**

12 1. Does Kittitas County's Amendment docket item 22-22 (CP-22-00002 & RZ-22-  
13 00002) amending the comprehensive plan from Rural Working to Rural Residential and  
14 rezoning from Agricultural 20 to Agricultural 5 violate RCWs 36.70A.070, 36.70A.040,  
15 36.70A.070 (5) (i) (ii) (iii) (iv) (v), and 36.70 A.170 (i)(a); is inconsistent with the County's  
16 comprehensive plan and Rural Residential comprehensive plan designation, and applies to  
17 land that qualifies for designation as agricultural lands of long term commercial significance?  
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#### 20 **Conservation Northwest Petitioners, 23-1-0002**

21 1. Does the Ordinance violate RCW 36.70A.070 (preamble), RCW 36.70A.130(1)(d),  
22 WAC 365-195-500, and/or KCC 17.98.020.6(a) because it is inconsistent with the Kittitas  
23 County Comprehensive Plan, including but not limited to Comprehensive Plan Policies RR-  
24 P17, NE-G1, NE-G4, NE-P7, NE-P18, Goal 7, the applicable Shoreline Management Plan,  
25 Subarea D Land Use Plan, and the comprehensive plan goals and recommendations  
26 relating to Open Space and Critical Areas?  
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29 2. Does the Ordinance violate RCW 36.70A.067, WAC 365-190-040, WAC 365-190-  
30 060, and/or KCC 17.98.020.6 (c), (d), (e), or (f) because the County failed to demonstrate  
31 that the designation of the land from Forest and Range to Rural Recreation meets the  
32

1 applicable criteria and/or adequately takes into consideration the relevant circumstances of  
2 the Property and surrounding property and land uses?

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4 3. Does the Ordinance violate WAC 365-190-080, WAC 365-190-090, WAC 365-190-  
5 130, WAC 365-196-485(1)(a) -(c) and (4)(a)-(c), WAC 365-196-830, and/or KCC  
6 17A.02.330 because it fails to protect wetlands, watercourses, listed species and critical  
7 areas and is inconsistent with and/or fails to comply with the applicable criteria in these  
8 provisions?  
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11 4. Is the Ordinance and the County's corresponding SEPA Determination of Non-  
12 Significance (DNS) clearly erroneous and in violation of RCW 43.21C.030, RCW  
13 43.21C.031(1), WAC 197-11-055, KCC Chapter 15.04, and other applicable law because  
14 the County determined that as a non-project proposal, approval of the Ordinance did not  
15 require a complete threshold determination and/or preparation of an environmental impact  
16 statement?  
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18  
19 5. Is the Ordinance and the County's corresponding SEPA Determination of Non-  
20 Significance (DNS) clearly erroneous and in violation of RCW 43.21C.030, RCW  
21 43.21C.031(1), RCW 43.21C.060, WAC 197-11-060, WAC 197-11-080, WAC 197-11-100,  
22 WAC 197-11-310, WAC 197-11-315, WAC 197-11-330, WAC 197-11-335, WAC 197-11-  
23 340, and/or KCC Chapter 15.04 because the County failed to adequately consider the  
24 direct, indirect, and cumulative probable adverse environmental effects of the Ordinance?  
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27 6. Is the Ordinance and the County's corresponding SEPA Determination of Non-  
28 Significance (DNS) clearly erroneous and in violation of WAC 197-11-330(e)(iii) because it  
29 fails to identify conflict with local, state, or federal laws or requirements for the protection of  
30 the environment, including but not limited to the Growth Management Act, Shoreline  
31 Management Act, and the Kittitas County Comprehensive Plan?  
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1 7. Is the Ordinance and the County's corresponding SEPA Determination of Non-  
 2 Significance (DNS) clearly erroneous and in violation of RCW 43.21C.030, RCW  
 3 43.21C.031(1), RCW 43.21C.060, WAC 197-11-055, WAC 197-11-060, WAC 197-11-080,  
 4 WAC 197-11-100, WAC 197-11-310, WAC 197-11-315, WAC 197-11-330, WAC 197-11-  
 5 335, WAC 197-11-340, and/or KCC Chapter 15.04 because the County failed to impose  
 6 conditions necessary to justify a mitigated determination of non-significance, failed to make  
 7 a determination of significance, and failed to prepare an environmental impact statement?  
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 10 **IV. PRELIMINARY SCHEDULE**

11 Notice is given in the table below of the Preliminary Schedule for hearings as well as  
 12 for filing of briefs and documents with the Board. **Please also file your documents**  
 13 **electronically at [eastern@elaho.wa.gov](mailto:eastern@elaho.wa.gov).**  
 14

15 <b>February 24, 2023</b>	Petition Filed
16 <b>March 2, 2023</b>	Notice of Hearing and Preliminary Schedule
17 <b>March 8, 2023</b> 18 <b>10:00 a.m.</b>	<b>Telephonic Prehearing Conference</b> Call (253) 215-8782 Meeting ID: 669 069 8875 Passcode: 635907 Zoom <a href="#">Link</a>
19 <b>March 15, 2023</b>	Prehearing Order
20 <b>March 27, 2023</b>	Index Due (Respondent to file)
21 <b>April 3, 2023</b>	Additions to Index (optional)
22 <b>April 17, 2023</b>	Deadline for Dispositive Motions and for Motions to Supplement the Record (proposed supplements to be attached)
23 <b>April 25, 2023</b>	Deadline for Response to Dispositive Motions or Motions to Supplement the Record
24 <b>May 19, 2023</b>	Anticipated date of Order on Motions
25 <b>June 2, 2023</b>	Deadline for Petitioners' Prehearing Brief (with exhibits)
26 <b>June 16, 2023</b>	Deadline for Respondent's Prehearing Brief (with exhibits)
27 <b>June 26, 2023</b>	Deadline for Petitioners' Reply Brief (optional)
28 <b>July 3, 2023</b> 29 <b>10:00 a.m.</b>	<b>Hearing on Merits of Petition</b> Location to be determined

### V. PREHEARING CONFERENCE

At the Prehearing Conference, the parties should be prepared to discuss the action being challenged, the nature of the claims asserted in the Petition for Review, and the framing of the legal issues to be decided.

The Respondent should be prepared to indicate the nature of any dispositive motions it intends to file. The parties are advised that the Board will normally only decide the following issues on motions: timeliness of the filing of the petition for review, standing to raise the claims in the petition, and subject-matter jurisdiction. The Presiding Officer may ask for stipulations concerning threshold matters that are not in dispute, if any.

The case schedule will be discussed at the Prehearing Conference and may be modified to fit the needs of the parties insofar as the Board determines it can reasonably accommodate them and meet its statutory deadlines. Thereafter, any changes to the schedule must be proposed by motion.

### VI. RULES OF PROCEDURE

The Board's Rules of Practice and Procedure, found in the Washington Administrative Code (WAC) at Chapter 242-03 WAC, shall apply to the proceedings in this case.<sup>1</sup>

### VII. SETTLEMENT AND MEDIATION

**Prior to the Prehearing Conference the Board expects the parties to engage in at least one settlement discussion.** At the Prehearing Conference, the parties will report on their interest in further settlement discussions. If the parties agree that a member of the Growth Management Hearings Board who is not on the designated panel could be of assistance by serving as a settlement officer, the Presiding Officer will appoint a settlement officer to assist the parties in resolving any or all of the issues presented in the Petition for

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<sup>1</sup> The Board's handbook, available on the website, may also be useful to the parties.

1 Review. If the parties reach settlement, the Presiding Officer shall be notified, and a Joint  
2 Motion for Dismissal filed with the Board. If settlement is not reached on all issues, the case  
3 will proceed as scheduled. The parties are advised that the Board may extend the 180-day  
4 decision deadline *for the purposes of settlement*, for up to ninety days pursuant to RCW  
5 36.70A.300(2)(b).  
6

### 7 **VIII. INTERPRETERS AND ACCOMMODATIONS**

8 If a limited-English speaking or hearing-impaired party needs an interpreter for any  
9 hearing, a qualified interpreter will be appointed at no cost to the party or participant. A form  
10 for a request for an interpreter is attached to this Notice.  
11

### 12 **IX. THE INDEX**

13 **Index** - Pursuant to WAC 242-03-510, within 30 days of service of the petition the  
14 Respondent shall prepare an Index that lists all documents considered by the Respondent  
15 in taking the challenged action. Each document included in the Index should be given a  
16 unique number for identification purposes and to avoid duplication. Thereafter documents  
17 should be referenced by their index number when attached as exhibits to briefs.  
18

19 The Petitioners shall review the Index prepared by the Respondent promptly and  
20 notify the Respondent of any omissions they believe have occurred. If the Respondent  
21 agrees, it shall file an Amended Index.  
22

23 If there is a disagreement over whether the item should be included in the record, the  
24 proponent may file a motion to supplement the record, attaching the disputed documents  
25 and explaining why the party believes the document is necessary or of substantial  
26 assistance in the determination of the issues. Supplementation may be permitted "if the  
27 board determines that such additional evidence would be necessary or of substantial  
28 assistance to the board in reaching its decision." RCW 36.70A.290(4).  
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**X. FAILURE TO ATTEND OR PARTICIPATE**

A party who fails to attend or participate in any hearing or other stage of the adjudicative proceedings before the Board in this case may be held in default and an order of default or dismissal may be entered pursuant to WAC 242-03-710.

**XI. COMMUNICATION WITH THE BOARD**

Pursuant to RCW 34.05.455, the parties may not communicate *ex parte* with the presiding officer or other Board members. The parties are directed to the Administrative Assistant to the Board, at (360) 664-9170, or email at eastern@eluhwa.gov, who shall be the Board's contact for any questions.

DATED this 2<sup>nd</sup> day of March 2023.



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Rick Eichstaedt, Presiding Officer

1 **INTERPRETER REQUEST**

2  
3 **Case No. 23-1-0002c**

4 **Paula J. Thompson, et al. v. Kittitas County**

5 I request that an interpreter be present as follows (Please circle as appropriate):

- 6 1. Limited English-speaking ability. My primary language is \_\_\_\_\_
- 7 (Indicate language)
- 8 2. Hearing impaired.
- 9

10  
11 Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2023.

12  
13  
14 Signature: \_\_\_\_\_

15 Party

16  
17 **Mail to:**

18 **Growth Management Hearings Board**

19 **P.O. Box 40903**

20 **Olympia, WA 98504-0953**