

ZIONTZ CHESTNUT
ATTORNEYS AT LAW

BRIAN W. CHESTNUT
BRIAN C. GRUBER
BETH A. BALDWIN
WYATT F. GOLDING
ANNA E. BRADY
CRYSTAL A. PARDUE

OF COUNSEL
RICHARD M. BERLEY
MARC D. SLONIM

FOURTH AND BLANCHARD BUILDING
2101 FOURTH AVENUE, SUITE 1230
SEATTLE, WASHINGTON 98121-2331
TELEPHONE: (206) 448-1230
FAX: (206) 448-0962
WWW.ZIONTZCHESTNUT.COM

December 13, 2022

Notice of Appeal

Kittitas County Board of Commissioners
bocc@co.kittitas.wa.us

To the Kittitas County Board of Commissioners,

Pursuant to KCC 15.04.210(3), co-appellants Conservation Northwest and Karl Flaccus submit this letter and its attachment as an appeal of the Mardee Lake Rezone (RZ-22-00005), Comprehensive Plan Amendment (CP-22-00005), and associated State Environmental Policy Act Determination of Non-Significance.

Conservation Northwest and Karl Flaccus timely administratively appealed the SEPA DNS, and the Board heard the appeal on November 29, 2022. At that appeal, the Board also passed a motion to approve the Rezone and Comprehensive Plan Amendment, with direction to staff to prepare enabling documents and associated findings.

Our understanding is that the Board plans to formally approve the rezone and comprehensive plan amendment on December 20, 2022, and subsequently publish a notice of decision with direction for appeal. Because there is both a rezone and a comprehensive plan amendment, we believe the appeal of the Rezone, Comprehensive Plan Amendment, and SEPA DNS should be to the Growth Management Hearings Board. *See Kittitas Cty. v. Kittitas Cty. Conservation Coal.*, 176 Wash. App. 38, 52, 308 P.3d 745, 751 (2013) (“we hold a site-specific rezone is a project permit approval under LUPA [to superior court] if it is authorized by a then-existing comprehensive plan and, by contrast, is an amendment to a development regulation under the GMA [to GMHB] if it implements a comprehensive plan amendment.”).

We submit this appeal because KCC 15.04.210(3) contains the following direction with respect to SEPA appeals: “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 made to the appropriate appellate body within ten (10) working days to the Kittitas County Board of Commissioners” (emphasis added). In our reading, this provision is unclear given that it appears to direct simultaneous appeals to either the superior court or the GMHB and the Board. Additionally, the underlined clause should not apply here, because the Board has already heard the appeal, and KCC 15.04.210(6) states that “Kittitas County shall provide for only one appeal of a threshold determination or of the adequacy of an EIS. Successive appeals on these issues

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shall be to Superior Court of Hearing Board, as appropriate” (emphasis added).

However, to ensure that we do not miss any procedural deadlines, we submit this letter and its attachment as an appeal pursuant to KCC 15.04.210(3). The contents of the appeal are set forth in the attached already submitted appeal. Additionally, we have already paid the appeal fee.

We would like to work collaboratively to resolve any procedural issues. Please reach out to me at wgolding@ziontzchestnut.com if you wish to discuss further.

Thank you,

A handwritten signature in blue ink, appearing to read "Wyatt Golding".

Wyatt Golding

Attorney for Conservation Northwest and Karl Flaccus

Encl.

cc: Kelly Bacon, kelly.bacon.cd@co.kittitas.wa.us