10. Rubber reclaiming;
11. Feed yards, livestock sales yards or slaughterhouses;
12. Smelting, reduction or refining of metallic ores;
13. Tanneries;
14. Wineries;
15. Manufacturing of industrial or household adhesives, glues, cements, or component parts thereof,
   from vegetable, animal or synthetic plastic materials;
16. Waste (refuse) recycling and processing;
17. On-site and off-site hazardous waste storage and/or treatment. Off-site materials shall be accepted
   only from Kittitas County source sites.

2. In considering the issuance of conditional use permits for the foregoing listed uses, the board of
   adjustment [Hearing Examiner shall:

   1. Assure that the degree of compatibility enunciated as the purpose of this title shall be maintained
      with respect to the particular use on the particular site and in consideration of other existing and
      potential uses within the general area in which such use is proposed to be located;

   2. Recognize and compensate for variations and degree of technological processes and equipment as
      related to the factors of noise, smoke, fumes, vibration, odors and hazards. Unless substantial
      proof is offered showing that such process and/or equipment has reduced the above factors so as to
      be negligible, use is located not less than one thousand feet from any church, school, park,
      playground or occupied dwelling as may exist on the same lot or parcel as such use. (Ord 2007-22,
      2007; Ord. 93-1 (part), 1993; Ord. 83-22 (part), 1983)

17.52.050 Setbacks.
If any use in this district abuts or faces any residential, Rural Residential or Urban Residential district, a setback of
fifty feet on the side abutting or facing the residential district shall be provided, with tree planting or other
conditions necessary to preserve the character of the residential district. The board of adjustment [Hearing Examiner
shall determine what these conditions shall be. (Ord. 2007-22, 2007; Ord. 96-19 (part), 1996; Ord. 83-2-Z-2 (part),
1983)

Section 14.  Kittitas County Code Chapter 17.56, Forest and Range Zone, is amended as follows:

Chapter 17.56
FOREST AND RANGE ZONE

17.56.020 Uses permitted.
The following uses are permitted:

1. Single-family homes, mobile homes, cabins, duplexes;
2. Lodges and community clubhouses;
3. Agriculture, livestock, poultry or hog raising, and other customary agricultural uses traditionally found in
   Kittitas County, provided that such operations shall comply with all state and/or county health regulations
   and with regulations contained in this title related to feedlots;
4. Forestry, including the management, growing and harvesting of forest products, and including the
   processing of locally harvested forest crops using portable equipment;
5. (Deleted by Ord. 92-6);
6. All buildings and structures not listed above which existed prior to the adoption of the ordinance codified in
   this chapter;
7. Mining and associated activities;
8. Quarry mining, sand and gravel excavation, and rock crushing operations;
9. (Deleted by Ord. 92-6);
10. Uses customarily incidental to any of the uses set forth in this section;
11. Home occupations which do not produce noise;
12. Any use not listed which is nearly identical to a permitted use, as judged by the administrative official, may be permitted. In such cases, all adjacent property owners will be given official notification for an opportunity to appeal such decisions to the county board of adjustment hearing examiner within 10 working days of notification pursuant to KCC Title 15A, Project Permit Application Process;

17.56.030 Conditional uses.
The following uses are conditional:

1. Campgrounds;
2. Private trail clubs (snowmobiles, motorbikes);
3. Airports;
4. Log sorting yards;
5. Sawmills;
6. Firing ranges;
7. Golf courses;
8. Cemeteries;
9. Asphalt plants (temporary only);
10. Feedlots;
11. Public sanitary landfill;
12. Trailers, for an extended period not to exceed one year, when used for temporary occupancy related to permanent home construction or to seasonal or temporary employment;
13. Dairying and stock raising except the raising of swine and raising of swine commercially and the establishment of livestock feed lots; provided that no permit shall be issued for dairying or stock raising on any tract of land having an area of less than nine acres or for animal sheds or barns to be located less than one hundred feet from any property held under different ownership from that upon which such shed or barn is located;
14. Greenhouses, nurseries;
15. Home occupations;
16. Hospitals;
17. Museums;
18. Public Utility substations and transmission towers;
19. Riding academies;
20. Schools, public and private;
21. Governmental uses essential to residential neighborhoods;
22. Churches;
23. (Deleted by Ord. 83-Z-2)
24. Community clubs;
25. Convalescent homes;
26. Day care facilities;
27. Bed and breakfast business.
28. Room and board lodging involving no more than four boarders or two bedrooms;
29. Feed mills, canneries and processing plants for agricultural products;
30. Kennels;
31. Livestock sales yard;
32. Temporary offices and warehouses of a contractor engaged in construction (not to exceed two years);
33. Golf courses;
34. Auction sales of personal property, other than livestock;
35. Private Campgrounds. In considering proposals for location of such campgrounds, the board of
   adjustment/sharing Examiner shall consider the following criteria:
   1. Campgrounds should be located at sufficient distance from existing or projected rural
      residential/residential development so as to avoid possible conflicts and disturbances.
   2. Traffic volumes generated by such a development should not create a nuisance or impose on the
      privacy of nearby residences or interfere with normal traffic flow.
   3. Landscaping or appropriate screening should be required and maintained where necessary for
      buffering.
   4. Adequate and convenient vehicular access, circulation and parking should be provided.
   5. Economic and environmental feasibility;
   6. Public health and safety of campers and those reasonably impacted by the campground (i.e. health,
      water, sanitation);
36. Log sorting yard;
37. Feedlots. Feedlots existing at the time of adoption of the ordinance codified herein may expand or be
   enlarged only in compliance with standards and regulations contained herein, and such operations shall
   comply with all state and/or county health regulations;
38. Mini-warehouses; provided, that the following standards shall apply to the approval and construction of
   mini-warehouses:
   1. A mini-warehouse proposal (application) must include plans for aesthetic improvements and/or
      sight screening;
   2. All buildings with storage units facing property boundaries shall have a minimum setback of 35
      feet;
   3. No commercial or manufacturing activities will be permitted within any building or storage unit;
   4. Lease documents shall spell out all conditions and restrictions of the use;
   5. Signs, other than on-site direction aids, shall number not more than two and shall not exceed 40
      square feet each in area;
39. Guest ranches, group homes, retreat centers;
40. Home occupations which involve outdoor work or activities, or which produce noise, such as engine repair,
    etc. This shall not include the cutting and sale of firewood which is not regulated by this code;
41. Day care facilities;
42. Bed and breakfast business;
43. Gas and oil exploration and production; and
44. Farm labor shelters, provided that:

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Section 15. Kittitas County Code Chapter 17.57, Commercial Forest Zone, is amended as follows:

Chapter 17.57
COMMERCIAL FOREST ZONE

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17.57.020 Uses permitted.
The following uses are permitted:

1. Forestry, including the management, growing and harvesting of forest products, and including the processing of locally harvested forest crops using portable equipment in accordance with the Washington Forest Practices Act of 1974 as amended, and regulations adopted pursuant thereto;

2. Removal, harvesting, wholesaling and retailing of vegetation from forest lands including but not limited to fuel woods, cones, Christmas trees, salal, berries, ferns, greenery, mistletoe, herbs, and mushrooms;

3. Portable saw mills and chippers, log sorting and storage, and other uses involved in the harvesting and commercial production of forest products;

4. Grazing of animals, apiary, Christmas tree plantations, and the harvesting of indigenous floral vegetation;

5. Dispersed recreation and recreational facilities such as primitive campsites, trails, trailheads and snow parks;

6. Mining and associated activities, extraction and processing of rock, sand, gravel, oil, gas, minerals and geothermal resources;

7. Aircraft landing fields and heliports for emergency and forest related management uses and practices only;

8. Storage of explosives, fuels and chemicals used for agriculture, mining, and forestry subject to all applicable local, state and federal regulations;

9. Watershed management facilities including but not limited to diversion devices, impoundments, dams for water storage, flood control, fire control, and stock watering;

10. Forestry, environmental and natural resource research;

11. Home occupations which do not produce noise;

12. One single-family dwelling unit and associated outbuildings per parcel;

13. Washington State Natural Area Preserves and Natural Resource Conservation Areas;

14. All buildings and structures not listed above which existed prior to the adoption of the ordinance codified herein; and

15. Any use not listed which is nearly identical to a permitted use, as judged by the administrative official, may be permitted. In such cases all adjacent property owners shall be given official notification for an
opportunity to appeal such decisions within ten working days of notification to the county board of adjustment Hearing Examiner pursuant to Title 15A of this code, Project permit application process. (Ord. 96-19 (part), 1996; Ord. 94-1 (part), 1994)

Section 16. Kittitas County Code Chapter 17.58. Airport Zone. is amended as follows:

Chapter 17.58
AIRPORT ZONE

17.58.060 Permits.

1. Future Uses. Except as specifically provided in subsections (A)(1), (2), and (3) of this section, no material change shall be made in the use of land, no structure shall be erected or otherwise established, and no tree shall be planted in any zone created unless a permit therefore has been applied for and granted. Each application for a permit shall indicate the purpose for which the permit is desired, with sufficient particularity to permit it to be determined whether the resulting use, structure, or tree is consistent with the provisions of this chapter. No permit for a use inconsistent with the provisions of this chapter shall be granted unless a variance has been approved in accordance with subsection D of this section.

1. In the area lying within the limits of the horizontal zone and conical zone, no permit shall be required for any tree or structure less than 75 feet of vertical height above the ground except when, because of terrain, land contour, or topographic features, such tree or structure would extend above the height limits prescribed for such zones.

2. In areas lying within the limits of the approach zones but at a horizontal distance of not less than 4,200 feet from each end of the runway, no permit shall be required for any tree or structure less than 75 feet of vertical height above the ground, except when such tree or structure would extend above the height limits prescribed for such approach zones.

3. In the areas lying within the limits of the transition zones beyond the perimeter of the horizontal zone, no permit shall be required for any tree or structure less than 75 feet of vertical height above the ground, except when such tree or structure, because of terrain, land contour, or topographic features, would extend above the height limit prescribed for such transition zones.

4. As a condition for approval of new development within the approach surfaces or safety zones a notice shall be recorded with the county auditor prior to final approval of new subdivisions, short subdivisions, building permits, conditional use permits, special use permit or other similar permits. Notice shall state: "This property is located adjacent to an airport and routinely subject to overflight activity by aircraft using the airport; residents and tenants may experience inconvenience, annoyance, or discomfort from noise, smell or other effects of aviation activities."

2. Existing Uses. No permit shall be granted that would allow the establishment or creation of an obstruction or permit a nonconforming use, structure, or tree to become a greater hazard to air navigation, than it was on the effective date of the ordinance codified in this chapter or any amendments thereto or than it is when the application for a permit is made.

3. Nonconforming Uses Abandoned or Destroyed. Whenever the airport manager, or his or her designee, determines that a nonconforming or structure has been abandoned or more than eighty percent torn down, physically deteriorated, or decayed, no permit shall be granted that would allow such structure to exceed the applicable height limit or otherwise deviate from the zoning regulations.

4. Variance. Any person desiring to erect or increase the height of any structure, or permit the growth of any tree, or use property, nor in accordance with the regulations prescribed in this chapter, may apply to the board of adjustment Hearing Examiner for a variance from such regulations. The application for variance shall be accomplished by a determination from the Federal Aviation Administration as to the effect of the proposal on the operation of an navigation facilities and the safe, efficient use of navigable airspace. Such
variances shall be allowed where it is duly found that a literal application or enforcement of the regulations will result in unnecessary hardship and relief granted, will not be contrary to the public interest, will not create a hazard to air navigation, will do substantial justice, and will be in accordance with the spirit of this chapter. A copy of the variance application shall be forwarded to the Kittitas County airport manager by the Kittitas County Community Development Services department consistent with the notification procedures under KCC Title 15A.

5. Obstruction Marking and Lighting. Any permit or variance granted may, if such action is deemed advisable to effectuate the purpose of this chapter, be so conditioned as to require the owner of the structure or tree in question to install, operate, and maintain, at the owner's expense, such markings and lights as may be necessary.

6. Nothing in this chapter shall diminish the responsibility of project proponents to submit a Notice of Construction or Alteration to the Federal Aviation Administration if required in accordance with Federal Aviation Regulations Part 77, "Objects Affecting Navigable Airspace". (Ord. 2007-22, 2007; Ord. 2001-10 (part), 2001)

17.58.090 Appeals. Any person aggrieved, by any order, requirement, decision or determination made by an administrative official in the processing of any application made under this chapter or in the actual decision made as required by this chapter may appeal to the board of adjustment/Utilities Examiner as provided in RCW 14.12.190. (Ord. 2001-10 (part), 2001)

17.58.100 Judicial review. Any person aggrieved, or any taxpayer affected, by any decision of the board of adjustment/Utilities Examiner, may appeal to the circuit court as provided in Section III of Chapter 12 of the Public Laws of the State. (Ord. 2001-10 (part), 2001)

Section 17. Kittitas County Code Chapter 17.59, Liberty Historic Zone, is amended as follows:

Chapter 17.59
LIBERTY HISTORIC ZONE

17.59.020 Permitted uses. The following uses are permitted:

1. Single-family homes, mobile homes, cabins, duplexes;

2. Lodges and community clubhouses;

3. Agriculture, livestock, poultry or hog raising, and other customary agricultural uses traditionally found in Kittitas County, provided that such operations shall comply with all state and/or county health regulations and with regulations contained in this title related to feedlots;

4. Forestry, including the management, growing and harvesting of forest products, and including the processing of locally harvested forest crops using portable equipment;

5. (Deleted by Ord. 92-6);

6. All buildings and structures not listed above which existed prior to the adoption of the ordinance codified in this chapter;

7. Mining and associated activities;

8. Quarry mining, sand and gravel excavation, and rock crushing operations;

9. (Deleted by Ord. 92-6);

10. Uses customarily incidental to any of the uses set forth in this section;

11. Home occupations which do not produce noise;
12. Any use not listed which is nearly identical to a permitted use, as judged by the administrative official, may be permitted. In such cases, all adjacent property owners will be given official notification for an opportunity to appeal such decisions to the county board of adjustment/Hearing Examiner within 10 working days of notification pursuant to KCC Title 15A, Project Permit Application Process;


17.59.030 Conditional uses.
The following conditional uses are permitted: Grocery store, drug and variety store, auto-service station, cafe, tavern, museum, gift shop and similar retail businesses which have been determined by the board of adjustment/Hearing Examiner to be consistent with the purposes of this chapter. (Ord. 96-19 (part), 1996; Res. 83-10, 1983)

Section 18: Kittitas County Code Chapter 17.60A, Conditional Uses, is amended as follows:

Chapter 17.60A
CONDITIONAL USES*

Sections
17.60A.010 Review criteria.
17.60A.020 Conditions.
17.60A.030 Application and accompanying data.
17.60A.040 Fees.
17.60A.050 Repealed.
17.60A.060 Hearings - Appeal.
17.60A.070 Repealed.
17.60A.080 Transfer of Ownership.
17.60A.090 Expiration.

* Prior history: Ords. 71-5, 2.

17.60A.010 Review criteria.
The Hearing Examiner/Board of Adjustment, upon receiving a properly filed application or petition, may permit and authorize a conditional use when the following requirements have been met:

1. The Hearing Examiner Board of Adjustment shall determine that the proposed use is essential or desirable to the public convenience and not detrimental or injurious to the public health, peace, or safety or to the character of the surrounding neighborhood.

2. The Hearing Examiner Board of Adjustment shall determine that the proposed use at the proposed location will not be unreasonably detrimental to the economic welfare of the county and that it will not create excessive public cost for facilities and services by finding that (1) it will be adequately serviced by existing facilities such as highways, roads, police and fire protection, irrigation and drainage structures, refuse disposal, water and sewers, and schools; or (2) that the applicant shall provide such facilities or (3) demonstrate that the proposed use will be of sufficient economic benefit to offset additional public costs or economic detriment. (Ord. 2007-22, 2007; Ord. 88-4 § 11 (part), 1988; Res. 83-10, 1983)

17.60A.020 Conditions.

1. In permitting such uses the Hearing Examiner board of adjustment may impose in addition to the regulations specified herein, such conditions as it deems necessary to protect the best interests of the surrounding property or neighborhood or the county as a whole.

2. Uses subject to conditions which exist in an R or S zone on the effective date of the ordinance codified herein shall not be changed, expanded nor structures used in connection therewith altered without first applying to the Hearing Examiner board of adjustment for review and under provisions of this chapter.

3. Any change, enlargement or alteration in such use shall require a review by the Hearing Examiner board of adjustment and new conditions may be imposed where finding requires. (Ord. 2007-22, 2007; Ord. 88-4 § 11 (part), 1988)
17.60A.030 Application and accompanying data.  
Written application for the approval of the uses referred to in this chapter shall be filed in the Community Development Services department upon forms prescribed for that purpose. The application shall be accompanied by a site plan showing the dimensions and arrangement of the proposed development or changes in an existing conditional use. The administrator and/or Hearing Examiner, board of adjustment may require other drawings, topographic surveys, photographs, or other material essential to an understanding of the proposed use and its relationship to the surrounding properties. (Ord. 2007-22, 2007; Ord. 96-19 (part), 1996; Res. 83-10, 1983)

17.60A.040 Fees.  
The fees for such application shall be as established annually by the board of county commissioners under separate action. Fees shall be payable to the Kittitas County treasurer and shall not be returnable in any case. (Ord. 2007-22, 2007; Ord. 88-4 § 11 (part), 1988; Res. 83-10, 1983)

17.60A.050 Affected area of use.  

17.60A.060 Hearings - Appeal.  
Any such hearing shall be held pursuant to Title 15A of this code, Project permit application process. (Ord. 2007-22, 2007)

17.60A.070 Appeal.  

17.60A.080 Transfer of Ownership.  
The granting of a conditional use permit and the conditions set forth run with the land; compliance with the conditions of the conditional use permit is the responsibility of the current owner of the property, the applicant and successors. (Ord. 2007-22, 2007)

17.60A.090 Expiration.  
A conditional use permit shall become void five years after approval or such other time period as established by the Hearing Examiner, board of adjustment if the use is not completely developed. Said extension shall not exceed a total of ten years and said phases and timelines shall be clearly spelled out in the application. (Ord. 2007-22, 2007)

Section 19.  
Kittitas County Code Chapter 17.60B, Administrative Uses, is amended as follows:

Chapter 17.60B  
ADMINISTRATIVE USES

17.60B.030 Administrative Authority.  
The director of Community Development Services is authorized to approve, approve with the conditions stated in this chapter and additional conditions deemed necessary to satisfy the purposes of this chapter and the criteria found in Section 17.60B.050 an administrative use permit. Any additional requirements obtained from other sections of the Kittitas County Code above those specified in this title, or modification of the proposal to comply with specified requirements or local conditions is also authorized. At the discretion of the administrator or by request of interested parties, the request for an administrative use permit can be heard by the Board of Adjustment/Hearing Examiner. The Board of Adjustment/Hearing Examiner may deny an application for an administrative use permit if the use fails to comply with specific standards established in this title and if any of the required findings in Section 17.60B.050 are not supported by evidence in the administrative record. (Ord. 2007-22, 2007)

17.60B.110 Appeal of Administrator's Decision.  
Action by the Administrator is final unless an appeal in writing is filed with the Board of Adjustment/Hearing Examiner, together with the applicable fee, within the time allowed per Title 15A, Project Permit Application Process of the Kittitas County Code. The request shall conform to the requirements of Section 15A.07, Project Permit Application Process of the Kittitas County Code. (Ord. 2007-22, 2007)
Section 20. Kittitas County Code Chapter 17.61, Utilities, is amended as follows:

Chapter 17.61
UTILITIES

17.61.020 Permitted and conditional uses.

1. Utilities shall be a permitted use in all zoning districts.
2. Minor alternative energy facilities shall be a permitted use in all zoning districts, provided the following limitations shall apply to wind turbines located within urban growth areas:
   1. Wind turbines shall not exceed a total height of 75 feet above grade and
   2. Rotors shall not exceed 80 feet in diameter.
3. Minor thermal power plant facilities may be authorized by the Community Development Services director as an administrative conditional use in all zoning districts, pursuant to the criteria and procedures of this chapter and KCC Title 15A.
4. Major alternative energy facilities may be authorized in the Agriculture-20, forest and range, commercial agriculture, and commercial forest zones as follows:
   1. Wind farms may be authorized pursuant to the provisions of Chapter 17.61A KCC;
   2. All other major alternative energy facilities may be authorized by the board of adjustment as a conditional use.
5. Major thermal power plant facilities may be authorized by the board of adjustment as a conditional use in the Agriculture-20, forest and range, commercial agriculture, and commercial forest zones.
6. Special utilities may be authorized by the board of adjustment as a conditional use in all zoning districts, except for minor thermal power plant facilities as provided in subsection C of this section, and communication facilities as provided in KCC 17.61.040. Normal maintenance and repair of existing developments shall be permitted use for both nonconforming and lawfully established special utilities.
7. Associated facilities may be authorized by the board of adjustment as a conditional use in the general industrial zone (Chapter 17.52 KCC).
8. The board of adjustment shall review all conditional use requests and administrative appeals pursuant to the procedures contained in KCC Title 15A, Project Permit Application Process, and the criteria contained in Chapter 17.60 KCC, Conditional Uses, this chapter, and other applicable law.
9. Nothing in this chapter is intended to interfere with the storage and/or distribution of products associated with on-site natural resource activities, including but not limited to fossil fuels. (Ord. 2007-22, 2007; Ord. 2002-19 (part), 2002; Ord. 2001-12 (part), 2001; Ord. 2000-06 (part), 2000; Ord. 99-14 (part), 1999; Ord. 98-17 (part), 1998)

17.61.030 Review criteria - Special utilities and associated facilities.

1. The board of adjustment shall determine that adequate measures have been undertaken by the proponent of the special utility and/or associated facility to reduce the risk of accidents caused by hazardous materials.
2. The board of adjustment, as required by existing statutes, shall determine that the proposed special utility and/or associated facilities are essential or desirable to the public convenience and/or not detrimental or injurious to the public health or safety, or to the character of the surrounding neighborhood.
3. The board of adjustment shall determine that the proposed special utility and/or associated facilities will not be unreasonably detrimental to the economic welfare of the county and/or that it will not create excessive public cost for public services by finding that:
1. It will be adequately served by existing services such as highways, roads, police and fire protection, emergency response, and drainage structures, refuse disposal, water and sewers, and schools; or

2. The applicant shall provide such services or facilities.

4. Special utilities and/or associated facilities as defined by this chapter shall use public rights-of-way or established utility corridors when reasonable. Although Kittitas County may map utility corridors, it is recognized and reaffirmed that the use of such corridors is subject to conditional use approval and just compensation to the landowner for the use of such corridor. While a utility corridor may be used for more than one utility or purpose, each utility or use should be negotiated with the landowner as a separate easement, right-of-way, or other agreement, or other arrangement between the landowner and all owners of interests in the property. Any county map which shows utility corridors shall designate such corridors as "private land closed to trespass and public use" where such corridors are on private land. Nothing in this paragraph is intended to conflict with the right of eminent domain.

5. The board of adjustment (Hearing Examiner) shall consider industry standards, available technology, and proposed design technology for special utilities and associated facilities in promulgating conditions of approval.

6. The construction and installation of utilities and special utilities may necessitate the importation of fill material which may result in the displacement of native material. The incidental generation of earth spoils resulting from the construction and/or installment of a utility or special utility, and the removal of said material from the development site shall not require a separate zoning conditional use permit.

7. The operation of some utilities and special utilities identified within this chapter may necessitate unusual parcel configurations and/or parcel sizes. Such parcels:
   1. Need not conform with applicable zoning requirements; provided, they comply with the procedures provided in KCC Title 16, Subdivisions, and so long as used for a utility or special utility;
   2. Are not eligible for any other use or any rights allowed to nonconforming lots in the event the utility or special utility use ceases;
   3. Shall continue to be aggregated to the area of the parent parcel for all other zoning and subdivision requirements applicable to the parent parcel. (Ord. 2001-12 (part), 2001; Ord. 2000-06 (part), 2000; Ord. 99-14 (part), 1999; Ord. 98-17 (part), 1998)

Section 21. Kittitas County Code Chapter 17.84, Variances, is amended as follows:

Chapter 17.84
VARIANCES

17.84.010 Granted when.
Pursuant to Title 15A of this code, Project permit application process, the administrator, upon receiving a properly filed application or petition, may permit and authorize a variance from the requirements of this title only when unusual circumstances cause undue hardship in the application of it. The granting of such a variance shall be in the public interest. A variance shall be made only when all of the following conditions and facts exist:

1. Unusual circumstances or conditions applying to the property and/or the intended use that do not apply generally to other property in the same vicinity or district, such as topography;
2. Such variance is necessary for the preservation and enjoyment of a substantial property right of the applicant possessed by the owners of other properties in the same vicinity or district;
3. The authorization of such variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or district in which the property is located;
4. That the granting of such variance will not adversely affect the realization of the comprehensive development pattern. A variance so authorized shall become void after the expiration of one year if no substantial construction has taken place;

5. Pursuant to Title 15A of this code, the board of adjustment hearing examiner, upon receiving a properly filed appeal to an administrative determination for approval or denial of a variance, may permit and authorize a variance from the requirements of this title only when unusual circumstances cause undue hardship in the application of it. The granting of such a variance shall be in the public interest. A variance shall be made only when all of the conditions and facts identified within subsections A through D of this section are found by the board of adjustment hearing examiner to exist. (Ord. 96-19 (part), 1996; Res. 83-10, 1983)

Section 22. Kittitas County Code Chapter 17.96, Board of Adjustment, is amended as follows:

Chapter 17.96
BOARD OF ADJUSTMENT
Sections
17.96.010 Members.
17.96.020 Terms.
17.96.030 Vacancies.
17.96.040 Removal.
17.96.050 Organization.
17.96.060 Meetings.
17.96.065 Rules and records.
17.96.070 Authority and duties.
17.96.080 Quorum and powers.
17.96.090 Appeals—By whom made—Time limit.
17.96.100 Hearings—Notice of time and place.
17.96.110 Appeal—Time and place—Notice.
17.96.120 Appeal—Scope of board’s authority.
17.96.130 Action final.
17.96.140 Order to include finding of fact.

Prior history: Ord. 71-5-12, 1-2-2.

17.96.010 Members.
A board of adjustment, composed of five members, shall be appointed by the chairman of the board of county commissioners with the approval of the majority of the board, provided that each member of the board shall submit to the chairman a list of nominees residing in his commissioner district, and that as nearly as mathematically possible, each commissioner district shall be equally represented on the board of adjustment. Not more than one member of the board of adjustment may be an appointed member of the planning commission. (Rev. 83-10, 1983)

17.96.020 Terms.
Of the members first appointed, one shall be appointed for one year, one for two years, and one for three years. Thereafter, the terms shall be for six years and until their successors are appointed and qualified. (Rev. 83-10, 1983)

17.96.030 Vacancies.
Vacancies on the board of adjustment shall be filled by appointment in the same manner in which the members of the county planning commission are appointed as provided in Section 8, Chapter 201 of the Laws of 1959.

Appointments shall be made for the unexpired portion of the term. (Rev. 83-10, 1983)

17.96.040 Removal.
Any member of the board of adjustment may be removed by the chairman of the board of county commissioners with the approval of the board for inefficiency, neglect of duty, or malfeasance in office. (Rev. 83-10, 1983)

17.96.050 Organization.
The board of adjustment shall elect a chairman and vice-chairman from among its members. The board of adjustment shall appoint a secretary who need not be a member of the board. (Rev. 83-10, 1983)
Section 23.  Kittitas County Code Chapter 17A.96, Critical Areas, is amended as follows:

17A.03.040 Processing of critical areas checklist and information.
Processing of critical areas checklist and information. The Kittitas County planning department shall serve as the
administrative agency for this chapter. All discretionary decisions hereunder shall be made by the planning director or his designee. The director may consult with other official sources, including the landowner, to determine the presence of critical areas. Utilization of outside data and information by either the director or the applicant is permitted by the Kittitas County critical areas policy document, and may be utilized to verify or dispute the designation or existence of critical areas on any property.

The critical areas checklist shall be processed concurrently with all other development permits requested concerning the site. After the application is complete, the director shall make a binding determination as to whether the parcel contains critical areas. The written determination shall include findings setting forth the basis for the determination. The written determination shall be made within fifteen business days of submittal of a complete checklist, together with receipt of the complete application as to any other related land use permit being requested for the parcel.

The director's decision may be appealed by the applicant to the Kittitas County board of commissioners, except that if the underlying permits require processing by any other decisionmaker, such as the Kittitas County planning commission, or Hearing Examiner, the appeal shall lie to that body. That body shall either make a final decision, or a recommendation to the board of commissioners, consistent with the nature of the underlying permit, concerning the critical areas designation and related mitigation. The decision or recommendation shall be coordinated with the decisionmaker's final decision or recommendation on the underlying permit. If the board of county commissioners does not have jurisdiction to review the underlying permit, such as a conditional use permit granted by a Hearing Examiner, the appeal lies directly from that board to superior court, the board of county commissioners shall nevertheless have jurisdiction of all appeals under this critical areas ordinance which de novo appeal shall be heard prior to the need to file an appeal on the underlying permit in superior court. (Ord. 94-22 (part), 1994).
Use of Hearing Examiners by Cities and Counties in Washington

What is a Hearing Examiner and Hearing Examiner System?

Local governments in Washington State have the option of hiring or contracting with a hearing examiner to conduct required quasi-judicial hearings, usually in place of local bodies such as the planning commission, the board of adjustment, the board of county commissioners, or the city council. A hearing examiner is an appointive officer who acts in a manner similar to a judge and typically is an attorney. The basic purpose of having a hearing examiner conduct these hearings is to have a professionally-trained individual make objective quasi-judicial decisions that are supported by an adequate record and that are free from political influences. Using a hearing examiner system allows local legislative and advisory bodies that might otherwise conduct these hearings to better concentrate on policy-making, and it can reduce local government liability exposure.

A board of county commissioners or a city council has considerable discretion in drafting an ordinance creating a local hearing examiner system. The position of hearing examiner, the type of issues the hearing examiner is authorized to consider and decide, the effect of the hearing examiner’s decision, and whether an appeal of any final decision is provided should all determined by the local legislative body and set out in the enabling ordinance. A hearing examiner’s decision, as defined by the local legislative body, can have the effect of either a recommendation to or a decision appealable to the ultimate decision-maker (typically the board of county commissioners or the city council), or it can be a final decision (appealable to superior court).

Counties and cities use hearing examiners, often in place of planning commissions, primarily for hearing and deciding land development project applications and/or administrative appeals of land use decisions. Hearing examiners are particularly useful where the rights of individual property owners and the concerns of citizens require formal hearing procedures and preparation of an official record. State land use planning and growth management laws provide cities and counties with specific
authority to establish a hearing examiner system to conduct hearings and make recommendations or decide a variety of land use issues. Hearing examiners may also conduct hearings and make recommendations or decisions on other local matters.

This focus paper describes the use of a hearing examiner, the pros and cons of such systems, and options available to Washington counties and cities. References are provided for further information available from the MRSC library and through our Web site.

**Establishing a Hearing Examiner System**

The office or position of hearing examiner must be established by ordinance. That ordinance should identify what matters the examiner is empowered to hear and what will be the effect of the examiner's decision on those matters. A common approach in such an ordinance is to establish the framework for the hearing examiner system, while leaving it to the examiner to adopt specific, detailed rules for the conduct of hearings. Hearing examiner ordinances typically address: the appointment and term of the hearing examiner; qualifications of the examiner; conflicts of interest and freedom from improper influence; powers and duties, including matters heard; hearing requirements; effect of decisions; reconsideration of decisions, if allowed; and appeals. MRSC has many examples of hearing examiner ordinances and has a compilation of articles and ordinances relating to the hearing examiner system in this state. See [http://www.mrsc.org/library/compil/cphearex.htm](http://www.mrsc.org/library/compil/cphearex.htm).

**Use of the Hearing Examiner System for Land Use, Environmental, and Related Decisions**

Most commonly, hearing examiners are used to hear and decide land use project permit applications where a hearing is required, such as in the case of applications for subdivisions, shoreline permits, conditional use permits, rezones, and variances. The recent trend in state law, particularly in conjunction with regulatory reform, has been to allow local governments to give more authority to the hearing examiner to make final decisions on quasi-judicial project permit applications. For example, RCW 58.17.330, as amended by 1995 regulatory reform legislation, provides that the local legislative body can specify that the legal effect of a hearing examiner's decision on a preliminary plat approval is that of "a final decision of the legislative body."

The hearing examiner's role in the project permit process can include:

- open record hearings on project permit applications;
• appeals of administrative SEPA determinations, which in most cases are combined with the open record hearing on the application;

• closed record appeals of administrative decisions made by the local planning staff, including appeals of SEPA determinations where an administrative appeal is provided;

• land use code interpretations to satisfy the statutory requirement that cities and counties planning under the Growth Management Act adopt procedures for such "administrative interpretations" (RCW 36.70B.110(11));

• land use code enforcement proceedings.

Other Issues Assigned to Hearing Examiners

The local legislative body may, by ordinance, authorize a hearing examiner to hear other types of contested matters, in addition to land use permit applications and code enforcement. Examples of other types of decisions and/or administrative appeals that could be handled by a local hearing examiner include:

• discrimination complaints under local personnel policies;

• employment decisions and personnel grievances;

• ethics complaints by citizens or employees;

• local improvement districts – formation hearing and/or assessment roll determinations;

• public nuisance complaints;

• civil infractions;

• property forfeiture hearings under the Uniform Controlled Substances Act (RCW 69.50.505(e));

• tax and licensing decisions and appeals;

• whistleblower retaliation claims.
Pros and Cons of Using Hearing Examiners

Pros

- More professional and timely decisions insuring fairness and consistency.

  A professional hearing examiner prepares for and conducts hearings in a manner insuring procedural fairness. Hearings are less emotional and more expeditious. Hearing examiners develop a high level of expertise and specialization, saving time in making decisions and improving their quality and consistency.

- Time-saving for legislative body, freeing legislators to focus on legislative policy and other priority issues.

  Conducting public hearings and making quasi-judicial decisions is time-consuming. Local legislators can free themselves from many of their hearing duties by delegating them to a hearing examiner. The local legislative body can still choose to make final decisions or to hear appeals of the examiner’s decisions, and those appeals will be facilitated by a thorough and organized record. The use of hearing examiners is especially time-saving for routine decisions and for complex land use decisions requiring formal hearings, citizen participation, and subject matter expertise.

- Separation of policy-making or advisory functions from quasi-judicial functions.

  Use of hearing examiners for quasi-judicial hearings separates legislative and administrative functions from quasi-judicial functions. This can improve decision-making by clarifying roles and avoiding conflicts. For jurisdictions with planning commissions, use of a hearing examiner system allows the planning commission to function as an advisory body. The legislative body can focus on policy-making while the planning department concentrates on administration. For counties with three-member boards of commissioners, use of a hearing examiner to conduct quasi-judicial proceedings can greatly assist commissioners who already responsible for a number of legislative and administrative functions.

- Improved compliance with legal requirements, including due process, appearance of fairness, and record preparation.

  Hearing examiners have special expertise in managing legal procedural requirements and avoiding appearance of fairness and conflict of interest.
issues. The hearing examiner assures procedural fairness, especially in cases where one side is represented by an attorney while the other side is not. Participants are often more satisfied with the proceedings, regardless of the outcome. A properly conducted hearing also results in a complete and well organized written record.

- Reduced liability relating to land use decisions and/or procedural challenges to decisions.

Using a hearing examiner system has been shown to reduce land use liability exposure. Improved hearing procedures, better records, and more consistent and documented decisions are typical of professional hearing examiners. At least one local government insurance authority has officially endorsed the use of hearing examiners for land use decisions based on a survey providing evidence of a lower risk profile for jurisdictions using a hearing examiner system for land use proceedings.

- Improved land development review integration under chapter 36.70B RCW (ESSB 1724).

A number of jurisdictions have adopted hearing examiner systems since the 1995 regulatory reform legislation mandating integration and consolidation of environmental and land use regulatory review for development projects. Use of a specialized land use hearing examiner is an effective method of consolidating and coordinating multiple review processes. For jurisdictions with a mandatory board of adjustment, adoption of a hearing examiner system eliminates the requirement for a board of adjustment.

- Opportunity for feedback to improve plans and regulations from professional hearing officer familiar with comprehensive plans and development regulations.

A professional hearing examiner has familiarity with the local comprehensive plan and development regulations and possibly those of other jurisdictions. Areas where plans, regulations, and policies are weak or inconsistent can be identified and referred to the planning staff, planning commission, or legislative body, providing feedback for continuous improvement.
• Removal of quasi-judicial decision-making from the political arena.

It may be difficult for elected local government officials to entirely eliminate political considerations from their quasi-judicial decision-making. Professional hearing examiners should be immune from political pressures.

Cons

• Cost to county or city for hiring a hearing examiner and staff.

There are costs in hiring hearing examiners and, if necessary, support staff. Counties and cities should consider whether savings in council and commission time, improvements in decision-making, and reduced liability justify the costs. Alternatives such as use of personal service contracts for hearing examiners can reduce costs.

• Increased cost to the parties due to more formal decision-making procedures.

Hearing examiners can increase the formality of the hearing process, although many of the procedural requirements and formalities are already required under state law. This formality can provide the advantage of increased appearance of fairness and impartiality in decision-making.

• Lack of accountability to voters for appointed hearing examiner making decisions or hearing administrative appeals.

Some people maintain that important decisions should be made by elected officials who are accountable to the voters. However, these concerns can be addressed by making the hearing examiner’s decision a recommendation to the council or commissioners or by providing for an administrative appeal to the legislative body.

Options for Efficient and Effective Use of Hearing Examiners for Smaller Counties and Cities

Smaller local governments may be reluctant to establish a hearing examiner system because of cost considerations and concerns about whether there will be enough occasions to justify using a hearing examiner. Here are some ideas about addressing these concerns:
- Contract for hearing examiner services. Counties and cities may establish a contractual relationship with a hearing examiner in which the examiner is compensated, on an hourly or other basis, only as needed.

- Share use of a hearing examiner with other jurisdictions. Some local governments in the state have entered into interlocal agreements to contractually share the services of a hearing examiner.

- Increase the number of matters heard by hearing examiner. Doing this could reduce costs relating to use of staff that would otherwise be occupied with those matters.

- Fund the hearing examiner system from permit review fees. Local governments can add and/or increase permit fees and appeal fees to help cover the cost of maintaining a hearing examiner system.

**Qualifications of Hearing Examiners**

There are no state statutes that establish the minimum qualifications of hearing examiners. As noted above, hearing examiners are often attorneys; however, a law degree is not required. A background in the area in which the examiner will perform would obviously be helpful. Since hearing examiners operate mostly in the land use arena, some local governments use examiners with a planning, rather than legal, background. Keep in mind that the land use decision-making process requires a thorough knowledge of legal procedures, and relevant statutes, local ordinances, and case law. In the ordinance establishing the office of hearing examiner, it is a good idea to identify the minimum qualifications that the legislative body deems necessary for a hearing examiner.

**Support, Resources, and Training for Hearing Examiners**

- Washington Association of Professional Hearing Examiners; Jim Driscoll, President; 101 Yesler, Suite 607; Seattle, WA 98104; (206) 628-0039. This organization provides periodic training conferences and maintains a list of hearing examiners in the state.
MRSC Library Resources

The following MRSC Library resources provide more detailed information concerning use of hearing examiners and the land use hearing examiner system, including sample ordinances and rules of procedure:


- Other MRSC Library resources, including sample ordinances establishing the office of hearing examiner, hearing examiner rules of practice and procedure, hearing examiner job descriptions, hearing examiner contracts, and citizens’ guides to the hearing examiner process.