

Kittitas County Commissioners  
Kittitas County Planner  
Kittitas County Planning Commission



Oct 7, 2014

This letter is to protest any changes to county code concerning rock crushers. We already covered this ground about ten years ago, especially in the Thorp area. I don't object to someone trying to mine gravel out of their own property, but to do the rock crushing on site creates an unwanted burden on adjacent property owners who would have to endure the extra noise and dust created from such an operation. The rock crushers are already in place in the county, they can be better utilized.

The noise and dust not only affects the immediate property owners, but others further out due to topography and wind.

Again, we have already addressed this issue, it does NOT need to be re-addressed.

This is just an end run around the current rulings. Please do not allow this proposed change.

Sincerely,

A handwritten signature in blue ink, appearing to read "DJ Evans".

DJ Evans

11960 N. Thorp Hwy

Thorp Wa. 98946

**Steph Mifflin**

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**From:** Gregory S. McElroy <gmcelroy@mcelroylaw.com>  
**Sent:** Tuesday, October 07, 2014 2:00 PM  
**To:** CDS User  
**Subject:** FW: Kittitas County Comprehensive Plan Amendment  
**Attachments:** ECP General LTR to Planning Commission on Comprehensive Plan Update 10072014--final.pdf

**Public Hearing Comments**  
**Kittitas County Comprehensive Plan Proposed Amendments**  
**Kittitas County Planning Commission**  
**October 7, 2014 6:00 p.m.**



To Planning Commission Members:

The attached comments are provided in opposition to the staff recommendation to expand rock crushing into the Ag-20 and Commercial Ag zones where it has historically been prohibited. The proposal also eliminates the conditional use permit requirement for rock-crushing those sensitive zones and, as written, would allow free-standing rock-crushing facilities on designated mineral parcels even at sites that have no history of mining and no proposals to mine.

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**GREGORY S. McELROY**  
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October 7, 2014

Email to: [cds@co.kittitas.wa.us](mailto:cds@co.kittitas.wa.us)

Robert "Doc" Hansen  
Community Development Services  
Kittitas County  
411 N. Ruby Street, Suite 2  
Ellensburg, WA 98926

Kittitas County Planning Commission  
c/o Community Development Services  
Kittitas County  
411 N. Ruby Street, Suite 2  
Ellensburg, WA 98926

**Re: Kittitas County Comprehensive Plan Amendments  
Kittitas County Planning Commission Hearing  
October 7, 2014 6:00 p.m.**

Dear Planning Commission Members:

I represent Ellensburg Cement Products, Hutchinson Properties, LLC, and JH Properties, L.L.C. My clients own and operate sand and gravel extraction and processing facilities throughout Kittitas County.

Ellensburg Cement Products, Inc. objects to the proposed amendments that (1) expands rock-crushing to inappropriate locations; (2) removes the protections to the public provided by Conditional Use Permits for rock-crushing operations; and (3) provides for administrative approval of "temporary" asphalt and concrete plants without defining the criteria for approval or defining the scope, intensity, or duration of "temporary."

These proposed changes are staff proposals and there is no record of any consumer, neighbor, or industry participant requesting these changes. The similar revisions proposed by staff in 2012 were rejected. No justification for these major changes is provided in the record. There is no broad support for these changes, which will negatively affect hundreds of families living adjacent to potential sites where unregulated rock-crushing operations can be started

without permits or mitigation.

### **Objection to Expansion of Rock Crushing**

Historically, Kittitas County has never allowed rock-crushing at all mining and extraction sites because on-site rock-crushing is not necessary to extraction. The rock can be hauled to the crusher, as it has been done throughout Kittitas County. Only in the Forest & Range zone has rock-crushing been permitted outright. It has never been an allowed use in the Ag-20 or Commercial Ag zones, let alone as an outright permitted use. This prohibition in Kittitas County has been repeatedly upheld by the Washington Courts.<sup>1</sup>

Rock crushing is inconsistent with the purposes of the Ag-20 zone and directly incompatible with the Commercial Ag zone. The unexplained "need" to expand rock-crushing to all of these areas is not supported in the record. There is no evidence that the current restrictions on rock-crushing limit the designation of mineral lands of long-term commercial significance, or limit the ability to extract minerals from the locations that are designated.

This proposal also contains inconsistencies and errors that demonstrate why meaningful public participation is still needed. The lack of proper review is evident in the unintended consequences of this proposal.

For instance, under the proposal, a rock-crushing operation is allowed in the Ag-20 zone as an outright permitted (and unregulated) use, while mining and excavation requires a conditional use permit, which could be denied. The result of this oversight is that permanent rock-crushing operations can be set up independently from mining on any designated mineral parcel in the Ag-20 or Commercial Ag zones, irrespective of whether mining will ever occur on the site. The history in the industry statewide guarantees that under this misguided proposal, permanent, free-standing rock-crushing plants can and will be established in Ag-20 and Commercial Ag lands without any intention by the operator to apply for a conditional use permit to mine. These independent rock-crushing facilities will not be subject to any land use hearing or controls. They will be permanent. These free-standing facilities will do nothing to facilitate the utilization of on-site minerals, but they will proliferate an unregulated and incompatible use to the detriment of the primary uses in the zone and to the potential injury to neighboring properties who will have no input into impacts and mitigation.

There is no stated need and no support in the record for expanding rock crushing to the Ag-20 or Commercial Ag zone and no support for the proposition that they should be

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<sup>1</sup> See, *Valentine v. Board of Adjustment*, 51 Wn.App. 366, 753 P.2d 988 (Div. 3, 1988); and *Ellensburg Cement Products v. Kittitas County*, 179 Wn.2d 737 (2014). Both cases affirm the permissibility of the separation of rock-crushing from mining and extraction as permissible and—in the later case—desirable in the agriculture zones under the Growth Management Act.

unregulated uses that are allowed without a conditional use permit.

### **Objection to the Removal of the Conditional Use Permit Requirement**

The Kittitas County code has long recognized that rock-crushing in most locations must be regulated by conditional use permits because unregulated rock-crushing can be an intense, noisy, and nuisance-prone operation, well beyond the limited impacts of mining and extraction. Rock-crushing has never been allowed in the Ag-20 and Commercial Ag zones, even with a conditional use permit for good reason.

This unjustified, staff proposal changes the outright prohibition of rock-crushing to an outright permitted use, without any consideration of where these new rock-crushing operations would be located, the number of residences affected, the community affected, and the impacts on those neighbors who are entitled to mitigation. The purpose of a conditional use permit is to address mitigation measures associated with site-specific issues including noise, glare, traffic, operating hours, vibration, dust, set-backs, buffers, and site screening. Without a conditional use permit, Kittitas County and the neighboring property owners have no ability to review or condition a rock-crushing operation to mitigate impacts.

Rock-crushing should not be expanded as a permitted use outside Forest & Range and the Commercial Forest zones. It is unnecessary to expand rock-crushing to the Ag-20 and the Commercial Ag zones because the historical practice of hauling rock to the crushing site is a proven and effective practice that limits the proliferation of these nuisance-prone facilities.

The need—or desirability—to expand crushing into incompatible zones is not demonstrated in the record. If rock crushing is expanded into new zones, strict requirements for conditional use permits must be imposed.

### **Objection to Administrative Conditional Use Permits for "Temporary" Asphalt and Concrete Batch Plants**

The proposal to allow an "Administrative Conditional Use" for temporary asphalt and concrete batch plants should be rejected.

Administrative conditional use permits should only be allowed for routine actions where all of the decision factors are clearly enumerated and all of the applicable terms are defined. If there is too much discretion in the decision, then the applicant, the other agencies, and the neighbors face the risk that the personal opinion or bias of a single decision-maker will control the decision, rather than the thoughtful, balanced, and experienced decision of a group of Planning Commission members and the public hearing process.

In this case, the staff proposal has absolutely no bright-line definitions or decision-making criteria to guide an administrative decision-maker on important questions. These questions include:

- What is meant by "temporary?"
- How does the proposal address state permits that are required?
- How is effective public notice provided?
- How are site-specific issues and community opposition handled?
- What are the standard conditions?
- How will the affected public even know of the proposal and their right to appeal?

This proposal lacks the necessary definitions and guidance for the decision-maker. Without specific guidance the administrator has no power to impose meaningful conditions and the neighbors have no effective mechanism for public hearing, mitigation, objection, or appeal.

The proposal to allow administrative conditional use permits for so-called "temporary" asphalt and concrete plants should be rejected.

### **Failure to Meet the Requirements of Meaningful Public Participation**

Kittitas County is required to provide meaningful public participation. In addition, proposed changes to the comprehensive plan must be complete and docketed by the deadline for consideration. This deadline applies equally to staff-originated proposals.

The record fails to demonstrate any need for this proposal or compliance with the docketing deadlines. As late as mid-July (weeks after the docketing deadline) this proposal did not exist in completed form and was not available for public review.

These are not minor changes. The expansion and de-regulation of rock-crushing is an extraordinarily controversial proposal that affects hundreds of properties. Many of those properties received prior notices and assurances in prior land-use actions that rock-crushing and extraction are two separate activities and that the approval of an extraction operation (or mineral land designation) did not mean that neighbors would face the noise and substantially greater intensity of a rock-crushing operation. This proposal would change that.

Normally, under Kittitas County procedure, major land use and zoning changes proposed for the comprehensive plan are presented in workshops and study sessions designed—as required by the Growth Management Act—to provide *meaningful* public participation. Kittitas County recognized this requirement when it scheduled an open house and workshop for August, 2014.

That workshop was cancelled. Among the reasons: "The issues are too complicated" or "The issues are too controversial" or "There are too many issues on the agenda." Whether the workshops are mandatory is one question. *Meaningful* public participation is mandatory. The expansion of rock-crushing and the relaxation of regulatory requirements on mining activity has not been subjected to meaningful public participation.

Kittitas County has produced no record that these major changes are consistent with the Growth Management Act. The staff have not offered any rationale for these changes or explanation how these changes relate to the mineral lands requirements of the Growth Management Act. Instead of concentrating rock-crushing and batch plants in centralized facilities that have been approved under SEPA and are regulated and mitigated by conditional use permits, this proposal would proliferate crushing and batching facilities throughout the county and substantially de-regulate the most nuisance-prone operations associated with mining.

### **Conclusion**

The Kittitas County Planning Commission should recommend against the proposed amendments (1) that expands rock-crushing to inappropriate locations; (2) that removes the protections to the public provided by Conditional Use Permits for rock-crushing operations; and (3) that provides for administrative approval of "temporary" asphalt and concrete plants without defining the criteria for approval or defining the scope, intensity, or duration of "temporary."

The Planning Commission should also reject these proposals because they have not been subjected to meaningful study and public review.

Very truly yours,

McELROY LAW FIRM, PLLC



Gregory S. McElroy