

September 5, 2024

VIA USPS AND EMAIL (jamey.ayling@co.kittitas.wa.us; cds@co.kittitas.wa.us)



Jamey Ayling
Planning Manager
Kittitas County Community Development Services
411 North Ruby St., Suite 2
Ellensburg, WA 98926

RE: *Gibson Rezone (RZ-24-00001)*
Location: Tax Parcel No. 280533, located S. 8, T. 17 N., R. 20
Ellensburg Cement Products, Inc. Rezone Comments

Dear Mr. Ayling:

Please consider this letter as formal comments on behalf of Ellensburg Cement Products, Inc. (Ellensburg Cement) on the above-referenced proposed rezone for Parcel No. 280533 owned by Kristen Gibson of Gibson & Son (“Gibson” or “Applicant”).¹ After reviewing the application materials on file, Ellensburg Cement does not believe that Gibson has met its burden demonstrating the need or appropriateness of the rezone. The proposed rezone would have the effect of permitting intensive gravel operations (mining, excavation, and rock crushing, etc.) as a matter of right with limited further County review, and to allow such operations in near proximity to existing residences and within an area otherwise surrounded by agricultural lands, creating an island (or “spot zone”) for these activities. Where such activities are permitted at all in the surrounding area, companies must undergo a thorough County conditional use permit process to ensure compatibility and appropriate conditions are imposed. The proposed rezone seeks to evade that permitting process. As such, the proposed rezone would impart a special benefit to a singular property and property owner, to the potential detriment to the surrounding properties, and in a way that would treat Gibson differently from other similarly-situated gravel operators in the County.

Ellensburg Cement further notes, and the County should be concerned, that neither the application materials nor the public notice provide any indication of these actual consequences of the rezone. As gravel operations are often the

¹ Ellensburg Cement previously submitted written SEPA comments by letter dated August 28, 2024, which comments are further attached as Attachment A, and incorporated herein by this reference.

subject of community complaints and displeasure given the inherent nature of the operations, the County should approach this issue understanding these sensitivities and with confidence that the reviewing public understands the consequences. Based on the current application materials for this particular island parcel, the rezone should be denied.

INTRODUCTION

The evident intent of Gibson's proposal is to evade future County permit and environmental review associated with gravel mining and rock crushing operations envisioned for the site, in a manner currently inconsistent with the surrounding dictates of the Agriculture-20 (A-20) zone, which have been followed by similarly situated applicants. The rezone application seeks to change the zoning designation for a singular parcel entirely encompassed within the A-20 zone and other agricultural lands for miles to the Forest and Range (FR) zone so that differing rules may apply to this island parcel, incongruous with the surrounding area, which is and would all remain A-20. To the point, Applicant requests a rezone of just one parcel to permit (where currently not allowed) rock crushing operations and to allow for mining and excavation operations as a matter of right, and without requiring a conditional use permit process for intensive mining, blasting, rock crushing, excavation, and other intensive operations. While it is accurate that both the A-20 and FR zoning designations are contemplated within the *Rural Working* future land use designation, the rezone application seeks to rezone just one singular parcel as FR to permit more intensive operations within the broader A-20 zone in which the property is situated.

The A-20 zone is a zoning designation within the County "wherein farming, ranching and rural lifestyles are dominant characteristics." KCC 17.29.010. The purpose and intent of A-20 zoning classification "is to preserve fertile farmland from encroachment by nonagricultural land uses; and protect the rights and traditions of those engaged in agriculture." *Id.*

In contrast, the purpose and intent of the FR zone "is to provide for areas of Kittitas County wherein natural resource management is the highest priority and where the subdivision and development of lands for uses and activities incompatible with resource management are discouraged." KCC 17.56.010.

Even a cursory review of KCC 17.15.060.1² evinces the potentially not insignificant changes that would be occasioned by the rezone. While many of the permitted uses are consistent, there are several material differences. Most

² A copy of KCC 17.15.060.1 is attached as Attachment B for reference.

notably, the proposed rezone to FR would allow for rock crushing as a new outright permitted use (where currently not allowed), allowing for future and expanded mining and excavation as an outright permitted use (where current operations must be consistent with any conditional use permit, and future expansion or changed operations must undergo a thorough conditional use permit process. None of the impacts or effects of these intensive land uses, which would now be permitted as a matter of right and for the first time, or subject to relaxed standards and avoidance of CUP review, is made clear from the application materials, nor addressed in any material fashion in the context of the County's rezone criteria in KCC 17.98.020.

When Ellensburg Cement has sought authorization for similar operations, it has been compelled to, and has dutifully complied with, the County's CUP process. This process is robust and resulted in significant review and conditions on the proposed operations.³ If the County believes it is in the best interests of the County and its residents to relax and loosen standards for gravel operations, including blasting and rock crushing, and avoid this more robust review within the A-20 or other similar agricultural zoning designations, it should do so County-wide and in a transparent process, rather than thorough a site-specific rezone providing a benefit to only one property owner, and to the potential detriment of others.

REZONE CONSIDERATIONS AND CRITERIA

Further to the general comments set forth above, Kittitas County Code 17.98.020 sets forth the criteria applications for rezone which must be demonstrated and met. A discussion of each is set forth below:

a. *The proposed amendment is compatible with the comprehensive plan.*

Relying only on the fact that the FR zone is included as a permissible zoning classification within the Rural Working land use designation, the Applicant has not otherwise demonstrated how the site-specific rezone is compatible with the comprehensive plan. In fact, the proposed rezone to FR

³ A copy of the County's CUP process, as set forth in chapter 17.60A KCC, is attached as Attachment C for reference. The conditional use permitting process requires, without limitation, that the proposed use is not detrimental or injurious to the public health, peace, or safety or to the character of the surrounding neighborhood, will not create excessive public cost for facilities and services, be adequately served by existing facilities and roads, and may and inevitably results in the imposition of specific conditions to ensure compliance. See, e.g., KCC 17.60A.015 and KCC 17.60A.020.

would conflict with several goals and policies under the County's 2021 Comprehensive Plan, including, without limitation the following:

- **RR-P1:** The County shall promote the retention of its overall character by establishing zoning classifications that preserve rural character identified to Kittitas County.
- **RR-P2:** In order to protect and preserve Resource Lands, non-resource development and activities on adjacent Rural lands shall require preservation of adjacent vegetation, existing landforms (e.g. ravines) or use of other methods that provide functional separation from the resource land use.
- **RR-P5:** Protecting and preserving resource lands shall be given priority. Proposed development allowed and adjacent to resource lands shall be conditioned to protect resource lands from negative impacts from that development.
- **RR-P6:** Allow for lands which offer adequate supply of rock and gravel resources located in areas compatible for such uses and conditioned so that operation does not negatively impact rural character.
- **RR-P15:** Give preference to land uses in Rural designated areas that are related to agriculture, rural residential development, tourism, outdoor recreation, and other open space activities.
- **RR-P16:** Land use development within the Rural area that is not compatible with Kittitas County rural character or agricultural activities as defined in RCW 90.58.065(2)(a) will not be allowed.
- **RR-P18:** Buffer standards and regulations should continue to be developed that will be used between incompatible rural uses.
- **RR-P21:** Functional separation and setbacks found necessary for the protection of water resources, rural character and/or visual compatibility with surrounding rural areas shall be required where development is proposed.
- **RR-G13:** Preserve and protect non-resource forests and agriculture lands which are dominant in Kittitas County.
- **RR-G22:** Provide preservation of agriculture activities where producers can live and work on their own lands separate from Resource Lands.
- **RR-P45:** Commercial/Industrial development in Rural Working lands shall be compatible to the rural environment, and must be developed as determined necessary to not significantly impact surface and groundwater.

As the Comprehensive Plan notes, uses within the *Rural Working* lands designation "generally encourage farming, ranching and storage of agriculture products, and some commercial and industrial uses compatible with the rural environment and supporting agriculture and/or forest activities. Areas in this

designation often have low population densities with larger parcel sizes compared to Rural Residential areas. Agriculture and forestry activities are generally less in scope than in the Resource lands.” While a site-specific rezone of properties adjacent to Resource lands, or adjacent to existing FR zoned lands could be supported, applying the FR zone to a singular parcel entirely encompassed by A-20 zoned property, with the clear intent of permitting and pursuing newly permitted gravel mining, extraction, rock crushing and related intensive operations directly conflicts with the Comprehensive Plan goals and policies.

b. The proposed amendment bears a substantial relation to the public health, safety or welfare.

The Applicant has not demonstrated how the site-specific rezone bears a substantial relation to the public health, safety or welfare. The Applicant addresses this criteria by merely stating that any “future permits would be reviewed for impacts and/or mitigation measures under applicable regulations in effect at the time of the permit action.” Yet, what Applicant does not state, but which is self-evident, is that the proposed rezone would now permit as a matter of right more intensive gravel operations, including rock crushing, mining and extraction, without the attendant restrictions or conditional use process currently in effect. Loosening, or entirely avoiding County review, cannot be said to bear a substantial relation to the public health, safety or welfare on issues that are often the source of neighbor and community complaints, and certainly not on the basis of a site-specific rezone with no change in designation of the surrounding community.

c. The proposed amendment has merit and value for Kittitas County or a sub-area of the county.

The Applicant has not demonstrated how the site-specific rezone has merit and value for Kittitas County or a sub-area of the county. Rather, the proposed site-specific rezone does not address any County-wide nor subarea change in zoning designations. Rather, it seeks to obtain a special benefit for one particular parcel within a much broader subarea all zoned agricultural, to allow for more intensive industrial and gravel operations.

d. The proposed amendment is appropriate because of changed circumstances or because of a need for additional property in the proposed zone

or because the proposed zone is appropriate for reasonable development of the subject property.

The Applicant has not demonstrated how the site-specific rezone is supported by either (a) changed circumstances; (b) because of a need for additional property in the proposed zone; or (c) because the proposed zone is appropriate for reasonable development of the subject property. The Applicant states only that the subject site does not have water rights and the soils are not suitable for farming or grazing. First, while the property may not benefit from its own water rights, it is uncertain (and unaddressed) whether the property has the right and ability to receive contract irrigation water delivery from an applicable irrigation district, and it appears to fall within the boundaries of Kittitas Reclamation District (KRD), which has mainlines and laterals near the property. The soil conditions at the property are not noted as being distinct or materially different than the surrounding properties, all zoned A-20, nor that no reasonable use could be made of the property. In fact, Gibson is already able to use the property, subject to conditions in a conditional use permit, for certain operations. Allowing more intensive and arguably incompatible uses, without conditions, does not appear to be necessary for reasonable development of the subject property. Gibson's property is not distinct from other properties throughout the County, and the County can expect successive rezone applications if this is the direction the County elects to go in.

e. The subject property is suitable for development in general conformance with zoning standards for the proposed zone.

The Applicant has not demonstrated how the site-specific rezone is suitable for development in general conformance with zoning standards for the proposed zone. Without stating what those are, the Applicant responds by merely noting that the FR zoning "offer several permitted uses that are more compatible with the subject site than the AG-20 zoning." Yet, the Applicant does not demonstrate how this particular property is "suitable" for such development. To the contrary, it is entirely surrounded by and encompassed within the A-20 zone, which either does not permit or restricts and conditions the intensive uses being sought, and with several residential properties within a one-mile radius of the property. Again, if the County finds properties such as this to be "suitable" for more intensive gravel operations, and without conditional use permit review, Ellensburg Cement likely has similarly-situated land holdings which would be similarly eligible for such relaxed permitting standards.

f. The proposed amendment will not be materially detrimental to the use of properties in the immediate vicinity of the subject property.

The Applicant has not demonstrated how the site-specific rezone will not be materially detrimental to the use of properties in the immediate vicinity of the subject property. Without any explanation, the Applicant states confusingly that trying to develop the property under the current A-20 zone would be “more impactful” to the surrounding properties. This statement is nowhere explained, and on its face, defies credulity.

g. The proposed changes in use of the subject property shall not adversely impact irrigation water deliveries to other properties.

The Applicant has not demonstrated how the proposed changes in use that would be permitted under the site-specific rezone will not adversely impact irrigation water deliveries to other properties. In response, the Applicant merely conclusorily states, without substantiation, that the proposed zone change to FR “will not adversely impact irrigation water deliveries to other properties because the [FR] permitted uses better fit the natural conditions of the site.” This response is confusing, makes no attempt to address the applicable criteria, and is entirely non-responsive.

The effect of the proposed rezone is that activities currently not permitted (i.e. rock crushing) or permitted only through a conditional use permit process and continued compliance with any applicable CUP (i.e. mining and excavation) would become activities permitted as a matter of right. The entire purpose of the rezone appears to be to loosen permitting standards for gravel operations and avoid and eliminate the robust conditional use permitting process that Ellensburg Cement has undergone for each of its relevant operations. These conditions have, in the past included, without limitation, required conditions related to the hours of operation of rock crushing operations, analysis of and limitation on trucks and heavy equipment impacting the adjacent community and County roadways, mitigating dust and noise impacts, and addressing compatibility and mitigating impacts on adjoining land uses, and others. As currently constituted, the proposed rezone appears to constitute impermissible “spot zoning” in seeking to reclassify a singular property within the broader zoning designation for the primary benefit of the property owner without any appreciable benefit to the interest of the public. *See, e.g., Anderson v. Island County*, 81 Wn.2d 312, 501 P.2d 594 (1972). If the County in fact believes it is in the best interests of the County to more broadly permit rock crushing and gravel operations, or streamline the permit process for the same, it should do

so holistically and not to the benefit of a singular property and property owner on a case-by-case basis.

CONCLUSION

Based on the foregoing, the County should have serious concerns regarding this rezone proposal. Among those concerns is whether the public and surrounding community understand the impacts of this proposal. While on its face, a change in zoning classification from A-20 to FR may seem innocuous or of little effect, the underlying intent and obvious allowances and relaxed permitting standards that would result requires careful consideration. Even if such relaxed standards are deemed in the best interests of the County, application of such lessened restrictions should be addressed holistically and not in the nature of spot zoning. If the County is inclined to approve this rezone, Ellensburg Cement and others owning property within the A-20 and other agriculturally designated zoning districts, will likely be evaluating their properties, and be bringing similar rezone requests and would expect to be treated similarly based on such precedent.

Pursuant to this letter, we request notice, directed to the undersigned, of any action the County takes relating to this rezone application, including, without limitation, a copy of any decision issued.

Thank you in advance for your consideration of these comments. Please feel free to contact me if you have any questions or require any additional information. We appreciate the County's continued careful review of this matter.

Sincerely,



Joseph A. Rehberger
Direct Line: (360) 786-5062
Email: jrehberger@cascadialaw.com
Office: Olympia

Enclosures

cc: Ellensburg Cement Products, Inc.

ATTACHMENT A

August 28, 2024

VIA USPS AND EMAIL (jamey.ayling@co.kittitas.wa.us; cds@co.kittitas.wa.us)



Jayme Ayling
Planning Manager and Responsible Official
Kittitas County Community Development Services
411 North Ruby St., Suite 2
Ellensburg, WA 98926

RE: *Gibson Rezone (RZ-24-00001)*
Ellensburg Cement Products, Inc. SEPA Comments

Dear Mr. Ayling:

Please consider this letter as formal comments on behalf of Ellensburg Cement Products, Inc. (Ellensburg Cement) on the State Environmental Policy Act (SEPA) Determination of Nonsignificance (DNS) issued by Kittitas County under File No. RZ-24-00001 on August 15, 2024.¹ These comments are provided pursuant to chapter 43.21C RCW, WAC 197-11-340, WAC 197-11-500, *et seq.*, and chapter 15.04 of the Kittitas County Code.

Based on the following comments, at this time, the DNS should be withdrawn and additional SEPA analysis should be conducted. A DNS should only issue “[i]f the responsible official determines there will be no probable significant adverse environmental impacts from a proposal.” WAC 197-11-340(1). The County’s DNS should be withdrawn because (a) neither the SEPA Checklist nor the County’s environmental review address, let alone evaluate, the probable impacts of any future development that would be occasioned by the rezone; (b) improperly postpones and defers such environmental analysis until the project stage; and (c) it fails to impose any mitigating conditions on the proposed rezone to address known probable environmental impacts. As such, Ellensburg Cement respectfully requests the County’s SEPA Responsible Official reconsider the DNS pursuant to WAC 197-11-340, and withdraw the determination at this time.

¹ Jeff Hutchinson, President of Ellensburg Cement Products, Inc., previously submitted written comments to the County by email dated August 21, 2024. Those additional comments should be considered as further written comments on the SEPA threshold determination and land use rezone proposal and are incorporated herein by this reference.

BACKGROUND

Founded in 1945, Ellensburg Cement, headquartered and doing business in Kittitas County, is a local and family-owned business specializing in ready-mix concrete and aggregates. Ellensburg Cement is committed to environmental compliance and stewardship in its business operations and has received the *Environmental Merit Award* from the Washington Aggregates and Concrete Association. Ellensburg Concrete has worked with the County on a number of sites, going through robust and detailed conditional use permitting and thorough environmental review associated with its operations.

Ellensburg Cement is interested in and concerned by Kristen Gibson's, of Gibson & Son ("Gibson"), pending rezone application and proposal based on the evident intent of the proposal to evade thorough environmental review associated with the understood proposed gravel mining and rock crushing operations envisioned for the site. Even as a non-project action, the SEPA review must disclose and evaluate the probable effects of the proposed rezone, including the short and long-term effects that may be occasioned by the differing land use regulations. To read the Checklist, one would be left with the impression that no such changes are occurring, and certainly would be left guessing at what those are. Yet, the proposal seeks to change the zoning designation for a singular parcel entirely encompassed within the Agriculture-20 (A-20) zone so that differing rules may apply. The remaining surrounding property would all remain A-20. To the point, Gibson requests a rezone of just one parcel to permit (where currently not allowed) rock crushing operations and to allow for mining and excavation operations as a matter of right, and without requiring a conditional use permit process for intensive mining and excavation operations. None of these changes or impacts are disclosed or analyzed.

Without disclosure of these facts and probable impacts by Gibson in the SEPA Checklist, and without any resulting review of these impacts by the County Responsible Official in making its SEPA threshold determination, the existing SEPA review is lacking. To the point, by not disclosing, analyzing, or quantifying the actual impact and probable effects of the rezone, it is impossible for the County to properly evaluate the environmental impacts based on the required SEPA factors and considerations.

The information provided by Gibson is presently not reasonably sufficient to evaluate the environmental impacts of the proposal.² Absent a complete review addressing these impacts, the current SEPA determination cannot be sustained.

SEPA CONSIDERATIONS

When reviewing proposals subject to environmental review, “SEPA demands a ‘thoughtful decision-making process’ where government agencies ‘conscientiously and systematically consider environmental values and consequences.’” *Wild Fish Conservancy v. Wash. Dep’t of Fish & Wildlife*, 198 Wn.2d 846, 873, 502 P.3d 359 (2022). A threshold determination (such as a DNS) “must indicate that the agency has taken a searching, realistic look at the potential hazards and, with reasoned thought and analysis, candidly and methodically addressed those concerns.” *Conservation Northwest v. Okanogan County*, 2016 Wash. App. LEXIS 1410, 88-89, 194 Wn. App. 1034 (June 16, 2016).

Moreover, while postured here as a non-project action in the form of a rezone only, even for such non-project actions, the County “must address the probable impacts of any future project action the proposal would allow.” *Spokane County v. E. Wash. Growth Mgmt. Hearings Bd.*, 176 Wn. App. 555, 579, 309 P.3d 673 (2013); see also WAC 197-11-060(4)(c)-(d). The express purpose of these rules is “to ensure an agency fully discloses and carefully considers a proposal’s environmental impacts before adopting it and ‘at the earliest possible stage.’” *Id.* (quoting *King County v. Wash. State Boundary Review Bd.*, 122 Wn.2d 648, 663-64, 666, 860 P.2d 1024 (1993)); see also WAC 197-11-060(5)(d)(i)-(ii).

Against this backdrop, Ellensburg Cement has concluded that the environmental disclosure and review is presently incomplete and lacking, and provides the following additional SEPA comments for the County’s consideration:

Lack of Disclosure and Analysis of Impacts of Rezone

The SEPA Checklist and associated review is lacking any disclosure or analysis of the probable impacts of the proposed rezone, in contravention of SEPA’s dictates.³ The SEPA rules expressly require consideration of “the range of

² See WAC 197-11-100 (“Further information may be required if the responsible official determines that the information initially supplied is not reasonably adequate to fulfill the purposes for which it is required.”)

³ For the vast majority of responses in the SEPA Checklist, the applicant merely responds “not applicable.”

probable impacts, including short-term and long-term effects” and that considered impacts “shall include those that are likely to arise or exist over the lifetime of a proposal or, depending on the particular proposal, longer.” WAC 197-11-060(4)(c). Further, a proposal’s effects “include direct and indirect impacts caused by a proposal, including “those effects resulting from growth caused by a proposal, as well as the likelihood that the present proposal will serve as a precedent for future actions.” WAC 197-11-060(4)(d).

Despite the above, the SEPA Checklist does not disclose these impacts and is devoid of any analysis. For example, Section B.8 of the SEPA Checklist requires disclosure of the “proposal’s affect on current land uses or nearby adjacent properties.” Rather than addressing the actual impacts of the rezone, the Checklist includes a mere conclusory statement that the “proposal does not affect current land uses on nearby or adjacent properties.” See Checklist at § B.8.a. It then goes on to merely summarily state that the “proposed zoning is consistent with the Rural Working land designation and activities, which prioritizes management of farming, ranching, and rural lifestyles in the A-20 zone, and prioritizes resource management in the Forest and Range zone.” *Id.*⁴ Similarly, and even more glaring, in the non-project supplement sheet, the Checklist merely repeats these or similar statements, without analysis, and defers environmental review, asserting that “[a]ny future permits would be reviewed for impacts and/or mitigation measures under the applicable regulations in effect at the time of the permit action.” This type of non-disclosure and non-analysis expressly contradicts SEPA rules requiring current the

⁴ Further, the SEPA Checklist gives sparse attention to the appropriateness of the proposed rezone under existing land use plans. See, e.g., Checklist at § D.5. No disclosure or analysis is provided with respect to the proposed isolated spot zoning of a singular tract within the much larger A-20 zone, including without limitation, **RR-P6** (“Allow for lands which offer adequate supply of rock and gravel resources located in areas compatible for such uses and conditioned so that operation does not negatively impact rural character.”); **RR-P16** (“Land use development within the Rural area that is not compatible with Kittitas County rural character or agricultural activities as defined in RCW 90.58.065(2)(a) will not be allowed.”); **RR-P18** (“Buffer standards and regulations should continue to be developed that will be used between incompatible rural uses.”); **RR-P21** (“Functional separation and setbacks found necessary for the protection of water resources, rural character and/or visual compatibility with surrounding rural areas shall be required where development is proposed.”); **RR-G22** (“Provide preservation of agriculture activities where producers can live and work on their own lands separate from Resource Lands.”); and **RR-P45** (“Commercial/Industrial development in Rural Working lands shall be compatible to the rural environment, and must be developed as determined necessary to not significantly impact surface and groundwater.”).

consideration of the probable effects of changed land use occasioned by a rezone, including both its short-term and long-term effects.

Even a cursory review of KCC 17.15.060.1 evinces the potentially not insignificant changes that would be occasioned by the rezone. Understanding Gibson's business operations, this would most notably include allowing for rock crushing as a new permitted use (where currently not allowed), allowing for future and expanded mining and excavation as a permitted use (where current operations must be consistent with any conditional use permit and future expansion or changed operations must undergo a thorough conditional use permit process), and allowing the conditional development of asphalt and concrete plants and retail sales. None of the impacts or effects of these intensive land uses, which would now be permitted for the first time or subject to relaxed standards, is disclosed, analyzed, or meaningfully evaluated. As these represent the most obvious and significant differences between the two zones, the intent though is clear. In short, the environmental review is devoid of relevant analysis and is insufficient.

Further, the SEPA Checklist and associated review appears devoid of any disclosure or analysis of the actual potential impacts of the newly permitted uses under the proposed rezone. Notably, this includes, without limitation, the following:

- Neither the SEPA Checklist nor any studies address noise and other impacts associated with blasting and vibration associated with the rock crushing operations that would be permitted under the proposed rezone.
- Neither the SEPA Checklist nor any studies address dust control, emissions, or air quality impacts from rock crushing operations that would be permitted under the proposed rezone.
- Neither the SEPA Checklist nor any studies address potential traffic impacts and safety associated with increased truck traffic and heavy machinery associated with uses that would be permitted under the proposed rezone.

- Neither the SEPA Checklist nor any studies address potential impacts to groundwater, hydraulic connectivity with surface water bodies,⁵ or aquifer impacts.
- While the application materials note a lack of any water rights associated with the property, the SEPA Checklist does not address or evaluate how water supply would be made available to the property for dust control and operational issues, and the impact of the same.

The DNS as issued includes no consideration or imposition of any mitigating conditions associated with these issues. As the proposed rezone would allow for new intensive uses as a matter of right, without further review, SEPA requires review of these probable impacts now, and such review cannot be deferred.

IMPROPER DEFERAL OF REQUIRED ENVIRONMENTAL REVIEW

Second, to the extent the SEPA Checklist and the County's review purports to effectively defer review of the environmental impacts of the rezone, such deferral is inappropriate and SEPA analysis must occur now and at the forefront before the rezone can be undertaken. The SEPA Checklist statement that "[a]ny future permits would be reviewed for impacts and/or mitigation measures under the applicable regulations in effect at the time if the permit action" is insufficient and a transparent attempt to not just defer but to avoid review. Yet, if the County were to in fact approve the proposed rezone, activities currently not permitted (i.e. rock crushing) or permitted only through a conditional use permit process and continued compliance with any applicable CUP (i.e. mining and excavation) would become activities permitted as a matter of right. The County should reject this slight-of-hand, and at a minimum, must evaluate these impacts now, with any probable adverse impacts adequately mitigated. As Washington courts have explained, even for non-project actions (such as rezones):

. . . the agency must address the probable impacts of any future project action the proposal would allow. The purpose of these rules is to ensure an agency fully discloses and carefully considers a proposal's environmental impacts before adopting it and "at the earliest possible stage." An agency may not postpone environmental analysis to a later implementation stage if [**685] the proposal

⁵ While the SEPA Checklist notes that Parke Creek is within 200 feet of the property in the southwest corner, see Checklist at § 3.a.1, it avoids any discussion of any impacts of the new uses authorized under the rezone, merely describing as "non-applicable." *Id.* at § 3.a.2.

would affect the environment without subsequent implementing action.

Spokane County v. E. Wash. Growth Mgmt. Hearings Bd., 176 Wn. App. 555, 579, 309 P.3d 673 (2013) (internal citations omitted); *see also Millennium Bulk Terminals-Longview, LLC v. Dep't of Ecology*, 2020 Wash. App. LEXIS 647, *17-18 (Wash. Ct. App. Mar. 17, 2020) (piecemealing of environmental review “is disfavored because the later environmental review often seems merely a formality, as the construction of the later segments of the project has already been mandated by the earlier construction”). The County should not and under the SEPA rules cannot, defer this review.

MITIGATING CONDITIONS REQUIRED FOR ISSUANCE OF ANY DNS

While Ellensburg Cement asserts the current SEPA disclosures and analysis is defective and is not based upon information reasonably sufficient to evaluate the environmental impact of the proposal, it further asserts that even when all impacts are properly disclosed, that any subsequent threshold determination, must, at a minimum, include and impose appropriate necessary mitigating conditions as part of a mitigated determination of nonsignificance (MDNS). The entire purpose of the rezone appears to be to loosen permitting standards for gravel operations and avoid and eliminate the robust conditional use permitting process⁶ that Ellensburg Cement has undergone for each of its relevant operations. These conditions have, in the past included, without limitation, required conditions related to the hours of operation of rock crushing operations, analysis of and limitation on trucks and heavy equipment impacting the adjacent community and County roadways, mitigating dust and noise impacts, and addressing compatibility and mitigating impacts on adjoining land uses, and others.

WITHDRAWAL AND RECONSIDERATION OF THE DNS REQUIRED

A DNS must be based upon “information reasonably sufficient to evaluate the environmental impact of a proposal.” WAC 197-11-335; *see also Moss v. City of Bellingham*, 109 Wn. App. 6, 14, 31 P.3d 703 (2001). To receive a DNS, an applicant must furnish reasonably complete information about the impacts. In

⁶ See Chapter 17.60A KCC (Conditional Uses). The conditional use permitting process requires, without limitation, that the proposed use is not detrimental or injurious to the public health, peace, or safety or to the character of the surrounding neighborhood, will not create excessive public cost for facilities and services, be adequately served by existing facilities and roads, and may impose specific conditions to ensure compliance. *See, e.g.*, KCC 17.60A.015 and KCC 1760A.020.

this regard, SEPA cases instruct that “the [local jurisdiction] must demonstrate that it had actually considered relevant environmental factors before [issuing the threshold determination]. Moreover, the record must demonstrate that the [local jurisdiction] adequately considered the environmental factors in a manner sufficient to be a prima facie compliance with the procedural dictates of SEPA.” *Boehm v. City of Vancouver*, 111 Wn. App. 711, 718, 47 P.3d 137 (2002). The responsible official “shall reconsider the DNS based on timely comments and may retain or modify the DNS or, if the responsible official determines that significant adverse impacts are likely, withdraw the DNS or supporting documents.” WAC 197-11-340(2)(f). Withdrawal of the DNS is appropriate here.

The SEPA rules further require that the lead agency withdraw a DNS where “new information is presented indicating . . . a proposal’s probable significant adverse environmental impact,” WAC 197-11-340(3)(a)(ii), or where the “DNS was procured by misrepresentation or lack of material disclosure.” WAC 197-11-340(3)(a)(iii). Here, Ellensburg Cement has raised new information not clearly disclosed in the SEPA Checklist or evaluated by the County, including the undisclosed actual material differences between the zoning designations. This new information requires withdrawal of the DNS. WAC 197-11-340(3)(a)(ii). Similarly, the lack of material disclosure on these issues, and of the lack of actual consideration of the probable effects of the rezone requires withdrawal of the DNS. WAC 197-11-340(3)(a)(iii). Withdrawal of the DNS will permit the County to ensure proper SEPA review consistent with WAC 197-11-335⁷ and applicable law, and to impose mitigating conditions, as demonstrated to be necessary.

SPOT ZONING AND NEED FOR GENERALLY APPLICABLE RULES

Related to the above, Ellensburg Cement views this proposal as a piecemeal special favor in the form of spot zoning that would benefit only Gibson and does not further the County’s land use goals, policies, or the broader interests. The proposal seeks to rezone one individual parcel entirely encompassed within the A-20 zoning designation. The County should act cautiously and resist efforts at such spot zoning benefiting just one party. While Gibson may or will offer arguments as to its views of the appropriate zoning classification of this parcel, such consideration should be given a broader view. Similarly, if the County in

⁷ Pursuant to WAC 197-11-340(2)(f), in response to comments, the Responsible Official shall reconsider the DNS, including modification or withdrawal, and where the lead agency concludes that there is insufficient information it may require an applicant to submit more information on subjects in the checklist. See WAC 197-11-335(1). This result is dictated here.

fact believes it is in the best interests of the County to more broadly permit rock crushing and gravel operations, or streamline the permit process for the same, it should do so holistically and not to the benefit of a singular property and property owner on a case-by-case basis.

CONCLUSION

The SEPA Checklist fails to properly disclose, let alone consider, the probable effects of the rezone. As such, the County's SEPA evaluation and DNS fails to demonstrate SEPA compliance. Given these deficiencies, and in further consideration of the significant impacts occasioned thereby, in accordance with the provisions of WAC 197-11-340(3), Ellensburg Cement respectfully requests the County withdraw the DNS issued on August 15, 2024, to ensure all appropriate impacts are evaluated and mitigated.

We request notice, directed to the undersigned, of any action the County takes relating to this threshold determination and the underlying rezone application.

Thank you in advance for your consideration of these comments. Please feel free to contact me if you have any questions or require any additional information. We appreciate the County's careful review of this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jm Rehberger', with a stylized, cursive script.

Joseph A. Rehberger
Direct Line: (360) 786-5062
Email: jrehberger@cascadialaw.com
Office: Olympia

cc: Ellensburg Cement Products, Inc.

ATTACHMENT B

17.15.060 Allowed uses in rural non-LAMIRD lands**17.15.060.1 Rural Non-LAMIRD Use Table**

P Permitted
PA Permitted
Administrative
CU Conditional Use
ACU Admin. Conditional
Use

Rural Non-LAMIRD

* See KCC
Chapter [17.08](#) Definitions

	Rural Residential		Rural Working		Rural Recreation			Rural Residential & Rural Recreation
	Ag 5⁴⁹	Rural 5⁴⁹	Ag 20⁴⁹	Forest & Range	Master Planned	General Commercial	Rural Recreation	PUD
A. Agriculture								
Agricultural Enhanced Uses*			p⁵⁵	p⁵⁵		p⁵⁵		
Agricultural direct marketing activities*	p⁶²	p⁶²	p⁶²	p⁶²				
Agricultural seasonal harvest festivities*	p⁶³	p⁶³	p⁶³	p⁶³				
Agricultural expanded seasonal harvest festivities*	C	C	C	C				
Animal boarding*	P	P	P	P		CU	CU	
Agriculture processing*	CU 23		CU 23	CU **		P		
Agriculture production*	p²⁴	P	P	p²⁴	p²⁴	p²⁴	p²⁴	p²⁴
Farm Stand,*	p²² / AC⁵¹	p²² / AC⁵¹	p²² / AC⁵¹	p²² / AC⁵¹	p²² / AC⁵¹	P	p²² / AC⁵¹	p²² / AC⁵¹
Agriculture Sales,*	CU		CU			P		
Dairy	CU	CU	CU	CU	CU	CU	CU	
Feedlot*			CU	CU **				
Grazing*	P	P	P	P	P	P	P	P
Marijuana processing*								
Marijuana production*								
Marijuana, retail sales*								
Nurseries	P	P	P	CU **		P	CU⁶¹	
Riding academies	CU		CU	CU	CU		CU	
Small-scale event facility*	AC⁴⁵ / CU	AC⁴⁵ / CU	AC⁴⁵ / CU	AC⁴⁵ / CU				
U-Pick/U-Cut Operations*	P / AC⁵¹	CU	P / AC⁵¹	P / AC⁵¹			CU	
Farm Visit	CU	CU	AC⁵¹	AC⁵¹	CU	Cu	CU	p⁵²
Commercial Activities associated with agriculture*	AC		AC					
	Ag 5⁵¹	Rural 5⁵¹	Ag 20⁵¹	Forest & Range	Master Planned	General Commercial	Rural Recreation	PUD
B. Civic Uses / Community Services								
Cemetery	p²¹	p²¹	p²¹	CU **	p²¹	p²¹	p²¹	p²¹
Clubhouses, fraternities and lodges*	AC⁴⁴	AC⁴⁴	AC³	AC³⁵	AC		AC	
Cultural and education facilities					P		P	
Libraries			CU³			CU		
Meeting facilities					P			
Museums and galleries						CU		
Religious institutions	CU		CU	CU	CU	CU	CU	
Schools, public or private*	p²⁵		p²⁵	CU			CU	
Interpretive Center*			AC	AC			AC	
	Ag 5⁵¹	Rural 5⁵¹	Ag 20⁵¹	Forest & Range	Master Planned	General Commercial	Rural Recreation	PUD
C. Commercial								
Auction sales of non-agriculture products						CU		
Bank						CU		

Bed and breakfast*	AC	AC	AC	AC **			AC	
Clinic*								
Day care facilities*								
Funeral home/mortuary								
Hospital*								
Hospital, animal or veterinary*			CU			CU		
Hotel/motel					CU 6			
Office*						P 17		
Restaurant				CU 36	P	CU	CU	
Retail sales,* general				CU 36	P	CU 18	CU 18	
Retail sales,* lumber and building materials								
Retail sales,* vehicles								
Services					P 20	CU 50		
Shooting range*			CU 31	CU ** 31			CU 31	
Tavern				CU 36	P	CU		
Temporary sales office					P			
Vehicle/equipment service and repair*	P 16		P 16	CU 36	P 42	P 42		
	Ag 51	Rural 51	Ag 2051	Forest & Range 41	Master Planned	General Commercial	Rural Recreation	PUD
D. Industrial								
Airport*	CU		CU	CU	CU	CU	CU	
Asphalt/Concrete plants				CU 37				
Explosives, storage or manufacture								
Forest product processing* (portable)	P	P	CU	CU 35				
Forest product processing* (permanent)			CU	CU **				
Freighting and trucking yard or terminal*								
Hazardous waste storage*								
Hazardous waste treatment*								
Impound/towing yard*								
Junkyard*								
Manufacturing*								
Mini-Warehouse				CU 59		CU 14		
Refuse disposal/recycle*			CU 19	CU 58				
Research laboratories								
Wastewater treatment								
Warehousing and distribution	PA 47	PA 47	PA 47 / CU 46	PA 47				
Wholesale business								
	Ag 51	Rural 51	Ag 2051	Forest & Range 41	Master Planned	General Commercial	Rural Recreation	PUD
E. Recreation								
Campground*	CU 12	CU 12	CU 12	CU 12 P 54 **	CU 13	CU 12	CU 12	CU
Golf course*	CU	CU	CU	CU **	CU		CU	
Guest ranch or guest farm*	CU	CU	CU	CU **			CU	
Parks and playgrounds*	P	P	P 2	P	P	P	P	P
Recreation, indoor*					P	CU	CU	P
Recreation , outdoor*	AC	AC	CU	CU	AC	AC	AC	P
Recreational vehicle park*	CU	CU			CU		CU	CU

Recreational vehicle/equipment service and repair*				CU 60				
Recreational vehicle storage				CU 26			CU 26	p 26
Stadiums								
Trails	PA	PA	PA	PA	PA	PA	PA	PA
	Ag 51	Rural 51	Ag 201	Forest & Range 41	Master Planned	General Commercial	Rural Recreation	PUD
F. Residential								
Accessory dwelling unit*	PA 27	PA 27	PA 27	PA 27 **			PA 27	PA 27
Accessory living quarters*	p 28	p 28	p 28	p 28 **	p 28		p 28	p 28
Adult family home*	p 41	p 41	p 41	p 41	p 41	p 41	p 41	p 41
Boarding house			CU 29	CU 29 **				
Convalescent home			CU	CU **				
Dwelling, single-family*	p 33	p 40	P	p 34	p 1	PA 2	P	P
Dwelling, two-family*	P		p 3	p 34	p 1		CU	P
Dwelling, multiple-family*					p 1			P
Farm labor shelter*	CU 4		CU 4	CU 4 **				
Group home*	CU	CU					CU	
Group Care Facility*	CU 56	CU	CU 56	CU			CU	
Home occupation*	P/CU 5	P/CU 5	P/CU 5	P/CU 5 **	P/CU 5		P/CU 5	P/CU 5
Manufactured home*	P	P	P	P **	P	PA 2	P	P
Manufactured home park								
Mobile home	p 38	p 38		p 34				
Special care dwelling*	p 30	p 30	p 30	p 30			CU 30	p 30
Temporary trailer	p 7	p 7	p 7	p 7 **	p 7	p 7	p 7	p 7
	Ag 51	Rural 51	Ag 201	Forest & Range 41	Master Planned	General Commercial	Rural Recreation	PUD
G. Resource								
Forestry*	P	P	P	p 34				
Forest product sales*				P				
Mining and excavation*	CU	CU 39	CU	p 34				
Rock crushing*		CU 39		p 34				
	Ag 51	Rural 51	Ag 201	Forest & Range 41	Master Planned	General Commercial	Rural Recreation	PUD
H. Utilities and Public Facilities								
Electric vehicle infrastructure*	p 32	p 32	p 32	p 32	p 32	p 32	p 32	p 26
Public facilities*	PA 53 27	PA 53 27	PA 53 27	PA 53 27	PA 53 27	PA 53 27	PA 53 27	PA 53 27
Solar Power Production Facilities								
Utilities	p 2 /ACU 2 /CU 2	p 2 /ACU 2 /CU 2	p 10 /ACU 10 /CU 10	p 2 /ACU 2 /CU 2	p 11 /ACU 11 /CU 11	p 2 /ACU 2 /CU 2	p 2 /ACU 2 /CU 2	p 2 /ACU 2 /CU 2
Watershed management activities*	PA	PA	PA	PA	PA	PA	PA	

** Publisher's Note: Footnote 37 was erroneously referenced in this section by [Ordinance 2013-001](#)

17.15.060.2 Footnotes Associated with Rural Non-LAMIRD Use Table.

1. Provided use is integrated into and supports the on-site recreational nature of the master planned resort and short-term visitor accommodation units constitute greater than fifty percent (50%) of the total resort accommodation units.
2. No new residence shall be permitted except that related to the business or enterprises allowed in this zone such as janitor or night watchman. Any such residence shall meet the requirements of the residential zone.
3. Not permitted in the Agriculture Study Overlay Zone. Clubhouses, fraternities and lodges limited to facilities that serve traditional rural or resource activities (such as granges).
4. Provided:
 - a. The shelters are used to house farm laborers on a temporary or seasonal basis only, regardless of change of ownership, if it remains in farm labor-needed status;
 - b. The shelters must conform with all applicable building and health regulations;
 - c. The number of shelters shall not exceed four (4) per twenty (20) contiguous acres of land area;
 - d. The shelters are owned and maintained by the owner or operator of an agricultural operation which clearly demonstrates the need for farm laborers;
 - e. Should the parent agricultural operation cease or convert to non-agriculture use, then the farm labor shelters shall conform with all applicable buildings and health regulations.
5. No sign advertising a home occupation shall exceed sixteen (16) square feet in size. Home occupations with no outdoor activities or noise are permitted; home occupations with outdoor activities or noise are a conditional use. In-home daycares with six (6) or fewer individuals receiving care in a twenty-four (24) hour period are permitted; in-home daycares with seven to twelve (7-12) individuals receiving care in a twenty-four (24) hour period require a Conditional Use Permit.
6. Provided short-term visitor accommodation units constitute greater than fifty percent (50%) of the total resort accommodation units.
7. When used for temporary occupancy for a period not-to-exceed one (1) year related to permanent home construction or seasonal/temporary employment.

8. Public transportation deadhead stations permitted; passenger terminals are a Conditional Use.
9. Utilities are defined and regulated by KCC Chapter [17.61](#), Utilities.
10. Utilities are defined and regulated by KCC Chapter [17.61](#), Utilities. Not permitted in the Agriculture Study Overlay Zone.
11. Utilities are defined and regulated by KCC Chapter [17.61](#), Utilities. Limited to the capital facilities, utilities, and services necessary to maintain and operate the master planned resort.
12. In considering proposals for location of campgrounds, the Board shall consider at a minimum the following criteria:
 - a. Campgrounds should be located at sufficient distance from existing rural residential/residential development so as to avoid possible conflicts and disturbances;
 - b. 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;
 - c. Landscaping or appropriate screening should be required and maintained where necessary for buffering;
 - d. Adequate and convenient vehicular access, circulation and parking should be provided;
 - e. Public health and safety of campers and those reasonably impacted by the campground (i.e. health, water, sanitation).
13. Campgrounds and Recreational vehicle sites with power and water are permitted; campgrounds and recreational vehicle sites without power and water require a conditional use permit.
14. The following standards shall apply to the approval and construction of mini-warehouses:
 - a. A mini-warehouse proposal (application) must include plans for aesthetic improvements and/or sight screening;
 - b. All buildings with storage units facing property boundaries shall have a minimum setback of thirty-five (35) feet;
 - c. No commercial or manufacturing activities will be permitted within any building or storage unit;
 - d. Lease documents shall spell out all conditions and restrictions of the use;
 - e. Signs, other than on-site direction aids, shall number not more than two (2) and shall not exceed forty (40) square feet each in area.
15. Permitted when conducted wholly within an enclosed building (excluding off-street parking and loading areas).
16. Limited to farm implement repair and maintenance.
17. Limited to offices directly related to tourism and recreation.
18. Retail sales are limited to groceries and sales directly related to tourism and recreation. Structural footprint containing all of these activities may not exceed 4,000 square feet.
19. Limited to composting facilities.
20. Limited to those services typically found on other destination resort properties and designed to serve the convenience needs of the users and employees of the master planned resort. Shall be designed to discourage use from non-resort users by locating such services well within the site rather than on its perimeter.
21. No new cemeteries. Existing cemeteries may expand or enlarge within established cemetery boundaries as of the date of amendment adoption, and in compliance with applicable standards and regulations.
22. When located no more than forty-five (45) feet from the centerline of the public street or highway and selling goods produced on site.
23. Hay processing, and small-scale processing of agricultural products produced on the premises are permitted without a conditional use permit.
24. Excluding swine and mink, provided a minimum of one (1) acre is available. When located in the Liberty Historic Overlay Zone, this use is subject to the provisions of KCC Chapter [17.59](#).
25. Existing schools are permitted; new schools require a conditional use permit. Not permitted in the Agriculture Study Overlay Zone.
26. Recreational vehicle storage may be enclosed or outdoor storage of recreational vehicles or both. Permitted where the use is only serving a residential PUD or in the Rural Recreation and Forest and Range zoning districts and subject to the following standards and conditions:
 - a. All stored vehicles must be licensed if required by law, and operational. This land use does not include vehicle sales.
 - b. Unless it is limited to serving a residential PUD and otherwise permitted or authorized, recreational vehicles shall not be stored outside when the site is contiguous to a residential zoning district.
 - c. No commercial or manufacturing activities are permitted except when recreational vehicle/equipment service and repair has been permitted subject to the requirements of KCC 17.15.060.2 [Footnote 60](#).
 - d. In the Forest and Range zoning district, and when not limited to serving a recreational planned unit development, the site shall either be:
 - i. Contiguous to a State Highway, or
 - ii. Contiguous to a designated urban arterial or rural collector road located near a highway intersection or freeway interchange.
 - iii. It is not necessary for the site to have direct access to such arterial, collector or highway to meet this requirement.
 - e. Recreational vehicle storage shall be designed to be compatible with the surrounding rural character, subject to the following standards:
 - i. Storage areas shall be enclosed with a minimum five-foot-high, security fence. The applicant may be required to provide additional plans for aesthetic improvements and/or site-screening.
 - ii. Additional setbacks, physical barriers or site-screening may be required on sites that border resource lands in the Commercial Agriculture or Commercial Forest zoning districts.
 - iii. Findings shall be made that the proposal does not require urban governmental services such as municipal sewer or water service and does not compromise the long-term viability of designated resource lands.
 - iv. Measures shall be taken to protect ground and surface water.
- Electric Vehicle Infrastructure subject to provisions of KCC Chapter [17.66](#).
27. Subject to the following requirements:
 - a. The parcel must be at least 3 acres in size;
 - b. Only one ADU shall be allowed per lot;
 - c. The ADU shall not exceed 1,500 square feet;
 - d. All setback requirements for the zone in which the ADU is located shall apply;
 - e. The ADU shall meet the applicable health department standards for potable water and sewage disposal, including providing adequate water supplies under [RCW 19.27.097](#);
 - f. No mobile homes or recreational vehicles shall be allowed as an ADU;
 - g. The ADU shall provide additional off-street parking;
 - h. An ADU is not permitted on the same lot where a special care dwelling or an Accessory Living Quarters exists;
 - i. The ADU must share the same driveway as the primary dwelling;
 - j. ADUs shall be subject to obtaining an administrative permit.
28. Subject to the following requirements:
 - a. Accessory Living Quarters shall be located within an owner-occupied primary residence;
 - b. Accessory Living Quarters are limited in size to no greater than fifty percent (50%) of the habitable area of the primary residence;
 - c. The Accessory Living Quarters are subject to applicable health district standards for water and sewage disposal;
 - d. Only one (1) Accessory Living Quarters shall be allowed per lot;
 - e. Accessory Living Quarters are to provide additional off-street parking;
 - f. Accessory Living Quarters are not allowed where an Accessory Dwelling Unit or Special Care Dwelling exists.
29. Maximum of four (4) boarders and two (2) bedrooms dedicated to the use.
30. Subject to the following requirements:
 - a. The Special Care Dwelling must meet all setback requirements for the zone in which it is located;
 - b. The Special Care Dwelling must meet all applicable health department requirements for potable water and sewage disposal;
 - c. Placement is subject to obtaining a building permit for the manufactured home;
 - d. Owner must record a notice to title prior to the issuance of building permit which indicates the restrictions and removal requirements;
 - e. The Special Care Dwelling unit cannot be used as a rental unit;
 - f. The Special Care Dwelling unit must be removed when the need for care ceases;
 - g. A Special Care Dwelling is not permitted on the same lot where an Accessory Dwelling Unit or Accessory Living Quarter exists.
 - h. Park model trailers shall obtain the same building permit as for placement of a manufactured home.
 - i. Park model trailers shall be inspected and approved by Washington State Department of Labor and Industries.
31. Structures and facilities associated with the operation of shooting ranges are permitted and subject to all associated Kittitas County building codes and regulations. Shooting Ranges may be operated in conjunction with other permitted or conditional uses for the specified zone. Shooting Ranges are subject to periodic inspection and certification as deemed necessary by the Kittitas County Sheriff's Department. In considering proposals for the location of Shooting Ranges a detailed site plan shall be required; the Board's review of said site plan and the proposal as a whole shall include, but not be limited, to the following criteria:
 - a. The general health, safety, and welfare of surrounding property owners, their livestock, their agricultural products, and their property.
 - b. Adherence to the practices and recommendations of the "NRA Range Sourcebook."
 - c. Adherence to the practices and recommendations of the "EPA Best Management Practices for Lead at Outdoor Shooting Ranges."
 - d. Proposed shooting ranges in areas designated as agricultural land of long-term commercial significance shall comply with [RCW 36.70A.177\(3\)](#) as currently existing or hereafter amended, and shall be limited to lands with poor soils or those unsuitable for agriculture.
32. Subject to the provisions of KCC Chapter [17.66](#), Electric Vehicle Infrastructure.
33. Single family homes located in Twin Pines Trailer Park, Central Mobile Home Park, or Swiftwater shall be subject to the provisions of KCC Chapter [17.24](#), Historic Trailer Court Zone.
34. When located in the Liberty Historic Overlay Zone, this use is subject to the provisions of KCC Chapter [17.59](#).
35. Limited to facilities that serve traditional rural or resource activities (such as granges). Allowed as a permitted use in the Liberty Historic Overlay Zone, subject to the provisions of KCC Chapter [17.59](#).
36. Allowed only as a conditional use in the Liberty Historic Overlay Zone, subject to the provisions of KCC Chapter [17.59](#).

37. Prohibited in the Liberty Historic Overlay Zone. Temporary asphalt plants only.
38. As of September 1, 1998, mobile homes are no longer allowed to be transported and placed within Kittitas County. Those units presently located in Kittitas County that are to be relocated within Kittitas County must have a fire/life inspection approved by the Washington State Department of Labor and Industries. Mobile homes located in Twin Pines Trailer Park, Central Mobile Home Park, or Swiftwater shall be subject to the provisions of KCC Chapter [17.24](#), Historic Trailer Court Zone.
39. Permitted when located within an established mining district; conditional use permit required when located outside established mining district.
40. Single family homes located in Twin Pines Trailer Park, Central Mobile Home Park, or Swiftwater shall be subject to the provisions of KCC Chapter [17.24](#), Historic Trailer Court Zone.
41. Pursuant to [RCW 70.128.140](#).
42. Permitted when conducted wholly within an enclosed building (excluding off-street parking and loading areas).
43. Includes truck stop operations. Minor repair work permitted.
44. Limited to facilities that serve traditional rural or resource activities (such as granges).
45. Use shall not exceed 10,000 square feet and no more than eight (8) events shall occur within a calendar year.
46. Existing facilities are permitted; new facilities require a conditional use permit. Limited to agricultural products.
47. Limited to seasonal, non-structural hay storage.
48. Services limited to resource based industries
49. All lots greater than one-half (1/2) acre will not have more than fifty percent (50%) of the lot covered by impervious surface.
50. An administrative conditional use permit is required when enhanced agricultural sales or sales of goods produced offsite are provided and/or when the farm stand is located more than forty-five (45) feet from the centerline of the public street or highway.
51. When enhanced agricultural sales are provided.
52. When approved as part of the PUD development plan.
53. Pursuant to KCC Chapter [17.62](#), Public Facilities Permits.
54. Limited to primitive campgrounds as defined by KCC [17.08.155A](#).
55. Agricultural Enhanced Uses which include eating and drinking establishments and/or event facilities for seminars or other social gatherings are limited to 4,000 square feet of total indoor floor area.
56. Only allowed as a conditional use when primary use of land is agriculture.
57. Pursuant to KCC [17.61C.050](#) and [17.61C.060](#).
58. (Removed per [Ord. 2022-017](#), 2022)
59. The following standards shall apply to the approval and construction of mini warehouses in the Forest and Range zone:
 - a. The site shall either be contiguous to a State Highway or contiguous to a designated urban arterial or rural collector road located near a highway intersection or freeway interchange. It is not necessary for the site to have direct access to such arterial, collector or highway to meet this requirement;
 - b. Findings shall be made that the use does not require urban government services such as municipal sewer or water service and does not compromise the long-term viability of designated resource lands;
 - c. Additional setbacks, physical barriers or site-screening may be required on sites that border resource lands in the Commercial Agriculture or Commercial Forest zoning districts;
 - d. Measures shall be taken to protect ground and surface water;
 - e. A mini-warehouse proposal (application) must include plans for aesthetic improvements and/or sight screening;
 - f. All buildings with storage units facing property boundaries shall have a minimum setback of thirty-five (35) feet;
 - g. No commercial or manufacturing activities will be permitted within any building or storage unit except for RV storage when authorized under KCC 17.15.060.2, [Footnote 60](#);
 - h. Lease documents shall spell out all conditions and restriction of the use;
 - i. Signs, other than on-site direction aids, shall number not more than two (2) and shall not exceed forty (40) square feet each in area.
60. Recreational vehicle/equipment service and repair is permitted by conditional use permit in the Forest and Range zoning district. The site shall either be:
 - a. Contiguous to a State Highway, or
 - b. Contiguous to a designated urban arterial or rural collector road located near a highway intersection or freeway interchange.
 - c. It is not necessary for the site to have direct access to such arterial, collector or highway to meet this requirement.
 Vehicles under repair shall either be kept inside buildings or visually screened from surrounding areas. No on-street vehicle parking shall be allowed associated with the use. All vehicles, including recreational vehicles and customer and employee automobiles shall be stored or parked on-site at all times. Maintenance and repair activities shall not take place in RV storage enclosures or spaces, except limited maintenance and minor repairs may be performed on RV's that are already being stored at the site in order to avoid having to move them, when such maintenance and repair activities can be completed in two hours or less and only in the enclosures or spaces in which the RV's are already being kept. This use shall be designed to be compatible with the surrounding rural character, subject to the following standards:
 - a. Findings shall be made that the use does not require urban governmental services such as municipal sewer or water service and does not compromise the long-term viability of designated resource lands.
 - b. Additional setbacks, physical barriers or site-screening may be required on sites that border resource lands in the Commercial Agriculture or Commercial Forest zoning districts.
 - c. Measures shall be taken to protect ground and surface water.
61. Nurseries limited to the growth, display, and/or sale of plants, shrubs, trees, and materials used in indoor or outdoor planting. Sale of bulk landscape materials such as rock, bark, mulch and topsoil shall not be permitted in this zone. Pre-packaged landscape materials are excluded from this restriction.
62. Agricultural direct marketing activities shall comply with all of the following standards:
 - a. The subject property shall be actively farmed by the property owner.
 - b. Retail structures shall not total more than three thousand (3,000) square feet.
 - c. The parcel, or adjacent parcel, shall include the residence of the owner or operator of the farm.
 - d. Carnival rides, helicopter rides, inflatable features and other typical amusement park games, facilities and structures are not permitted.
 - e. The use shall be operated in accordance with all applicable federal, state, and local ordinances.
 - f. New structures or existing structures converted for public use shall meet current building and fire codes.
 - g. Adequate sanitary facilities shall be provided in accordance with Kittitas County Public Health Department requirements.
 - h. Adequate ingress/egress shall be provided to and from the site in accordance with Kittitas County Public Works requirements.
 - i. Sufficient land area is provided to accommodate the proposed use and related parking, and the use and any appurtenant structures shall be so arranged on the land as to minimize any adverse effects on surrounding properties. The use shall not create particular hazards to adjacent properties.
63. Agricultural seasonal harvest festivities shall comply with all of the following standards:
 - a. The site shall conform to the requirements for "agricultural direct marketing activities" except as provide for herein.
 - b. Hours of operation shall occur between 8:00 a.m. and 6:00 p.m.
 - c. Seasonal harvest festivities are prohibited on vacant property, unless the vacant land adjoins property occupied by the owner/operator of the festivities.
 - d. Seasonal harvest festivities shall be limited to Friday, Saturday, Sunday, and Monday, from the second weekend of June through the December 31.
 - e. Inflatable amusement devices, such as moonwalks, slides, or other inflatable games for children, shall be limited to a maximum of five (5) per seasonal harvest festivities event.

([Ord. 2023-010](#), 2023; [Ord. 2022-017](#), 2022; [Ord. 2021-015](#), 2021; [Ord. 2019-013](#), 2019; [Ord. 2018-021](#), 2018; [Ord. 2018-018](#), 2018; [Ord. 2018-001](#), 2018; [Ord. 2016-023](#), 2016; [Ord. 2015-010](#), 2015; [Ord. 2014-015](#), 2014; [Ord. 2014-005](#), 2014; [Ord. 2014-004](#), 2014; [Ord. 2013-012](#), 2013; [Ord. 2013-008](#), 2013; [Ord. 2013-001](#), 2013)

ATTACHMENT C

Chapter 17.60A

CONDITIONAL USES*

Sections

[17.60A.010](#) Review authority.
[17.60A.015](#) Review criteria.
[17.60A.020](#) Conditions.
[17.60A.030](#) Application and accompanying data.
[17.60A.040](#) Repealed.
[17.60A.050](#) Repealed.
[17.60A.060](#) Hearings – Appeal.
[17.60A.070](#) Repealed.
[17.60A.080](#) Transfer of Ownership.
[17.60A.090](#) Expiration.
[17.60A.095](#) Modification.
[17.60A.100](#) Revocation or limitation.

* Prior history: Ords. 71–5, 2.

17.60A.010 Review authority.

KCC [17.15.030](#) explains how to interpret the Zoning Use Tables. Uses identified with an "AC" (Administrative Conditional Use) on the use tabled in KCC Chapter [17.15](#) shall be reviewed administratively by the Director while uses identified with a "CU" (Conditional Use) shall require a public hearing and review by the Board. ([Ord. 2013-012](#), 2013)

17.60A.015 Review criteria.

The Director or Board, upon receiving a properly filed application or petition, may permit and authorize a conditional use when the following requirements have been met:

1. 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 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
 - A. The proposed use 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
 - B. The applicant shall provide such facilities; or
 - C. The proposed use will be of sufficient economic benefit to offset additional public costs or economic detriment.
3. The proposed use complies with relevant development standards and criteria for approval set forth in this title or other applicable provisions of Kittitas County Code.
4. The proposed use will mitigate material impacts of the development, whether environmental or otherwise.
5. The proposed use will ensure compatibility with existing neighboring land uses.
6. The proposed use is consistent with the intent and character of the zoning district in which it is located.
7. For conditional uses outside of Urban Growth Areas, the proposed use:
 - A. Is consistent with the intent, goals, policies, and objectives of the Kittitas County Comprehensive Plan, including the policies of Chapter 8, Rural and Resource Lands;
 - B. Preserves "rural character" as defined in the Growth Management Act (RCW [36.70A.030\(20\)](#));
 - C. Requires only rural government services; and
 - D. Does not compromise the long term viability of designated resource lands. ([Ord. 2019-013](#), 2019; [Ord. 2013-012](#), 2013; [Ord. 2013-001](#), 2013; [Ord. 2012-009](#), 2012; Ord. 2007-22, 2007; Ord. 88-4 § 11 (part), 1988; Res. 83-10, 1983)

17.60A.020 Conditions.

In permitting such uses the Director or Board 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. These conditions may include, but are not limited to, the following:

1. Increasing the required lot size, setback or yard dimensions;
2. Limiting the height of buildings or structures;
3. Controlling the number and location of vehicular access points (subject to approval by the reviewing authority with jurisdiction to issue approach or access permits);
4. Requiring the dedication of additional rights-of-way for future public street improvements;
5. Requiring the designation of public use easements;
6. Increasing or decreasing the number of required off-street parking and/or loading spaces as well as designating the location, screening, drainage, surfacing or other improvement of a parking area;
7. Limiting the number, size, height, shape, location and lighting of signs;
8. Requiring or limiting view-obscuring fencing, landscaping or other facilities to protect adjacent or nearby properties;
9. Designating sites for and/or the size of open space or recreational areas;
10. Requiring site reclamation upon discontinuance of use and/or expiration or revocation of the project permit;
11. Limiting hours and size of operation;
12. Controlling the siting of the use and/or structures on the property;
13. Requiring mitigation measures to effectively reduce the potential for land use conflicts with agricultural and resource lands, such as: landscape buffers, special setbacks, screening, and/or site design using physical features such as rock outcrops, ravines, and roads.
14. Demonstrating that the requirements of [Chapter 13.35, Kittitas County Code](#), Adequate Water Supply Determination, can be met. ([Ord. 2014-005](#), 2014; [Ord. 2013-012](#), 2013; [Ord. 2012-009](#), 2012; 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, Hearing Examiner and/or Board 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. 2013-001](#), 2013; [Ord. 2012-009](#), 2012; Ord. 2007-22, 2007; Ord. 96-19 (part), 1996; Res. 83-10, 1983)

17.60A.040 Fees.

Repealed by [Ord. 2017-001](#). ([Ord. 2017-001](#), 2017; [Ord. 2013-001](#), 2013; Ord. 2007-22, 2007; Ord. 88-4 § 11 (part), 1988; Res. 83-10, 1983)

17.60A.050 Affected area of use.

Repealed by Ord. 96-19. (Ord. 2007-22, 2007; Ord. 88-4 § 11 (part), 1988; Res. 83-10, 1983)

17.60A.060 Hearings – Appeal.

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

17.60A.070 Appeal.

Repealed by Ord. 9619. (Ord. 2007-22, 2007; Ord. 88-4 § 11 (part), 1988; Res. 83-10, 1983)

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. 2013-001](#), 2013; Ord. 2007-22, 2007)

17.60A.090 Expiration

A conditional use permit shall become void five (5) years after approval or such other time period as established if the use is not completely developed. Said extension shall not exceed a total of ten (10) years and said phases and timelines shall be clearly spelled out in the application. ([Ord. 2013-001](#), 2013; [Ord. 2012-009](#), 2012; Ord. 2007-22, 2007)

17.60A.095 Modification

Any change, enlargement or alteration in such use shall require a new review and new conditions may be imposed where finding requires. ([Ord. 2013-012](#), 2013; [Ord. 2013-001](#), 2013)

17.60A.100 Revocation or limitation.

The Board may hold a hearing to revoke or additionally limit a conditional use permit granted pursuant to the provisions of this Chapter. Ten (10) days prior to the hearing, notice shall be delivered in writing to the applicant and/or owner of the property for which such conditional use permit was granted. Notice shall be deemed delivered three (3) days after being mailed, first class postage paid, to the owner as shown on the current tax rolls of the County.

A conditional use permit may be revoked or limited by the Board if any one (1) of the following findings can be made:

1. That circumstances have changed so that 1 or more of the Conditions of [17.60A.020](#) are no longer met;
2. That the conditional use permit was obtained by misrepresentation or fraud;
3. That one or more of the conditions of the conditional use permit have not been met;
4. That the use for which the conditional use permit was granted had ceased or was suspended for twelve or more consecutive calendar months;
5. That the actual or permitted use is in violation of any statute, ordinance, law, or regulation; or
6. That the use permitted by the conditional use permit is detrimental to the public health, safety or welfare or constitutes a nuisance.

The Board's decision shall be subject to judicial appeal under the provisions of KCC Chapter [15A.08](#).

The Board's decision shall not be effective for twenty-one (21) days after being entered. The Superior Court in reviewing the Board's decision to revoke a CUP may grant a stay during the pendency of any appeal upon a finding that such a stay is necessary to avoid manifest injustice or upon stipulation by the County. ([Ord. 2013-001](#), 2013; Ord. 2009-22, 2009)