

Proposed Amendment to Chapter 2, Comprehensive Plan Regarding Water Rights

2.2.3 Private Property and Water Rights

Kittitas County recognizes private property rights and as such includes reference to Ordinance No. 96-09, an ordinance enabling a private property taking impact analysis within Kittitas County. In addition, Kittitas County recognizes the importance of agriculture and has addressed appropriate protection mechanisms through those policies contained in Kittitas County Code Section 17.74, Right to Farm for the Protection of Agricultural Activities.

GPO 2.25A Kittitas County will administer this Chapter in accordance with the United States and State of Washington constitutional provisions for the protection of private property rights and provision of due process. As set forth in WAC 365-195-720 [Procedural Criteria], the county in administering this ordinance, “should refer to all sources at all levels of government, including federal and state constitutions, federal and state statutes, and judicial interpretations thereof.”

GPO 2.25B Should any provisions of this ordinance be in violation of constitutional requirements or of recent court decisions, the Planning Director will advise the Board of the provisions in violation, and whether the violation is a requirement of the State of Washington or a regulation or policy of the county. If the violation is a requirement of the state, the Washington State Attorney General’s Office will be advised. If the violation is a county requirement, the Board of County Commissioners will schedule a public meeting to consider removing or amending such section or policy.

GPO 2.25C Kittitas County will place a high priority in the Kittitas County Comprehensive Plan on the following state goal:

RCW 36.70A.020(6) Property Rights. Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions.

Water Rights

Water rights are property rights held by individual citizens, irrigation entities, municipalities, public and private utilities and governments including Indian tribes and nations. Water rights are recognized by state law RCW 90.023.010 Surface Waters and RCW 90.44.035 Ground Waters.

Surface water rights within Kittitas County are being adjudicated in ~~Yakima Superior Court~~ an in the action commonly known as Acquavella.

Kittitas County does, under its authority from the Growth Management Act, have a duty and the authority to protect ground and surface water. Kittitas County may place limitations on the establishment of new uses of groundwater based on the county’s authority to protect ground and surface water. Restrictions on the establishment of new uses of groundwater do not interfere with existing rights because a water right does not become a vested property right until after the

water is put to beneficial use. The requirements set forth in Kittitas County Code are therefore not restrictions on water rights but rather are requirements for the establishment of new uses of water.

The Growth Management Act requires Counties to protect the quantity and quality of ground and surface water. The Washington Supreme Court has recently held that this protection of ground and surface water by municipalities planning under the Growth Management Act will take the form of, among other things, determining whether an applicant is in compliance with the groundwater permit/exemption from permitting statute or determining, at final plat-stage, whether proposed provision of water is legally possible or actually met and making the actual possession of legal rights in an adequate amount of water a condition of final plat approval. Kittitas County recently eliminated its administrative segregation provisions partially because that process failed to protect ground and surface water.

In addition, recent studies confirm that groundwater and surface water in the Yakima River drainage are hydraulically connected and that new uses of groundwater can interfere with senior water rights and stream flows. The restrictions imposed on new uses of groundwater set forth in the Kittitas County Code are enacted to address this situation.

The County does not view the restrictions set forth in the Code as establishing new land use requirements. Rather, the County views the restrictions as the method by which the County will determine that property owners are meeting the existing legal requirement for demonstrating an adequate water supply. In the event that the restrictions are viewed as potentially subject to vesting, Kittitas County hereby finds that new uses of groundwater that are not mitigated in the Yakima River drainage basin threaten to interfere with senior water rights and stream flows and create a public health and safety threat that warrants application of these provisions to existing lots as allowed by RCW 58.17.170(3).

Protection of ground and surface water will help protect rural character. Development that is less dense and involves larger lots will protect water quality and quantity. By seeking to protect water quality and quantity by generally, in the rural areas, favoring development that is less dense and features larger lot sizes, the rural character will be maintained because rural character is typified by large lots and less dense development.

~~Kittitas County affirms existing water rights and uses and shall have no power of eminent domain or authority to impair by any county action, ordinance, or policy, including that of watershed planning agencies, (a) any lawful water right or use; (b) the capability of water suppliers or users to store, divert, convey, deliver, and apply the water to beneficial use in the exercise of those rights; (c) the continuation of existing land uses dependent on, or benefited by, those water rights and uses.~~

~~In defining water rights for purposes of these agricultural land uses, no water rights under State law, including the Acquavella litigation, are available for fish or wildlife habitat without~~

~~voluntary agreement of the water and/or land owner affected. Water rights and waters covered by the stipulation entered in the Acquavella adjudication as to all parties in Kittitas County dealing with water rights as confirmed for Non-Diversiory Stock and Wildlife watering are incorporated by reference and set forth as follows for clarity:~~

~~GPO 2.26A Waters in natural watercourses in the sub-basin shall be retained when naturally available, in an amount not to exceed 0.25 cubic foot per second (cfs), for stock water uses in such watercourses as they flow across or are adjacent to lands, which are now used as pasture or range for livestock. Retention of such water shall be deemed senior (or first) in priority, regardless of other rights confirmed in this cause. Regulation of these watercourses by plaintiff shall be consistent with such retention requirements.~~

~~GPO 2.26A Waters in natural watercourses in the sub-basin shall be retained when naturally available, in an amount not to exceed 0.25 cubic foot per second (cfs), for wildlife watering uses in such watercourses as they flow across or are adjacent to lands, which are now used as pasture or range for wildlife. Retention of such water shall be deemed senior (or first) in priority.~~

~~GPO 2.26D Waters in naturally occurring ponds and springs (with no surface connection to a stream) in the sub-basin shall be retained for wildlife watering uses, when such ponds and springs are located on or are adjacent to lands which are now used as pasture or range for wildlife. Said uses embody entitlement to a level in the water bodies sufficient to provide water for wildlife drinking directly from there while ranging on riparian lands, and with the same priority as provided in paragraph 1. Regulation of the ponds and springs by plaintiff shall be consistent with such retention requirements.~~

~~GPO 2.26E Nothing in this stipulation mandates that any lands, associated with water rights or water retention as provided herein shall be reserved for wildlife purposes.~~

Development Regulations Regarding Adequate Provision of Potable Water

Chapter 13.35

ADEQUATE WATER SUPPLY DETERMINATION

Sections

13.35.010 Authority.

13.35.020 Applicability.

~~13.35.025~~ Required Submissions

13.35.025 Interim Measures

13.35.027 Permanent Measures

13.35.028 Applicability Outside Yakima River Drainage

13.35.030 Group A Public Water System Requirements.

13.35.040 Group B Water System Requirements.

13.35.050 Individual Water System Requirements.

13.35.060 Shared Water System Requirements.

13.35.010 Authority.

The Health Officer of the Kittitas County Public Health Department has the authority, on behalf of the County, to ascertain whether there is evidence of an adequate water supply, including whether proposed water systems comply with all state and local engineering, design and construction standards as set forth in the Joint Plan of Responsibility between the State of Washington Department of Health and the Kittitas County Public Health Department. (Ord. 2011-006, 2011)

13.35.020 Applicability.

~~(1) An Adequate Water Supply Determination is required of all persons who are applying for a building permit with either:~~

All new uses of water must comply with KCC 13.35.025-Interim Measures or KCC 13.35.027-Permanent Measures as applicable. An Adequate Water Supply Determination is required of all persons who are:

1) applying for a building permit with either:

a) a proposed new structure which will have potable water or

b) a proposed change in the number of dwelling units for any existing structures (such as making a single family structure into a duplex); or

~~b) proposing extensive changes to the old water system where the changes have the potential to negatively impact the water systems flow~~

~~e) a proposed change in the number of dwelling units for any existing structures~~
~~d) 2)proposing a new or supplemental water system(2)~~
~~(3) Proposing extensive changes to the old water system where the changes have the potential to negatively impact the water systems flow.~~

2) making applications, including but not limited to, long plats, short plats, binding site plans, large lot subdivisions, or conditional uses, that require water.

An Adequate Water Supply Determination shall not be required for building permits that do not require a change in the water system or structures which will not have potable water plumbing. (Ord. 2011-006, 2011) Kittitas County hereby finds that new uses of groundwater that are not mitigated in the Yakima River drainage basin threaten to interfere with senior water rights and stream flows creating a public health and safety threat that warrants elimination of all vesting under RCW 58.17.170(3) for this chapter. Kittitas County hereby eliminates all such vesting pursuant to the authority granted in RCW 58.17.170(3) for this chapter.

13.35.025 Interim Measures

(1) Effective Period- March 31, 2014 to October 1, 2015 and applicable to all areas within the Yakima River drainage.

(2) All proposed land division and building permit applicants shall submit either: 1) a letter from a water purveyor stating that the purveyor has adequate water rights and will provide the necessary water for the applicant's project; 2) an adequate water right for the proposed project; or 3) a certificate of water budget neutrality from the Department of Ecology or other adequate interest in water rights from a water bank. No project to which this chapter is applicable shall be approved without one of these required submissions.

(3) All applicants for land divisions shall also submit information on "proximate parcels" held in "common ownership" as those terms are defined in WAC 173-539A-030 and otherwise demonstrate how the proposed new use will not violate RCW 90.44.050 as currently existing or hereafter amended.

(4) All proposed new instances of groundwater use for non-commercial lawn or garden purposes shall need to demonstrate either (1) ownership of an adequate water right or (2) adequate mitigation has been purchased.

(5) All new proposed commercial and industrial uses shall need to demonstrate either (1) ownership of an adequate water right, (2) connection to a municipal water purveyor, or (3) purchase of adequate mitigation.

(6) All mitigation during the Interim Measures shall be for Total Water Supply Available at Parker (TWSA at Parker).

(7) Failure to obtain mitigation before commencement of an activity requiring mitigation shall be a code violation subject to enforcement under Title 18 KCC.

(8) Violation of water limits involved in the mitigation agreement shall be a matter between the land owner and the provider of mitigation and enforceable as provided in said mitigation agreements.

(9) Adequacy of mitigation shall be determined by the Department of Ecology and a letter to the purchasing applicant attesting to the adequacy of the mitigation purchased shall issue and be presented to Kittitas County.

13.35.027 Permanent Measures

(1) Effective Date 10/1/15-onward and applicable to all areas in the Yakima River drainage.

(2) All new uses of ground water shall require either: 1) a letter from a water purveyor stating that the purveyor has adequate water rights and will provide the necessary water for the new use; 2) an adequate water right for the proposed new use; or 3) a certificate of water budget neutrality from the Department of Ecology or other adequate interest in water rights from a water bank. No new use to which this chapter is applicable shall be approved without one of these required submissions.

(3) All applicants for land divisions shall also submit information on “proximate parcels” held in “common ownership” as those terms are defined in WAC 173-539A-030 and otherwise demonstrate how the proposed new use will not violate RCW 90.44.050 as currently existing or hereafter amended.

(4) Failure to obtain mitigation before commencement of an activity requiring mitigation shall be a code violation subject to enforcement under Title 18 KCC.

(5) Violation of water limits involved in the mitigation agreement shall be a matter between the land owner and the provider of mitigation and enforceable as provided in said mitigation agreements.

(6) Adequacy of mitigation shall be determined by the Department of Ecology and a letter to the purchasing applicant attesting to the adequacy of the mitigation purchased shall issue and be presented to Kittitas County.

(7) All mitigated water uses shall also demonstrate that they are metered and monitored annually in accord with the agreement between the land owner and the mitigation provider.

(8) All mitigation during the Permanent Measures shall be for TWSA Parker and local tributary impairment.

13.35.28 Applicability Outside Yakima River Drainage

Applicants for land divisions within Kittitas County and outside the Yakima River drainage will need to comply with KCC 13.35.025(3) regardless of the date of project application.

13.35.030 Group A Public Water System.

Applicants for an Adequate Water Supply Determination where the source is a Group A public water system shall provide to KCPHD:

1. A completed Adequate Water Supply Determination application signed by the water purveyor along with any applicable fees;
2. The final water system identification number from the Department of Health; and
3. Verification that the Department of Health operating permit is either in Yellow or Green status. Applicants for a building permit expecting to be supplied with drinking water from a purveyor with an operating permit in Red status (inadequate) or in Blue status (operating without design approval, or exceeded number of DOH-approved connections) will not be approved by KCPHD. (Ord. 2011-006, 2011)

13.35.040 Group B Public Water System.

Applicants for an Adequate Water Supply Determination where the source is a Group B public water system shall provide to KCPHD:

1. A completed application signed by the water purveyor along with any applicable fees;
2. The final water system identification number from the Department of Health; and
3. Certification that the Group B public water system has been constructed and maintained in accordance with the KCPHD or DOH approved plans and specifications, including up to date monitoring and financial information. (Ord. 2011-006, 2011)

13.35.050 Individual Water System.

Applicants for an Adequate Water Supply Determination with an individual water system shall meet the following requirements:

1. Application. Submit a completed application with any applicable fees to KCPHD.
2. Groundwater Well as Water Source. The water quality and quantity of the groundwater well shall be evaluated for an Adequate Water Supply Determination by KCPHD.
 - a. Water Quality. The water produced by the water source shall either:
 - i. Pass a water quality test with results submitted to KCPHD; or
 - ii. If the water fails the water quality test, then applicant shall
 1. Add a treatment system to raise the water quality to potable standards. ~~All treatment system designs shall be submitted by a professional engineer and bear the engineer's seal and signature.~~ The treatment system shall comply with all applicable federal , state and local regulations and shall protect the health and safety of the users of the system; and
 2. File a notice with the County Auditor describing the treatment system.
 - b. Water Quantity.
 - i. All wells to be used in an individual water system shall be constructed prior to the issuance of an Adequate Water Supply Determination.

- ii. A well log recorded within the last ten (10) years demonstrating a minimum flow of ~~five (5)~~ two (2) gallons per minute (GPM) for at least a two (2) hour period shall be submitted to KCPHD.
 1. If a well log is not available or the well log indicates a flow of less than ~~five (5)~~ two (2) GPM for a two (2) hour period, then a four-hour draw down test shall be submitted to KCPHD.
 2. A well log that was recorded more than ten (10) years ago may be accepted at the discretion of the Health Officer.
 - iii. The minimum acceptable production level where the water source is a well is three hundred fifty (350) gallons per day for an individual water system.
3. Water Distribution System. When the water source is a well and produces less than five gallons per minute (5 GPM) according to the well log or four-hour draw down test, adequate flow equalization is required for periods of higher use within the dwelling unit. The water distribution system design shall ~~be submitted by a professional engineer and bear the engineer's seal and signature and~~ meet the following requirements:
- a. Flow equalization tank requirements shall be determined by the following:
 $(150)(\underline{52}-X \text{ gpm}) = \text{gallons of tank capacity needed}$ (where X = gallons per minute produced as determined by the four-hour draw down test). The required tank capacity could be as much as ~~263~~ 715 gallons depending on the flow of the well.
 - b. A booster pump and pressure tank shall be included in the water distribution system.
4. Cistern as Water Source. When the proposed water source is a cistern, the applicant for a Water Supply Determination shall comply with Chapter 13.25 KCC. (Ord. 2011-006, 2011)

13.35.060 Shared Water System.

Applicants for an Adequate Water Supply Determination with a connection to a shared water system shall meet the following requirements:

1. Application. Submit a completed application with any applicable fees to KCPHD. This includes a valid Shared Well Users Agreement signed by both users of the well that is recorded with the County Auditor.
2. Groundwater Well as Water Source. The water quality and quantity of the groundwater well shall be evaluated for an Adequate Water Supply Determination by KCPHD.
 - a. Water Quality. The water produced by the water source shall either:
 - i. Pass a water quality test with passing results submitted to KCPHD; or
 - ii. If the water fails the water quality test, then applicant shall:
 1. Add a treatment system to raise the water quality to potable standards. ~~All treatment system designs shall be submitted by a professional engineer and bear the engineer's seal and signature.~~ The treatment system shall comply with all applicable federal, state and local regulations and shall protect the health and safety of the users of the system; and

2. File a notice with the County Auditor describing the treatment system.
- b. Water Quantity.
 - i. All wells to be used in a shared water supply system shall be constructed prior to the issuance of an Adequate Water Supply Determination.
 - ii. A well log recorded within the last ten (10) years demonstrating a minimum flow of ~~seventeen (17)~~ five (5) gallons per minute (GPM) for at least a two (2) hour period shall be submitted to KCPHD.
 1. If a well log is not available or the well log indicates a flow of less than ~~seventeen (17)~~ five (5) GPM for the two (2) hour period, then a four-hour draw down test shall be submitted to KCPHD.
 2. A well log that was recorded more than ten (10) years ago may be accepted at the discretion of the Health Officer.
 - iii. The minimum acceptable production level for a shared water supply system is seven hundred (700) gallons per day.
3. Water Distribution System. When the water source produces less than ~~seventeen (17)~~ five (5) gallons per minute according to the well log, adequate flow equalization is required for periods of higher use within the two dwelling units. The water distribution system design shall be submitted by a licensed engineer, bear the engineer's seal and signature, and meet the following requirements:
 - a. Flow equalization tank requirements shall be determined by the following:
 $(150)(\del{17-5}-X \text{ gpm}) = \text{gallons of tank capacity needed}$ (where X = gallons per minute produced as determined by the four-hour draw down test). The required tank capacity could be as much as ~~2500~~ 675 gallons depending on the flow of the well.
 - b. A booster pump and pressure tank shall be included in the water distribution system. (Ord. 2011-006, 2011)

Title 16 SUBDIVISIONS

16.05.20 Requirements.

(1) Whenever a binding site plan for an eligible project is proposed on a parcel of land for which neither a planned unit development or a building permit has been approved for the entire parcel, the following must be satisfied prior to recording: A conceptual site plan shall be prepared in a form prescribed by the director which includes the following information (if appropriate to the project type):

- a) Maximum number of dwelling units permitted;
- b) Approximate size and location of all proposed buildings;
- c) Approximate layout of an internal vehicular circulation system, including proposed ingress and egress;
- d) Approximate location of proposed open space, including required landscaped areas, if any;
- e) Approximate location of parking areas;
- f) Location and size of utility trunk lines serving the site;
- g) Topography detailed to five-foot intervals;
- h) Location of water storage and fire hydrant location; and
- i) Demonstrate that the requirements of Chapter 13.35, Kittitas County Code, Adequate Water Supply Determination, can be met.

16.12.150 Road, Sewer, Water and Fire System Recommendations.

The Planning Official, county Public Works Director, county Health Officer, and the county Fire Marshal, shall certify to the Hearing Examiner, prior to the hearing, their respective recommendations as to the adequacy of the proposed road system; the proposed sewage disposal and potable water supply systems; compliance with Kittitas County Code Chapter 13.35, Adequate Water Supply Determination; and fire and life safety protection facilities within the subdivision.

16.32.050 Short plat review.

The planning official shall be vested with the responsibility of processing short plat applications. The county shall review and consider the proposed short subdivision with regard to:

- A. Its conformance with all county subdivision, zoning, health and sanitation, roads and bridges, and fire and life safety regulations and with laws adopted by the state of Washington.
- B. Its conformance to all standards and improvements required under this title.
- C. Potential hazards created by flood potential, landslides, etc.
- D. Provisions for all improvements and easements (roads, ditches, etc.) required by this title.
- E. Access for all proposed lots or parcels by way of a dedicated road right-of-way or easement.
- F. All other relevant facts which may determine whether the public interest will be served by approval of the proposed subdivision.
- G. Lots or parcels created by the final platting of a subdivision or short subdivision may not be further divided within a five-year period without filing of a final plat; except as provided for in RCW 58.17.060 (Ord. 2011-013, 2011; Ord. 2005-31, 2005)
- H. Its compliance with Kittitas County Code Chapter 13.35, Adequate Water Supply Determination.

16.36.015 Criteria for eligibility as a large lot subdivision.

- A. All large lot subdivisions shall conform to the county comprehensive plan and all zoning regulations in effect at the time the large lot subdivision is submitted.
- B. Consistent with parcel creation by long and short subdivision provisions of this code, preliminary approval of large lot subdivisions shall mean that road and access requirements are identified and conformance with section 16.04 of this code has been met.
- C. Proof that all lots or tracts created by large lot subdivision are approved for irrigation delivery by the appropriate irrigation entity or entities shall be provided.
- D. Requirements for easements as set forth in Section 16.12.110 shall be met.
- E. The appropriate dedication as provided for in 16.24.090 and 16.24.110, A dedication shall appear on the face of the large lot subdivision survey with the following statement: KNOWN ALL MEN BY THESE PRESENT: that the undersigned, owner(s) in fee simple of the described real property, does hereby grant forever unto all owners of lots in this survey and all future plats in this survey a common ownership interest in all private roads shown.
- F. A note shall appear on the subdivision survey with the following statement:
"NOTE: The lots in this survey are created through the large lot subdivision review

process. As such there has been review for conformance with suitability for on-site sewage disposal and availability of potable water."

- G. All large lot subdivisions shall contain information set forth in Sections [16.12.010](#) through [16.12.030](#). (Ord. 2005-31, 2005)
- H. All large lot subdivisions shall meet requirements of Kittitas County Code Chapter 13.35, Adequate Water Supply Determination.

Chapter 17.60A

CONDITIONAL USES

17.60A.020 Conditions.

In permitting such uses the 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. Requiring or limiting view-obscuring fencing, landscaping or other facilities to protect adjacent or nearby properties;
8. Limiting the number, size, height, shape, location and lighting of signs;
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. (Ord. 2012-009, 2012; Ord. 2007-22, 2007; Ord. 88-4 § 11 (part), 1988)
14. Demonstrating that the requirements of Chapter 13.35, Kittitas County Code, Adequate Water Supply Determination, can be met.

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