

OKANOGAN COUNTY COMMISSIONERS

ORDINANCE NO. 2014 - 10

An ordinance amending Okanogan County Code 14 Environmental Policy to update the process for the review of appeals brought against the administrative decisions made by the SEPA Responsible Official.

WHEREAS: Okanogan County has adopted Okanogan County Code 14.04 Environmental Policy consistent with the authority granted and direction given them by RCW 43.21C State Environmental Policy Act and WAC 197-11 SEPA Rules, and

WHEREAS: RCW 43.21C.060 allows an appeal to a local legislative body of any decision by a local nonelected official conditioning or denying a proposal under authority of SEPA. Agencies may establish procedures for such an appeal, or may eliminate such appeals altogether, by rule, ordinance or resolution. Such appeals are subject to the restrictions in RCW 36.70B.050 and 36.70B.060 that local governments provide no more than one open record hearing and one closed record appeal for permit decisions, and

WHEREAS: The State Environmental Policy Act RCW 43.21C finds that a major purpose of this chapter is to combine environmental considerations with public decisions, any appeal brought under this chapter shall be linked to a specific governmental action. The State Environmental Policy Act provides a basis for challenging whether governmental action is in compliance with the substantive and procedural provisions of this chapter. The State Environmental Policy Act is not intended to create a cause of action unrelated to a specific governmental action.

WHEREAS: In 2014 the Okanogan Board of County Commissioner opted to utilize the Office of Hearing Examiner for the review and decision of certain land use applications and appeal processes as authorized in OCC 2.65 adopted in 1994, and

WHEREAS: The Okanogan Board of County Commissioners desired to maintain a clear separation between the quasi-judicial duties of the Hearing Examiner and the legislative duties of the Regional Planning Commission and the Board of County Commissioners, and

WHEREAS: The Okanogan County Commissioners finds the current administrative appeals process found in OCC 14.04.220 is not consistent with applicable Washington State law, be it therefore

THEREFORE BE IT ORDAINED: The Okanogan Board of County Commissioners adopts the amendments to Okanogan County Code 14.04.220 Appeals found in attachment A to this ordinance, and be it further

BE IT FURTHER ORDAINED: Adopts attachment B findings of fact and attachment C conclusions of law.

DATED at Okanogan, Washington this 29 day of September, 2014.

**BOARD OF COUNTY COMMISSIONERS
OKANOGAN, WASHINGTON**

Ray Campbell
Ray Campbell, Chairman

Sheilah Kennedy
Sheilah Kennedy, Member

Jim DeTro
Jim DeTro, Member



ATTEST:

Lalena Johns
Lalena Johns, Clerk of the Board

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Attachment A

OCC 14.04.220 Appeals.

A. Okanogan County establishes the following administrative appeal provisions pursuant to RCW 43.21C.075 and WAC 197-11-680:

1. (a) An appeal from a final determination on quasi-judicial applications by the responsible official must be filed, in writing, with the administrator for the Office of Hearing Examiner. The appeal must be received or postmarked within 15 calendar days after the final determination has been published in the official county newspaper.

(b) A threshold determination may not be appealed, except, a threshold determination of significance may be appealed in accordance with this section.

(c) No threshold or final determination regarding a legislative proposal may be appealed, unless the determination is connected to an appeal of the government's final decision on the proposal.

(d) All appeals filed in accordance with this section shall be heard by the Hearing Examiner in accordance with OCC 2.65.
2. Failure to comment on the threshold determination shall deny a party standing to appeal the final determination.
3. All appellants under subsection 1 shall state, with specificity and the reasons therefor, all elements of the environmental checklist and final determination that are inadequate. Failure to state specific grounds for objections in the notice of appeal shall constitute a waiver of those objections.
4. If there is an appeal in cases where an environmental impact statement has been prepared on a quasi-judicial application, and the appeal relates to the adequacy of specific elements, it must be filed in writing with the administrator for the Office of Hearing Examiner. The appeal must be received or postmarked within 15 calendar days after notice of the final environmental impact statement has been published in the official county newspaper.

(a) Failure to comment on the draft EIS during the applicable comment period will deny a party standing to appeal the adequacy thereof. All appeals under subsection (4) shall state, with specificity, all elements of the draft EIS that the appellant finds inadequate and shall state the reasons therefor. Failure to state the specific grounds for objections in the notice of appeal shall constitute a waiver of those objections.
5. All hearings on a quasi-judicial application reviewable under SEPA shall be held only after the appeal period has passed. In all cases where an open record hearing is required for the underlying application, any hearing to consider an appeal brought under this section shall be consolidated with the open record hearing.

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Attachment B
Findings of Fact

- 1) Revised Code of Washington (RCW) 43.21C and WAC 197-11 authorize counties to adopt regulation, subject to certain requirements, which provides for the environmental review of qualifying projects and certain government actions.
- 2) Okanogan County adopted ordinance 76-13 adopting OCC 14.04 Environmental Policy in which established the process for appeals of administrative decisions in section OCC 14.04.220.
- 3) In 1994 Okanogan County adopted ordinance 94-15 creating the Office of Hearing Examiner as an alternative process for the review of land use applications. The ordinance was codified as Okanogan County Code (OCC) 2.65.
- 4) Beginning in 2014 The Okanogan Board of County Commissioners (BOCC) elected to utilize the Office of Hearing Examiner for certain land use applications and administrative appeals.
- 5) Staff review of OCC 2.65 discovered inconsistencies with the duties assigned to the Hearing Examiner (HE) by local code versus the duties the BOCC wanted the HE to perform. The language of OCC 2.65 as adopted in 1994 was outdated and inconsistent with applicable state statutes and other local codes such as OCC 16 Subdivisions and OCC 17 Zoning.
- 6) When the BOCC was made aware of the inconsistencies found in OCC 2.65 they ordered staff from the planning department, working with the Chief Civil Deputy, to propose amendments to correct the inconsistencies and bring OCC 2.65 up to date.
- 7) During the course of review of OCC 2.65 staff determined a new code section creating a consistent process for processing the appeal of administrative decisions should be proposed concurrent with the review of OCC 2.65. After consultation with the BOCC staff created OCC 2.67 Administrative Appeals for consideration.
- 8) During the course of review of OCC 2.65 and the subsequent creation of new section OCC 2.67 staff determined the appeal process for OCC 14.04.220 Environmental policy should remain separate from the process for appeals of other administrative decisions due to the nature of the SEPA process and the direction found in RCW 43.21C and WAC 197-11 for the processing of appeals brought against SEPA decisions. After consultation with the BOCC staff prepared amendments to OCC 14.04.220 Appeals for consideration.
- 9) The BOCC finds that RCW 36.70B.050 directs that each local government shall provide by ordinance or resolution for review of permit applications to achieve the following objectives:
 - 1) Combine the environmental review process, both procedural and substantive, with the procedure for review of project permits, and
 - 2) Except for the appeal of a determination of

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Attachment B Continued
Findings of Fact

significance as provided in RCW 43.21C.075 provide for no more than one open record hearing and one closed record appeal.

- 10) The BOCC finds that RCW 43.21C.075 establishes requirements and policies for the consideration of the appeal of administrative decisions made pursuant to implementation of the State Environmental Policy Act.
- 11) The BOCC finds that Washington Administrative Code (WAC) 197-11-680 authorizes counties to establish process by which the appeal of administrative decisions will be considered or may eliminate administrative appeals entirely by rule, ordinance, or resolution.
- 12) The BOCC finds that WAC 197-11-680 does not allow the appeal of a threshold (preliminary) determination made by the SEPA Responsible Official; except a threshold determination of significance may be appealed.
- 13) The SEPA Responsible Official for Okanogan County reviewed the proposed amendments and determined they were categorically exempt from SEPA review in accordance with WAC 197-11-800 (19) Procedural Actions.
- 14) A public notice was published on September 10, 2014 which scheduled a public hearing for September 22, 2014 to consider the proposed amendments to OCC 2.65, OCC 14, OCC 15, OCC 16, and OCC 17 and a new section OCC 2.67.
- 15) The BOCC conducted the public hearing as scheduled at which the proposed amendments, staff report, and written comments submitted prior to the hearing were placed into the record. Testimony was taken from those present and wishing to be heard. Additional written comments were submitted.
- 16) The BOCC considered the verbal and written information placed into the record.
- 17) The BOCC finds that RCW 36.32.330 directs that decisions of the BOCC are appealed to Superior Court subject to applicable statutes.
- 18) The BOCC finds that RCW 36.70C Land Use Petition Act directs the process by which local land use final decisions are appealed to Superior Court.
- 19) The BOCC finds that eliminating the administrative appeal process for SEPA determinations made during the review of legislative proposals removes an unnecessary and confusing step in the public process and will create a more direct line for public input during the

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consideration of legislative proposals and ensures that the necessary connection between environmental review and the final legislative decision is preserved.

- 20) The BOCC finds that preserving the administrative appeal process for final SEPA decisions or threshold determinations of significance made during quasi-judicial (project proposal) review enhances the public review process and hence promotes the public health, safety, and welfare.
- 21) After consideration of the information presented the BOCC voted to approve the amendments as proposed and directed staff to prepare enabling documents.
- 22) The BOCC continued the public hearing to September 29, 2014 for review and adoption of an ordinance amending OCC 14.04.220 Appeals.

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Attachment C
Conclusions of Law

- 1) Okanogan County is authorized by the Revised Code of Washington (RCW) 36.70 Planning Enabling Act, RCW 58.17, RCW 36.70B and other applicable statutes to adopt land use controls and regulatory processes by which those controls are enforced.
- 2) Okanogan County is authorized by law to provide a process for the appeal of administrative decisions made by department staff in the course of enforcing the codes under their purview and concludes the availability of these processes promote the public health safety and welfare.
- 3) RCW 43.21C.075 establishes requirements and policies for the consideration of the appeal of administrative decisions made pursuant to implementation of the State Environmental Policy Act.
- 4) Washington Administrative Code (WAC) 197-11-680 authorizes counties to establish process by which the appeal of administrative decisions will be considered or may eliminate administrative appeals entirely by rule, ordinance, or resolution.
- 5) The BOCC has determined that amendments to OCC 14.04.220 Appeals are necessary to bring that code section into compliance with other local land use regulation as well as RCW 43.21C, RCW 36.70B, RCW 36.70C, WAC 197-11 and other applicable state statutes.
- 6) At the direction of the BOCC staff prepared amendments to OCC 14.04.220 as well as OCC 2.65, OCC 15, OCC 16, OCC 17 and a new section OCC 2.67 Administrative Appeals.
- 7) On September 22, 2014 the BOCC conducted a properly noticed public hearing to consider amendments to OCC 14.04.220, OCC 2.65, OCC 15, OCC 16, OCC 17 and a new code section OCC 2.67 Administrative Appeals.
- 8) At the conclusion of the public hearing and after considering the public testimony and other information presented ordered the preparation of ordinances adopting the proposed amendments.
- 9) At a continued public hearing held on September 29, 2014 the BOCC adopted by ordinance amendments to OCC 14.04.220 to provide a consistent process for the appeal of administrative decisions made pursuant to OCC 14.04 Environmental Policy. The amendments are compliant with RCW 43.21C Washington state Environmental Policy Act, WAC 197-11 SEPA Rules, RCW 36.70B and other afore cited Washington State statutes.