



Notice of Hearing Examiner Dismissal

7/22/2026

To: Interested Parties and Parties of Record

RE:

Project Name:	KITSAP CCS LLC - Administrative Appeal of SDAP-COMM 25-00823
Appellants:	Ella Irwin 26509 Bond Rd NE Kingston, WA 98346; Caitlyn Hatchel 26499 Bond Rd. NE Suite B Kingston, WA 98346; Michael Wong 26343 Bond Rd NE Kingston, WA 98346
Appellants' Representative:	Duncan Greene 524 Second Avenue, Suite 500 Seattle, WA 98104
Applicant:	Kitsap CCS LLC PO Box 11109 Bainbridge Island, WA 98110
Application:	ADMIN APPEAL
Permit Number:	26-01252

The Kitsap County Hearing Examiner has **DENIED** the Request for Reconsideration. The Kitsap County Hearing Examiner has **DISMISSED** the appeal of **26-01252: KITSAP CCS LLC - Administrative Appeal of SDAP-COMM 25-00823 – ADMIN APPEAL**, subject to the conditions outlined in this Notice and included Dismissal. The June 1, 2026 Order/Final Decision Granting Motion to Dismiss is sustained without modification.

THE DECISION OF THE HEARING EXAMINER IS FINAL, UNLESS TIMELY APPEALED, AS PROVIDED UNDER WASHINGTON LAW.

The applicant is encouraged to review the Kitsap County Office of Hearing Examiner Rules of Procedure found at <https://www.kitsap.gov/dcd/HEDocs/HE-Rules-for-Kitsap-County.pdf>.



Please note affected property owners may request a change in valuation for property tax purposes, notwithstanding any program of revaluation. Please contact the Assessor's Office at 360.337.5777 to determine if a change in valuation is applicable due to the issued Decision.

The complete case file is available for review by contacting the Department of Community Development. If you wish to view the case file or have other questions, please contact help@kitsap1.com or 360.337.5777.

CC:

Applicant/Owner: Kitsap CCS LLC, kitsapccs65@gmail.com

Applicant's Authorized Agent: Team 4 Engineering, permits@team4eng.com

Appellants: Ella Irwin, ella@rundogrun.com; Caitlyn Hatchel,

hoodcanalbrewery@gmail.com; Michael Wong, mwong@mac.com

Appellant's Representative: Duncan Greene with Cairncross & Hempelmann, dgreene@cairncross.com

County Representative: Lisa Nickel, lnickel@kitsap.gov

Interested Parties: None

DCD Staff

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BEFORE THE

KITSAP COUNTY HEARING EXAMINER

IN RE:

Kitsap CCS, LLC
SDAP Appeal
SDAP 25-00823

ORDER DENYING
RECONSIDERATION

Overview

The Appellant’s Motion for Reconsideration is denied. The Appellant has not established a material question of fact as to whether the proposal will trigger any added water quality treatment or restrictions under the County’s stormwater standards or whether the proposed use is subject to the County’s critical aquifer recharge area (CARA) standards. The County’s stormwater standards impose specific water quality best management practices (BMPs) and performance standards for specified levels of contaminants qualifying as “suspended solids.” No evidence was presented as to whether any contaminant generated by the proposal would dissolve as suspended solids or that the approved BMPs would not suffice to meet required performance standards. The proposed use is also clearly not subject to any restrictions or mitigation under the County’s CARA standards.

The most significant and intriguing issue raised by this appeal is whether the Kitsap Stormwater Manual¹ is designed to address stack emissions. As identified in the Order Granting Motion to Dismiss, the Manual makes almost no reference stack emissions except that such emissions are controlled at the point of origin. There are no Manual BMPs that control emissions at the stack. As noted in the Order, it makes little sense to

¹ References to “Kitsap Stormwater Manual” and variants thereto are more precisely the 2021 Kitsap County Stormwater Design Manual adopted by KCC 12.04.020.

1 control emission impacts at the impact point since air emissions extend much further than
2 a project site.

3 Most helpful would have been declarations from stormwater engineers clarifying the
4 applicability of the Kitsap Manual to stack emissions. The Manual is a highly technical
5 regulatory tool the implementation of which is dependent upon the technical expertise of
6 a stormwater engineer. As discussed below, the Manual water quality standards are
7 limited to water quality BMPs and standards that only apply to specific types of
8 contaminants. The Appellant made no analysis of those Manual BMPs and standards.
9 The Order Granting Motion to Dismiss specifically identified the applicability of County
10 stormwater standards as a primary issue of concern. Outside of SEPA review, the
11 County's stormwater water quality treatment requirements are exclusively addressed by
12 the Manual.

13 A highly beneficial comment from a stormwater engineer would have been whether the
14 Kitsap Manual has ever been used to mitigate against stack emissions. Judicial notice is
15 taken that in the hundreds of decisions issued by the Examiner involving Kitsap Manual
16 review, no such stormwater review has ever applied BMPs to stack emissions. However,
17 very few of those projects involved any projects with smoke stacks. That is likely at least
18 in part because industrial projects are subject to separate industrial stormwater permit
19 review by the Washington State Department of Ecology (DOE). What is highly telling
20 from that industrial permit review is that, as discussed below, Clean Water Act
21 regulations governing such permits expressly exempt stack emissions subject to air
22 quality permits.

23 **Legal Analysis**

24 There is no material question of fact regarding whether the County's stormwater or
25 CARA standards would apply and/or result in any additional mitigation, restrictions or
26 design changes to the proposal,

27 As background, an Order Granting Motion to Dismiss was issued on June 1, 2026. The
28 Appellant filed a motion for reconsideration on June 8, 2026 and provided supplemental
29 briefing as authorized by the Examiner on June 22, 2026. The County filed a response
30 on July 6, 2026 and the Appellant on July 8, 2026. The reconsideration briefing was
accompanied by several declarations.

A technical memorandum² submitted by the Appellant with her June 22, 2016
reconsideration briefing addressed air emissions generated by the proposal. The

² The memorandum should have been presented as a declaration signed under oath for formal summary judgment review. Rules of evidence, however, are relaxed in informal local land use quasi-judicial

1 memorandum was prepared by Eric Albright and Joseph Kalmar. Both authors identify
2 that they have experience in air quality and stormwater evaluations. Mr. Albright and
3 Ms. Kalmar identify several toxins generated by crematorium smoke stacks, including
4 mercury, lead, arsenic and formaldehyde. The authors opine that “there is a potential
5 pathway” for the toxins to enter groundwater and/or stormwater. They do not identify
6 whether the proposed facility will generate toxin levels sufficient to materially and
adversely affect water quality, but rather assert that there is enough of a concern to merit
additional assessment. The County provides no expert opinion to the contrary.

7 Although Albright and Kalmar assert that they have experience with stormwater
8 evaluations, they make no mention of stormwater regulations in their memorandum.
9 Instead, they focus upon SEPA review. As concluded in the Order Dismissing Appeal,
10 SEPA compliance is beyond the scope of this review. The Albright/Kalmar analysis does
11 nothing to reasonably suggest that the air emissions of the proposal may trigger further
12 mitigation under the County’s stormwater standards. The Kitsap Manual has very
13 specific standards for treating water quality. Those standards are identified in Section
14 5.3.4, “Select BMPs for Runoff Treatment.” Those standards identify water quality
treatment design requirements based upon type of use, type of contaminant and types of
water bodies potentially affected.

15 Section 5.3.4 of the Kitsap Manual requires “basic” water treatment for the proposal.
16 “Basic” water treatment is required if a proposal creates more than 5,000 square feet of
17 pollution generating hard/imperious surface (PGIS) and more advanced treatment isn’t
18 triggered due to phosphorous, oil or metal contamination. According to the Applicant’s
19 stormwater report, the proposal creates more than 5,000 square feet of PGIS. No
20 phosphorous contaminants have been identified by the Appellant. Metal (also referenced
as enhanced) treatment also isn’t triggered because the proposal doesn’t discharge into
any bodies of water as specified for that type of treatment.

21 Section 5.3.4 specifies performance standards based upon the level of “suspended solids.”
22 The presences of “suspended solids” is the only type of contaminant subject to water
23 quality treatment. The Albert/Kalmar analysis makes no mention of whether smoke stack
24 emissions would dissolve in stormwater as a “suspended solid.” The analysis also makes
25 no mention of the adequacy of the water quality BMPs approved for the proposal as
26 referenced in the Applicant’s stormwater report. In short, although Albright/Kalmar raise
27 the “potential” that smokestack emissions may dissolve into stormwater and/or
28 groundwater, there is no information or opinion provided as to whether those emissions
would dissolve as “suspended solids” or that the water quality BMPs used for the project
would not be sufficient to treat the solids within required levels. Other than data showing

29 proceedings. The absence of sworn testimony is not found to significantly undermine the comments of
30 Eric Albright and Joseph Kalmer.

1 that the proposal could generate large quantities of airborne toxins, there is no evidence
2 or even expert opinion offered that these quantities could convert into “suspended solids”
3 in quantities large enough to violate the performance standards of the Kitsap Manual
4 subject to the water quality treatment proposed by the Applicant. Jumping to such a
5 conclusion from the indirect evidence provided by the Appellant’s experts is highly
6 conjectural and speculative. Speculation and conclusory statements will not preclude
summary judgment. *Strauss v. Premera Blue Cross*, 194 Wash. 2d 296, 301, 449 P.3d
640, 642 (2019)

7 Even if the Kitsap Manual could be used as an additional source of mitigation for the
8 smokestack emissions, application of the Manual would likely be preempted by state and
9 federal air quality standards. Additional research since the Order Granting Motion to
10 Dismiss further confirms that the Kitsap Manual is not designed to address smokestack
11 emissions. As noted in the Order, the Kitsap Manual expressly recognizes that stack
12 emissions are controlled at the point of origin. For smoke stacks, the point of origin of
13 course is the smoke stack. The Kitsap Manual has no BMPs addressing design standards
14 for smoke stacks. The Kitsap Manual is largely based upon requirements specified by
15 the Clean Water Act (CWA). A CWA regulation governing DOE issued Industrial
16 Stormwater General Permits provides further insight as to the contemplated relationship
17 between air quality and stormwater standards. 40 CFR 122.26(g) lists industrial activities
18 excluded from stormwater regulation. One of the conditions for that exclusion under 40
19 CFR 122.26(g)(4)(k) is that the discharge cannot include “[p]articulate matter or visible
deposits of residuals from roof stacks/vents not otherwise regulated, i.e., under an air
quality control permit, and evident in the storm water outflow..” This deference to air
quality standards is consistent with the principle that any dissolved emissions must
qualify as “suspended solids” under basic treatment.

20 In her reconsideration brief the Appellant cites to RCW 70A.15.2540 as counter to any
21 finding of preemption by air quality regulations. RCW 70A.15.2540 expressly states that
22 that rules adopted by an air pollution control authority like PSCAA supersede local
23 ordinances in matters involving the “control and enforcement of air pollution”
24 contemplated by the Clean Air Act, and it expressly preserves local regulation in related
25 areas like nuisances, workplace health-and-safety, and qualifying zoning performance
26 standards. That is a compelling point. Air quality standards may not fully preempt water
27 quality regulation of stack emissions. However, if that’s the case the Kitsap Manual
28 provisions cited as supporting a finding of preemption still establish that the Kitsap
Manual is not designed to address, restrict or mitigate smoke stack emissions. The record
still lacks any evidence that the crematorium emissions could be subject to any water
quality standard in the Kitsap Manual.

29 The applicability of CARA standards is more easily resolved than stormwater standards.
30 CARA regulations place no restrictions on crematoriums. The Appellant asserts that the

1 project site is located within a Category I CARA designation. CARA regulations are
2 limited to prohibiting specified uses in the Category I designation. See KCC
3 19.600.615A1. Crematoriums are not listed as a prohibited use. See KCC 19.600.620.
4 No other CARA regulations apply.

5 The Appellant's reconsideration motion contested the Examiner's limitation of new
6 evidence to stormwater and CARA impacts. Hearing Examiner Rule 2.12.1e limits any
7 new evidence to that "not available at the time of the hearing." Despite this rule and the
8 Examiner's authorization limited to stormwater/groundwater impacts, the Appellant still
9 submitted a declaration contesting the notice given for the decision under appeal. The
10 Appellant was given a full opportunity to present that evidence in her response to the
11 County's motion to dismiss. All of the information in the declaration was available at
12 the time the response was due. The Irwin declaration is stricken from the record.

13 The Appellant reconsideration request also contested the Examiner's alleged limitation
14 of reconsideration issues to the stormwater/groundwater issue. The Order Dismissing
15 Appeal did not purport to prohibit the consideration of any reconsideration issues. It did
16 not limit reconsideration issues to stormwater/groundwater impacts. It limited its
17 authorization of new evidence to those impacts.

18 The Appellant's reconsideration request again challenges the adequacy of notice of
19 application for the decision under appeal. For the reasons identified in the Order Granting
20 Motion to Dismiss, the only arguable defect in the postcard notice was the omission of
21 the proposed crematorium use. There is no question that the Appellant had actual notice
22 of the proposed crematorium use when she filed her April 7, 2026 appeal. When she
23 received actual notice, the SEPA appeal period may have expired. If that's the case the
24 Appellant should have identified the defect in postcard notice and requested a deadline
25 extension in her April 7, 2026 appeal. As noted in the Order Granting Motion to Dismiss,
26 any challenge to the SEPA threshold decision could not be amended into the April 7,
27 2026 appeal because the SEPA review is a separate transaction for purposes of appeal
28 amendments. The postcard notice is still found adequate.

29 **Decision Upon Reconsideration**

30 The June 1, 2026 Order/Final Decision Granting Motion to Dismiss is sustained without
modification. The Appellant's request for reconsideration is denied.

ORDERED this 22nd day of July 2026.

Phil Olbrechts
Kitsap County Hearing Examiner

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Appeal Right

Pursuant to KCC 21.04.290D, appeals of hearing examiner decisions on Type II appeals are the final land use decision of Kitsap County. Appeal of this decision is must be made to superior court as governed by the Land Use Petition Act, Chapter 36.70C RCW.

Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.