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NOTICE OF APPEAL

October 27, 2022

Co-Appellant:
Conservation Northwest
1829 10th Ave W, Suite B
Seattle, WA 98119

Co-Appellant:
Karl Flaccus
32 Gold Creek Lane
Snoqualmie Pass, WA
and
6845 47th Ave. NE
Seattle, WA 98115

To: Dan Carlson
Kittitas County Director of Community Development Services
411 N Ruby St., Suite 2,
Ellensburg, WA 98926

Re: Notice of Appeal - RZ-22-00005/CP-22-00005 Mardee Lake Determination of Non-Significance

Dear Director Carlson,

Conservation Northwest and Karl Flaccus (co-appellants) submit this appeal of Kittitas County Community Development Services' Determination of Non-Significance (DNS) for the proposed rezoning of Mardee Lake from Forest and Range with a Rural Working Land Use to Rural Recreation Zoning and Land Use (RZ-22-00005). This appeal challenges the rezoning decision and SEPA DNS which we believe to be clearly erroneous and inconsistent with the County's own Comprehensive Plan, the County Code, SEPA, the Federal Endangered Species Act, and other applicable law. Please consider this appeal both as a SEPA appeal and to inform the Board of County Commissioner's decision on the proposal.

[Appellants Interested in Decision](#)

Conservation Northwest (Co-Appellant)
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For over 25 years, Conservation Northwest has partnered with natural resource agencies, stakeholders, and Tribes to identify, plan, fund, and implement landscape-scale watershed restoration investments to address the barrier effects of I-90 and connect and enhance habitat to provide migratory corridors for fish and wildlife in the Snoqualmie Pass area – an area identified as a Connectivity Emphasis Area in the Snoqualmie Pass Adaptive Management Area Plan and critically important for wildlife movement (USFS 1997). Conservation Northwest spearheaded the Cascades Conservation Partnership and the I-90 Wildlife Bridges Coalition to reconnect Washington’s north and south Cascades by protecting and restoring habitat and establishing wildlife crossings under and over I-90. Conservation Northwest continues to work with the USFS, WSDOT, WDFW and others to protect and restore critical wildlife areas that invite safe wildlife travel through Washington’s Cascade Mountain Range. As detailed below, the proposed rezoning and associated development will undermine the benefits of the I-90 Wildlife Bridge Coalition, and thus harm Conservation Northwest’s deep interest in protecting and restoring wildlife populations in the area. Conservation Northwest has affected members that reside in Kittitas County and has long worked collaboratively on conservation projects in Kittitas County.

Karl Flaccus (Co-Appellant)
32 Gold Creek Lane
Snoqualmie Pass, WA
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Karl Flaccus has been a cabin owner in the Gold Creek Valley for 22 years. He cares deeply about Gold Creek Valley and its ecology and environment. He frequently visits the area proposed for rezoning and plans to do so in the future.

Appellants’ interest in the decision stems from decades of work on conservation projects in the area, and expectation that Kittitas County will adhere to the law, Kittitas County’s own Comprehensive Plan, and science.

We note that our concerns are shared by many commenters including the Confederated Bands of the Yakama Nation, the Washington Department of Ecology, the Washington Department of Fish and Wildlife, and the Washington Department of Transportation. This resounding and widespread opposition by a Tribal government and State agencies to a project and SEPA determination demonstrates the inadequacy of the SEPA analysis. We incorporate the referenced comments into this appeal by reference.

Appellants’ Reasons to Appeal the Decision

The SEPA Determination of Non-Significance describes the project as the rezoning and amendment of the Comprehensive Plan and rezoning of 150.98 acres from Forest and Range with a Rural Working Land Use to Rural Recreation Zoning and Land Use.

SEPA review of rezoning must include consideration of the probable environmental impacts of development that is authorized by the rezoning. For example, in *King County v. King County Boundary Review Board*, 122 Wn.2d 648, 860 P.2d 1024 (1993), the Washington Supreme Court

required that an environmental impact statement be prepared for a boundary line adjustment, because development was likely to follow.

The land is currently designated as Forest and Range, “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. The minimum lot size is 20 acres. KCC 17.56.040.

The rezone to Rural Recreation Zoning and Land Use changes the purpose of use to “provide areas where residential development may occur on a low-density basis or in residential clusters. A primary goal and intent in siting R-R zones will be to promote rural recreation residential development associated with the many natural amenities found within Kittitas County.” KCC 17.30.010. The minimum lot size is 5 acres, with cluster development more easily allowed. KCC 17.30.040.

In essence, the rezone switches the property from one where development is discouraged to one where development is the primary goal and intent.

The SEPA checklist and threshold determination must take into account all the direct, indirect, and cumulative impacts of the rezone, including the probable development that will occur. This determination must take into account context and intensity. According to WAC 197-11-330(3)(e):

A proposal may to a significant degree:

- (i) Adversely affect environmentally sensitive or special areas, such as loss or destruction of historic, scientific, and cultural resources, parks, prime farmlands, wetlands, wild and scenic rivers, or wilderness;
- (ii) Adversely affect endangered or threatened species or their habitat;
- (iii) Conflict with local, state, or federal laws or requirements for the protection of the environment; and
- (iv) Establish a precedent for future actions with significant effects, involves unique and unknown risks to the environment, or may affect public health or safety.

As explained herein, the Mardee Lake proposal raises each of the listed issues. The SEPA Checklist and DNS are deficient because they fail to evaluate all of the probable environmental impacts of the project. Increased development and land use is a probable impact of the rezone. Indeed, the applicant notes that part of the reason for the request is new access to water rights from the Snoqualmie Public Utility, nearby development creating recreational and other pressures and likely use, and references the example of the Suncadia resort. The applicant further states that “the proposed rezone for the property provides for the reasonable development of the land for rural recreational uses.”¹

All direct, indirect, and cumulative impacts of the proposal must be considered in the SEPA threshold determination. The SEPA checklist and threshold determination are inadequate and violate SEPA for the reasons detailed in this letter, including the following:

¹ <https://www.co.kittitas.wa.us/uploads/cds/land-use/Rezoning/RZ-22-00005%20Mardee%20Lake/RZ-22-00005%20Mardee%20Lake%20Changed%20Circumstance%20Document.pdf>

- The SEPA checklist contains almost no information of any kind and fails to consider the impacts of potential development associated with the rezone. It incorrectly presumes that a change in designation lacks environmental impact because there are not pending development permits. This is incorrect and violates SEPA and the KCC's SEPA provisions. The SEPA Checklist and threshold determination must account for reasonably likely future development. SEPA requires consideration of impacts at the earliest possible time and prohibits segmentation of projects. It violates SEPA to simply defer consideration of environmental impacts into the future.
- The SEPA checklist does not list the threatened/endangered species known to be in and/or adjacent to the area (i.e. Bull Trout (*Salvelinus confluentis*), Northern Spotted Owl (*Strix occidentalis caurina*), Marbled Murrelet (*Brachyramphus marmoratus*), Fisher (*Pekania pennanti*)), and the DNS does not consider impacts to these species.
- The SEPA DNS fails to account for potential conflict with the Federal Endangered Species Act. Authorization of proposals that harm species listed as threatened or endangered is unlawful and presents potential liability for not only the project proponent, but also the County.
- The SEPA checklist and DNS do not consider the impacts to the wildlife corridor, Mardee Lake, and associated streams and wetlands, which are environmentally sensitive and special areas.
- The SEPA checklist and DNS do not adequately specify that the parcels and adjacent lands are in a Washington Department of Fish and Wildlife (WDFW) Priority Habitat and Species (PHS)² Critical Area that includes streams, Bull Trout rearing habitat, extensive wetlands, and a very important wildlife connectivity corridor. By not acknowledging that the parcels exist in a critical area, the SEPA checklist and DNS do not consider the impacts to the wildlife corridor, Mardee Lake, and associated streams and wetlands, which are environmentally sensitive and special areas. A wildlife connectivity corridor is a critical area and a rezone that would allow increased recreation is not consistent with critical areas protection.
- The SEPA DNS conflicts with the Kittitas County Comprehensive Plan and associated County Code, and Kittitas County Critical Areas Regulations that recognize the need to protect critical habitat areas and connectivity corridors.

Kittitas County Comprehensive Plan & Snoqualmie Pass Sub-Area Comprehensive Plan (adopted into the Kittitas County Comprehensive Plan)

To support our appeal, we highlight specific language from the Kittitas County Comprehensive Plan/Snoqualmie Pass Sub-Area Comprehensive Plan that protects critical areas and promotes habitat connectivity.

RR-P17: Limit development in rural areas through density requirements that protect and maintain existing rural character, natural open space, critical areas, and recreation areas.

NATURAL ENVIRONMENT GOALS AND POLICIES:

NE-G1: Designate and protect the functions and values of critical areas consistent with Best Available Science.

NE-G4: Promote efforts to connect habitat and open space on private lands and open space on public lands.

² <https://geodataservices.wdfw.wa.gov/hp/phs/>

NE-P7: Evaluate opportunities to: 1. Use innovative land use management techniques to conserve and protect designated critical areas.

NE-P18: Evaluate opportunities to protect fish and wildlife habitat on a regional and site-specific scale, considering the following: 1. Habitat connectivity; 2. Habitat diversity; 3. Areas of high species diversity

D. SUBAREA “D”

Location and General Description

Subarea D is the most eastern portion of the planning area. Gold Creek Valley begins at the head of Keechelus Lake and stretches to the northeast, over seven miles, to Chikamin Ridge. The upper reaches of the valley (outside of this subarea) are within the Alpine Lakes Wilderness. The eastern boundary of the subarea coincides with the Wilderness boundary.

Natural Features

The valley offers some of the most spectacular scenery in the Pass area including Rampart Ridge, Chikamin Peak and Kendall Peak. Gold Creek flows year around into Keechelus Lake. In the flatter portions of the valley floor, the creek bed becomes broad and, in dry summer months, part of the creek flows underground. The lower reaches of the creek are a designated flood plain in the Kittitas County Comprehensive Plan. There are extensive wetlands near the valley entrance. Some are associated with Gold Creek and others with Mardee Lake and Coal Creek.

Development Constraints

The steep slopes on the east side of the valley are unbuildable and development will be limited to the valley floor. Gold Creek should be protected as a sensitive environmental area and respected as a potential source of flooding. Extensive wetland areas around Mardee Lake present constraints to development, as do steep slopes and rock outcropping on a ridge area east of Mardee Lake. Coal Creek and Hyak Creek are other environmentally sensitive areas, which will require protection and special attention.

D. OVERALL GOALS

7. Preserve and protect environmentally sensitive areas and scenic vistas.

SUBAREA D LAND USE PLAN

In no case shall construction result in increased slope instability or erosion in the area, or disturb ecologically sensitive areas, such as Mardee Lake and its associated wetlands... residential development should be planned with the highest degree of sensitivity to the aesthetic values of the area and the preservation and enhancement of wildlife habitat.

IV. OPEN SPACE AND CRITICAL AREAS

IV.2 Goal: Identify uses complementary with Open Space/Critical Areas goals and objectives.

IV.3 Goal: Develop an implementation strategy for preserving and incorporating open space and critical areas into the community plan.

4. Plans should be developed which will preserve or enhance native flora, fauna and sensitive areas.

IV.8 Goal: Natural wetlands of irreplaceable high quality as habitat and open space should be preserved and protected.

IV.11 Goal: Protect fish and wildlife habitat areas, including habitat corridors, migration routes, ponds, streams, and breeding and nesting areas.

2. Enhance and improve wildlife habitat and habitat corridors, which may be disturbed or disrupted by development.

OPEN SPACE AND CRITICAL AREAS

Recommended Actions

2. The Committee should enlist the assistance of appropriate agencies and knowledgeable individuals to further identify highly sensitive environmental areas including high quality wetlands and riparian corridors, old growth forests, sensitive wildlife habitats and wildlife corridors. The Committee should review the Counties' critical areas maps and regulations to ensure that these sensitive areas are adequately identified and protected, considering the special requirements of the mountain environment.

Kittitas County Critical Areas Regulations

To support our appeal, we highlight specific language from the Kittitas County Critical Areas Regulations that define and promote the sustainability of Fish and Wildlife Habitat Conservation Areas, including movement corridors and state priority habitats identified by WDFW.

17A.02.330 “Fish and Wildlife Habitat Conservation Areas.” Fish and wildlife habitat conservation areas” are areas that serve a critical role in sustaining needed habitats and species for the functional integrity of the ecosystem, and which, if altered, may reduce the likelihood that the species will persist over the long term. These areas may include, but are not limited to, rare or vulnerable ecological systems, communities, and habitat or habitat elements including seasonal ranges, breeding habitat, winter range, and movement corridors; areas with high relative population density or species richness; and also, locally important habitats and species designated by the County, and state priority habitats and species as identified by the WA Department of Fish and Wildlife.

The parcels owned by Mardee Lake Inc. exist in the heart of the Snoqualmie Pass Corridor, also known as the Snoqualmie Pass Adaptive Management Area in the Northwest Forest Plan which states that planning here “should recognize the area as a critical connective link in north-south movement of organisms in the Cascade Range” (NWFP D-16).³ The 1997 USFS Snoqualmie Pass Adaptive Management Area Plan Final EIS and Record of Decision focus on maintaining critical connectivity corridors in the area with restrictive standards and guidelines regarding recreational uses and facilities.

The Mardee Lake Inc. parcels contain multiple critical areas that support or have the potential to support a variety of species including Bull Trout, Westslope Cutthroat Trout, Gray Wolf, Marbled Murrelet, Northern Spotted Owl, and aquatic and terrestrial priority habitats including Freshwater Emergent Wetland, Freshwater Forestland/Shrub Wetland, and Biodiversity Areas and Corridor (see Figure 1. and the WDFW Priority Habitats and Species Report accompanying this appeal).

Kittitas County adopted WDFW PHS when they updated their Critical Areas Ordinance (CAO) in February 2022. The CAO regulates the following critical areas: Critical Aquifer Recharge

³ Northwest Forest Plan Standards and Guidelines.
https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprd3843203.pdf

Areas, Fish and Wildlife Conservation Areas, Frequently Flooded Areas, Geologically Hazardous Areas, Wetlands. The Mardee Lake parcels fall under both ‘Fish and Wildlife Conservation Areas’ and ‘Wetlands’ critical areas.

We do not believe that the DNS adequately considered WDFW PHS Critical Areas, and the wildlife connectivity corridor critical area in particular, and is therefore inconsistent with the Kittitas County Comprehensive Plan and the county’s Critical Areas Ordinance.

Conservation Northwest has recently released a report on the best available science pertaining to recreation and wildlife co-existence.⁴ Research has shown repeatedly that higher densities of human presence either on foot or motorized travel, and in higher densities fragmented by development, influence wildlife behavior and decrease the use of available habitat.^{5,6} Even low levels of human activity can change wildlife behavior and habitat use.⁷ “Passive” activities such as hiking, snowshoeing, or cross-country skiing in critical areas can have adverse effects on wildlife if concentrated in large numbers. Wildlife use and function in this critical wildlife migration corridor will be impaired by a rezoning (to Rural Recreation) that increases residential development, recreational pressures, and the number of people in this area. The Gold Creek Area, including Mardee Lake, already has high levels of recreation that often spill over the bounds of available parking. Simply put, recreational developments at Snoqualmie Pass need to be focused outside of these critical habitat areas and wildlife migration corridors.

Completed wildlife crossing structures in the Gold Creek Valley have largely been funded by tax-payer dollars as part of the I-90 Snoqualmie Pass East Project. These investments have provided great benefits to all species that depend on the critical wildlife corridor that connects habitat the north and the south of I-90. From 2014 (when structures were installed) to 2021, 7000+ successful wildlife crossings have been made by animals at the Gold Creek crossing structures. Use of these structures has ensured successful population connections and a reduction in animal-vehicle collisions. Moreover, WSDOT designed these projects and structures to be consistent with the Snoqualmie Pass Adaptive Management Area Plan and the Kittitas County Comprehensive Plan/Snoqualmie Pass Sub-Area Comprehensive Plan which support connectivity corridors. As a result of this rezoning, significantly increased land use densities and development within and adjacent to Gold Creek Valley will negatively affect public investments in these wildlife connectivity structures (bridges, culverts and overcrossings), affect habitat restoration areas, and displace wildlife that are moving through this corridor. It is essential that recently restored ecosystem functions, ongoing connectivity and restoration efforts, and animal movement is not impaired by increased human presence from recreation that would result from this rezoning.

⁴ Machowicz, A., Vanbianchi, C., and Windell, R. 2022. Recreation and Wildlife in Washington: Considerations for Conservation. Home Range Wildlife Research. https://conservationnw.org/wp-content/uploads/2022/09/Recreation-and-wildlife-in-Washington-Considerations-for-conservation_FINALreduced.pdf

⁵ Larson CL, Reed SE, Merenlender AM, Crooks KR (2016) Effects of Recreation on Animals Revealed as Widespread through a Global Systematic Review. PLOS ONE 11(12): e0167259. <https://doi.org/10.1371/journal.pone.0167259>

⁶ Miller, A.B.; King, D.; Rowland, M.; Chapman, J.; Tomosy, M.; Liang, C.; Abelson, E.S.; Truex, R. 2020. Sustaining wildlife with recreation on public lands: a synthesis of research findings, management practices, and research needs. Gen. Tech. Rep. PNW-GTR-993. Portland, OR: U.S. Department of Agriculture, Forest Service, Pacific Northwest Research Station. 226 p.

⁷ Sytsma, M., Lewis, T., Gardner, B., and Prugh, L. 2022. Low levels of outdoor recreation alter wildlife behavior. *People and Nature/Early View*. <https://doi.org/10.1002/pan3.10402>

Any of the listed uses for Rural Recreation could be allowed if this type of rezoning is allowed, including but not limited to: increased residential development, Lodges, B&B, Restaurant, Retail, Campground, Golf Course, ORV Park, Rec Vehicle Storage. The SEPA checklist and DNS must account for all such reasonably likely potential uses and associated effects. We believe that a rezone to allow intensive recreational development is not consistent with critical areas protection. In other words, Rural Recreation Zoning and Land Use and its listed uses are incompatible within and adjacent to a critical area – in this case, a wildlife connectivity zone.

Once the property is rezoned, the permitting pathway for additional high density recreation infrastructure will be opened. A DNS is inappropriate considering that the potential significant environmental impacts resulting from this rezone would be difficult to mitigate during intensive recreational development, and offsite mitigation would not adequately compensate for the loss of critical habitat function for these localized areas.

Although the application is a non-project action, disclosure of potential impacts to the environment (i.e. critical areas and species) must be identified during the rezone application and considered during the SEPA decision. Identifying potential impacts to ecological connectivity in the Gold Creek Valley is needed to ensure that public investments and commitments are maintained.

Based on the above, we believe the DNS issued for this application is not sufficient to adequately address potential adverse impacts to critical areas, including a wildlife connectivity zone.

The current Forest and Range with a Rural Working Land Use with protections for critical areas/habitat is better aligned with the Kittitas County Comprehensive Plan/Snoqualmie Pass Sub-Area Comprehensive Plan, Kittitas County Critical Areas Ordinance, and the USFS Snoqualmie Pass Adaptive Management Area Plan, then would be Rural Recreation Zoning and Land Use.

Conclusion

The DNS failed to consider that the Mardee Lake parcels are in a critical area and failed to adequately take into account Kittitas County's own Comprehensive Plan and Critical Areas Ordinance resulting in procedural defects that led to a wrong decision. The factors outlined above, had they been properly considered, would have led to further examination of the impacts of the rezoning application on the environment. If left to stand, this decision threatens the integrity of the critical areas of Mardee Lake.

Changes to the Decision and Desired Outcomes

Co-Appellants Conservation Northwest and Karl Flaccus seek invalidation of the DNS and direction to the Director to prepare a Critical Areas Report, Determination of Significance (DS) and associated Environmental Impact Statement (EIS).

A Critical Areas report would more accurately identify the extent of critical areas (streams, wetlands, species habitat, and connectivity corridor), address potential impacts in or adjacent to the critical areas from future development, and how the proposed application proposes to avoid

impacts to the critical areas and species it supports. We believe the results of this report would support a Determination of Significance (DS) and subsequent Environmental Impact Statement (EIS).

Please contact Conservation Northwest and Karl Flaccus at the addresses below regarding anticipated proceedings.



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Supplemental information submitted with this appeal:

1. WDFW Priority Habitats and Species Report for Mardee Lake parcels

Copies of this appeal and supplemental information were provided to the applicant, the applicant's registered agent, and the County via email, with a physical copy sent via U.S. mail to the applicant's registered agent's listed address.

Figure 1. Mardee Lake Critical Area – Identified by Washington Department of Fish and Wildlife – Hashed Area is Priority Habitat and Species (PHS) mapped Biodiversity Area (Critical Area). Kittitas County adopted WDFW PHS when they updated their Critical Area Ordinance in February 2022.

