

Lindsey Ozbolt

From: Traci Shallbetter <traci@shallbetterlaw.com>
Sent: Wednesday, March 02, 2016 7:35 AM
To: Lindsey Ozbolt
Cc: Frank Baron
Subject: Yakima River Campground
Attachments: Yakima River Campground Comment Letter 030116.pdf

Lindsey,
Attached is 14-page letter outlining my client's initial comments on the Yakima River Campground Project, Project File CU-15-000002, SD-15-00001, SP-15-00001, based on what was described in the Notice of Application and some of the materials available on the Project site. We have several questions about the Project and its impacts/evaluation of impacts, albeit, under no scenario does it appear in our opinion that its impacts can be brought below a level of significance, that the Project is consistent with the criteria for a CUP, or that Staff/Examiner would be wise to recommend/the BOCC would be wise to approve this Project.

Thank you for your work on the matter, and we will look forward to future updates.

Traci Shallbetter
SHALLBETTER LAW PLLC
The Best in Real Estate and Land Use
2497 200th Ave SE
Sammamish, WA 98075
(509) 260-0037
www.shallbetterlaw.com

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Sammamish, WA 98075
Dir: (509) 260-0037

www.shallbetterlaw.com
traci@shallbetterlaw.com

PUGET SOUND NORTHERN CASCADES KITTITAS COUNTY CENTRAL WASHINGTON EASTERN WASHINGTON

March 1, 2016

Ms. Lindsey Ozbolt
c/o Kittitas County CDS
411 N. Ruby St., Ste 2
Ellensburg, WA 98926

RE: CU-15-00002, SD-15-00001, SP-15-00001
Yakima River Campground 172-Unit RV Site with 15 Cabins, Dormitories,
Lodge, Dining Hall, Caretakers' Residence, and Associated Improvements

Dear Ms. Ozbolt:

The applicant's proposal, which we understand to be a Campground/RV Park with 103 RV spaces, 69 campsites (which, includes or is tantamount to 69 parking spaces), 18 cabins (with undisclosed parking), a 2288 square foot restroom/shower facility, a 1750 square foot caretaker's residence, a 6300 square foot activity center, a swimming pool, and associated facilities on roughly 26 acres along the Yakima River—*all of which area is classified as critical areas, and all of which lies either within the 100-year floodplain or them floodway* ("Project") appears likely to have significant environmental impacts and further seems inappropriate for a CUP in the subject zone.¹ While "campgrounds" and "outdoor recreational use" may be allowed as conditional use in the Forest and Range and Rural Working areas, the Project is the antithesis of what may have been contemplated by such conditional uses or the intent of the Forest and Range zone and Rural Working land use. Notably, even at the maximum bonus densities allowed with cluster or conservation platting on the subject property, a maximum of 4 units would be allowed over the entire 86-acre site; here, the applicant would have more than 193 units on the subject property, resulting in an average density of 7.5 units per acre.² Not only do

¹ The applicant makes reference to a 1985 CUP under which certain structures and uses were permitted, some of which were constructed, and of those which were constructed, several were destroyed or burned down (ostensibly being burned down as part of a fire training exercise because they were in such a state of abandonment and disrepair). We are assuming, based on KCC 17.80.020-030 and applicable case law, that all structures and uses of the 1985 CUP were abandoned such that no nonconforming use rights exist under the 1985 CUP and the applicant is not suggesting or intending that it has any right to rebuild any of the structures that were permitted under the 1985 CUP, but never constructed, or subsequently abandoned and destroyed. To the extent the applicant is seeking or intends to construct any of the improvements that were the subject of the 1985 CUP and are not disclosed expressly in the description of the Project, we would request that the applicant be required to revise the application accordingly and renotice it for comment.

² The Project's density appears to be approximately 7.5 units per acre given that it proposes to site a total of 172 RV/campsite units (ranging in square footage of 1125 square feet to 2400 square feet), plus 18

the environmental impacts of this Project necessitate further study, but the Project would appear incapable of satisfying the criteria for a CUP of SSDP. Even if the Project, after adequate evaluation of the likely significant environmental impacts through an EIS of appropriate scope, were to satisfy the criteria for CUP, we would hope that Staff would recommend that the BOCC exercise their discretion to deny the Project for the reasons discussed herein, and those that we anticipate from the WDFW, the Yakama, and Ecology.

A. SEPA: The Project, As Proposed, Is Besieged With Significant Environmental Impacts.

We request that the County require an EIS of appropriate scope from the applicant to evaluate what appear to be likely significant impacts on wildlife, groundwater, surface water, air, public health and safety, noise, light and glare, aesthetics/visual, emergency services, and the built environment.

The Project, as proposed and described, is besieged by significant environmental impacts. Remarkably, the notion of creating some offsetting benefit through “setting aside” a portion of the floodway as perpetual open space is a red herring given that a floodway is virtually off-limit for development anyhow; if the Project goes forward a red herring may be the last living fish in the area.

The applicant suggests that the subject property has already been developed and used, to some extent, for a campground with various improvements pursuant to a 1985 CUP; however, as discussed *infra*, Part B, the property has not been operated as a campground for many years, cabins on the site have actually been destroyed (burned down), and under applicable law rights under the 1985 CUP have been abandoned. *See Part B, infra*; KCC 17.80.020-.030; *McMilian v. King County*, 161 Wn.App. 581, 591-92, 255 P.23d 239 (2011) (common law doctrine of abandonment applies to nonconforming use). *See also* WAC 173-27-080(8)-(9) (discontinuation of a nonconforming use for twelve consecutive months or twelve months during any two-year period results in abandonment such that nonconforming rights expire and any subsequent use must conform to current regulations); *Youde v. San Juan County*, SHB 02-018 (2003) (boathouse that became no longer fit for human habitation over a period of time deemed to have been abandoned).

cabins, plus a restroom/shower facility, a kitchen/activity center, and caretaker residence (3 units) on approximately 25 acres. While the total site that is described as part of the project is 86.58 acres, it would appear that roughly 60 acres of such site is floodway and generally undevelopable such that any suggestion that the applicant is somehow clustering development in a way that preserves property as open space, or prevents development of land that would otherwise be developed is a smokescreen.

As a practical matter, the density appears to approximate more like 25 units per acre on the western most portion of the site which, notably, is next to the only house and developed area adjacent to the Project! We request that the County evaluate the actual density being located immediately adjacent to Kittitas County Tax Parcel 19463, which is, interestingly and unfortunately, the one parcel adjacent to the Project, that is developed with a single family residence and a wildlife refuge and lake.

An EIS is required for actions that are not exempt from SEPA and that have a "probable significant, adverse environmental impact." RCW 43.21C.031(1). No evidence of mitigation exists to date that would bring the Project below a level of significance. Moreover, the record appears to contain no consideration of alternatives to the Project that may achieve the objective with less environmental impact.

SEPA is intended to ensure that environmental impacts and alternatives are properly disclosed and considered, at the earliest opportunity. *Save Our Rural Environment v. Sno. Co.*, 99 Wn.2d 363, 662 P.2d 816 (1983). *Accord Alpine Lakes Protection Society v. Washington State Dept. of Nat. Resources*, 102 Wn.App. 1, 979 P.2d 929 (1999)

RVs and transient occupancies present unique and significant impacts that are potentially greater than those of a single family residence or an actual owner: emissions, dust, oil and fuel leakage, additional fire risk, noise, light and glare associated with vehicle lights and campers, increased density, less community ties or attachment.

Even just a cursory review of some aspects of the Project that have yet to be evaluated or mitigated—if even capable of mitigation—sheds some light on the significance of the environmental impacts that this Project presents:

- Traffic and Safety—While a traffic study is being required, it is unclear the extent to which such study, or any mitigation, will account for the safety risks, and associated noise, dust, emissions, effluents, and light and glare that will be associated with the daily trips of what will likely be at least 103 RVs, 90 vehicles for other camping guests, and some additional odd number of vehicles associated with those occupants and employees. Notably, the situation of the site between the Yakima River, the uncontrolled railway crossing, and the highway, with one means of ingress/egress poses additional risks and impacts that do not appear to have been addressed.
- Noise— More than 195 RVs and other vehicles coming in and out of camp (with their guest vehicles), setting up along the Yakima River, in a 100-year flood plain, situated between the Yakima River and an active railway and highway, and with daily and evening activity, is likely to result in a great deal of noise. While the Project may invite nature enthusiasts or church groups, it may be as likely to invited motorcycle clubs, with their exceptionally noisy bikes.
- Dust, Light and Glare—Headlights from 172 RVs or vehicles (and guest vehicles likely to be associated with an RV or camper, assuming each campsite is not limited to one vehicle in/one vehicle out) will create dust, light and glare, not to mention lights associated with outdoor lighting during the evenings. The light associated with 172 RVs and associated vehicles and campsites is distinct from “normal residential light or glare.”
- Public Services— A campground with 172 campsites, 18 cottages, plus a lodge/activity center, restroom/shower house, and associated facilities —particularly in light of its transient and dense nature—has the potential for increased need for police and

emergency response, particularly given its siting along the Yakima River (which is known to result in several emergency calls each year even without the addition of what likely is at least an additional 500 guests camping out along the river, or crossing the uncontrolled railroad tracks to get there; the applicant's blanket, unsubstantiated assertion to the contrary does not make it so. While it is easy to disregard the likelihood of emergency events such as major floods or fires, both have occurred in recent years; one only needs to consider the washing out of SR 970 a few miles north of the Project site and the Taylor Bridge fire that destroyed acres of land and many homes.

- **Water Quality and Wildlife**—The impact of a roughly 195-unit transient development—which will involve at least as many vehicles, likely fuel-based—sited entirely within the 100-year floodplain and floodway, with the floodway and Yakima River as the primary amenity presents significant risks to the health and quality of the Yakima River and associated wildlife and habitat.

Because the type of development discussed in the environmental checklist would have a probable significant adverse environmental impact and no mitigation has been proposed that would bring the impacts below a level of significance—indeed, it is difficult to conceive of how any mitigation short of dramatic reductions in scope and intensity to something akin to the highest density allowable in the zone under cluster/conservation platting (4 units over the 86 acres) could even come close to bringing impacts within a level of nonsignificance—the County should require an EIS or further studies that would enable an adequate evaluation of the impacts and alternatives to the proposed action.

B. The Existing Conditional Use Permit Has Been Abandoned: Any Nonconforming Status under an Existing Conditional Use Has Been Abandoned Such that the Entirety of the Project Must Be Reviewed as A Whole, Under the Current County Code and Applicable Law.

The applicant apparently obtained a conditional use permit for certain aspects of a campground use in 1985—prior to the Growth Management Act, prior to the County's regulations pertaining to critical areas, and during a period when the County's regulations of septic areas, floodplains, and rural and resource lands were lax to nonexistent. Anecdotal evidence as well as objective information (tax returns or lack thereof) indicate that the subject property has not been operated for church camp purposes that were the subject of the 1985 CUP for well over three-years (and, more ostensibly, since approximately 2006).

Conditional and other permitted uses are subject to later enacted regulations enacted for the health, safety and welfare of the community where such uses have been abandoned for a period of time. *Rhod-A-Zalea & 35th, Inc. v. Snohomish County*, 136 Wn.2d 1, 12, 959 P.2d 1024 (1998); *Total Outdoor Corp. v. City of Seattle Dep't of Planning & Development*, 187 Wn.App. 337, 351 348 P.3d 766 (2015) (Washington's common law abandonment doctrine applies to nonconforming uses); *McMilian v. King County*, 161 Wn.App. 581, 591-92, 255 P.2d 239 (2011) (citing general rules). Indeed, the County has specific provisions pertaining to abandonment of nonconforming uses and structures.

KCC 17.80.020-.030. The fact the use may have been established by a conditional use permit does not change its status as a nonconforming use or structure, or the fact it is subject to the abandonment principles pertaining to nonconforming uses or structures.

Abandonment of nonconforming rights also pertain to permits issued (or general nonconforming uses) under the Shoreline Management Act. *See* WAC 173-27-080(8)-(9) (discontinuation of a nonconforming use for twelve consecutive months or twelve months during any two-year period results in abandonment such that nonconforming rights expire and any subsequent use must conform to current regulations); *Youde v. San Juan County*, SHB 02-018 (2003) (boathouse that became no longer fit for human habitation over a period of time deemed to have been abandoned)

We are under the impression based on objective evidence (i.e. lack of income tax data, B&O tax returns, business license information) and anecdotal evidence, that the applicant ceased engaging in the use, and utilizing the structures that were the subject of the 1985 CUP many years ago (circa 2006), and indeed, the use was so far abandoned as to result in the applicant's willingness to allow the complete destruction of the 8 cabins and other structures by fire. As such, under the County's own code, and as a matter of common law, the applicant's conditional use, as a legally established permitted use—a nonconforming use—was abandoned, and to the extent the applicant desires to recommence such use or any part of such previously permitted (now nonconforming use), the applicant must comply with all new code standards. *See, e.g., Total Outdoor*, 187 Wn.App. at 351; *see also* KCC 17.80.030 (if a nonconforming use is discontinued for more than three years, it shall not be reestablished). The right to engage in a legal nonconforming use—whether such use is authorized under a CUP or as a fully permitted use—is lost by abandonment or discontinuance. *Total Outdoor*, 187 Wn.App. at 351.

Because the uses and structures that are the subject of the 1985 CUP were abandoned or destroyed³, no vested rights or grandfathered status attaches to any of the prior uses on the subject site, and all improvements and uses that were previously authorized under the CUP or constructed on the site pursuant to the 1985 CUP (i.e. a septic system, structures previously constructed, but since burned down (or structures that were permitted, but never constructed) must be reviewed and subjected to the current County codes. *See Rhod-A-Zalea*, 136 Wn.2d at 12, 959 P.2d 1024; *Total Outdoor*, 187 Wn. App. at 351; KCC 17.80.020; KCC 17.890.030. The applicant errs in suggesting that it continues to have the benefit of any rights under the 1985 CUP insofar as the applicant has not been operating a campground for well over three-years, and the applicant has allowed the structures on the site to either be destroyed or degraded to a quality such that repair would require expenditures equal to more than 50% of the value of the such structures.

C. Conditional Use Permit: The Project Fails to Meet the Criteria Under Which the County “May” Grant a Conditional Use Permit.

³ Several structures were destroyed in a fire training exercise, but such structures were completely run-down and dilapidated or of condemned status prior to such voluntary destruction.

Conditional uses are discretionary uses which need not be granted even when the applicant is capable of making an argument that the proposal could meet the criteria set forth in KCC 17.60A. The Code specifically states that the Board “may” grant a CUP when the criteria are met; the Code does not state that the Board “shall” or “must” grant a CUP even if the criteria are unequivocally, much less questionably, met. Even if the Project, at a far reduced and severely conditioned scale could satisfy the criteria, the Board would not be obligated to grant the requested CUP. The language of KCC 17.60A.016 is permissive and discretionary such that the Board *may*, but is not obligated, to grant a CUP when the criteria in KCC 17.60A.015 are met.

In the case at hand, the Project does not even come close to satisfying the criteria upon which a conditional permit *may* be granted. The Project proposes 172 “campsites,” of which 103 will be designated for RVs and 69 will be non-RV (each of which presumably will still involve at least one vehicle). In addition, the Project will have 18 cabins (with associated vehicles and parking), a 2288 sf shower/restroom facility, a 6300 sf dining hall and activity center, and a 1750 square foot caretaker’s residence, and potentially a swimming pool, and some incidental amenities such as fire pits and trails. The entire Project will be situated *in the 100-year floodplain and the floodway*. The density—roughly 195 units on 26 acres results in an average density of about 7.5 units per acre, with the vast majority of the density (RVs and campsites) concentrated on a wee few acres that are situated next to the only single family residence adjacent to the Project site, and bordering a roughly 9-acre private lake.⁴

1. The Project Fails to Satisfy KCC 17.60A.015(1).

The Project does not even satisfy the first of the seven criteria for a Conditional Use Permit which requires that the applicant show that the Project “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.” KCC 17.60A.015(1) (emphasis added).

The proposed conditional use is not desirable, much less essential, to the public convenience (KCC 17.60A.015(1)). And, even if it somehow were, it would nonetheless be detrimental to the public health, peace, safety, or character of the surrounding neighborhood. The public appears to have been functioning just fine without the facility at issue, and there is no indication that the area lacks adequate camping opportunities; indeed, the facts would suggest that the public convenience did not even desire, much less need, a campground in the current location for 50 RV sites and 18 cabins, as the applicant abandoned such use years ago.

⁴ Of all the locations for siting the density of the RV and campsite development, the location proposed is the most unfortunate and impactful. The applicant has chosen to site the most dense and intense development (103 RV sites and 62 campsites with vehicles and parking) immediately next to the only neighboring single family residence (Tax Parcel 19463), and a private 9-acre lake. The siting provides no buffer to the adjacent residential use, and invites trespassing and environmental impacts over most alternatives.

Not only does the subject Project appear to be unessential, but the approval of the Project, with its roughly 195-units on 25 acres in the floodway and floodplain would dramatically disrupt the adjacent neighborhood where a small group of individuals have established a very rural, wildlife refuge and community around a lake. These neighbors, including specifically Dr. Baron, have specific concern that the Project would disrupt the wildlife patterns and greatly disturb the residential community. Of additional concern is the likelihood of trespassers who may attempt to visit the adjacent, private pond that Dr. Baron and his neighbors own. (Specifically, the need to fence the 15' lake (former rock quarry) to prevent trespassing and potential drowning, and the resultant disruption such fencing will cause to the elk and deer migration course).

2. Proof Has Not Been Offered To Satisfy KCC 17.60A.015(2).

KCC 17.60A.015(2) requires the applicant to show that “[t]he 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 [several conditions are met].” The applicant has not provided evidence to prove that the Project is going to have an economic benefit, rather than an economic detriment, to the community. While it is easy to hypothesize that a fully occupied 195-unit campground will mean purchasers for what local businesses are selling, it is equally easy to conceive that the occupants of the campground will stock up on supplies in the city, will be self-sufficient, or will not be large contributors to the economy. Of greater concern is the likelihood that these transient occupants (conservatively 400 persons on a full-occupancy weekend) will require emergency response service (health emergencies, fires, scuffles, accidents, proximity of this large recreational venue to the Yakima River and the railroad and highway, reality of alcohol and now legal marijuana usage).

3. It Remains Unclear Whether the Proposed Uses (Including Any Uses Engaged in Under the Abandoned 1985 CUP) Complies with Relevant Criteria of Current Code (KCC 17.60A.015(3)).

It is incumbent upon the County to ensure that each aspect of the proposed Project complies with all relevant development standards and criteria for approval. KCC 17.60A.015(3). As noted above, all aspects of the Project—including those that may have been the subject of the 1985 CUP such as previously installed septic systems and structures—are subject to review and compliance with current County standards. Of particular concern is the extent to which the proposed uses and structures can comply with the County’s flood zone and critical area development standards.

4. The Project, as Proposed, Does Not Mitigate Its Material Impacts.

The fourth of the seven criteria that the applicant must satisfy in order for the BOCC to even consider granting the CUP, is that “[t]he proposed use will mitigate material impacts of the development, whether environmental or otherwise.” KCC 17.60A.015(4).

Concern exists about whether it is even *possible* to mitigate the impacts of the Project—even with significant reductions in scale and scope of the Project—to a level that would

make them less than material or significant. It is clear, however, that to date no mitigation has been proposed that even comes close to mitigating the impacts of the Project on the environment and surroundings. Such impacts of most concern pertain to those associated with:

- Leeching and contamination to groundwater and surface water associated with septic usage in the floodplain and floodway associated with roughly 195 units (103 RVs, 69 campsites, 19 cabins, and associated caretaker and other lodgings)
- Contamination to surface water, groundwater, and impacts to wildlife and nature associated with the parking and transient camping uses by 103 RVs in the floodplain. (The densest and most intense development is sited on just a few acres immediately next to a 9-acre private lake. The water table in the ground is believed to be at about same depth as surface as lake, and 172 campsites within feet of lake present great concern.
- Interference with wildlife habitat created by the intensification and density of recreational and residential uses on the subject property.
- Impacts on neighboring built environment and land use, including trespassing to neighboring property, the 9-acre lake, and associated trail system, together with waste (trash, beer cans, debris).
- Dust, light, and glare associated with the 103 RVs, and the vehicles for the balance of the roughly 90 units on site, plus staffing and guests.
- Safety concerns and impacts vis a vis the Yakima River have not been addressed. The Project invites upwards of 500 individuals to recreate along the bend of the Yakima River, with no provision made for their safety or rescue on the River.
- Safety concerns and impacts vis a vis the uncontrolled railway crossing have not been address. The Project invites upwards of 200 vehicles (of which 103 or more would be RVs), and more than 500 people to set up camp between the Yakima River and the railroad tracks, and come and go from the property, over the uncontrolled railroad crossing, at all hours, at varying states of mind. At minimum, a lighted, sounded, automated railroad crossing should be installed at the railroad crossing.
- Ingress and egress has not been adequately addressed for purposes of public safety. The Project proposed to have 103 RVs situated in a floodplain/floodway area, plus an additional 69 vehicles associated with campsites, 18 vehicles for cabins, and some additional number of vehicles for employees and guests, together with all associated campers and recreationalists. In the event of a flood or emergency, or a train blocking the railroad tracks, the folks at this Yakima River Campground would be in a quite a predicament. An emergency response plan, or even a manner of dealing with a minor crisis has not been addressed.

- Noise associated with the additional density and occupancy of the property, which noise carries greater in a riverine environment. Additional noise concerns exist if ATVs, snowmobiles, or dirt bikes are allowed on the site.
- Fire dangers associated with campfires, camping, and upwards of 172 vehicles during summer months. One only need remember the Taylor Bridge fire a few years ago, and just a few miles northeast of the Project.
- Potential damage associated with ATVs, snowmobiles, dirtbikes, and others in the critical areas where all of the Project is situated, and potentially trespassing onto neighboring property.
- No landscaping plan has been provided. Dense, mature native vegetation should be installed along the boundaries of the property to create a buffer to/from neighboring land uses.
- No provision has been made to preclude hunting, restrict fishing, or prohibit the discharge of firearms. All such uses should be prohibited, as should be ATVs, dirt bikes, and snowmobiles.
- While the Project may be vested under the County's pre-2016 Shoreline Management Program, nothing precludes the County from requiring the Project to comply, as a condition of the Conditional Use Permit approval, or if necessary for purposes of mitigating impacts on the environment under SEPA, to comply with relevant aspects of the County's newly adopted Shoreline Management Program.

5. The Project is Not Compatible with Existing Neighboring Uses.

In order for the BOCC to approve the CUP (which, again, the BOCC has no obligation to approve, even if all criteria were to be satisfied), the BOCC must find that the Project⁵ consisting of 103-RV units, 69-campsites, 18 cabins, and over 10,338 square feet of additional improved structures, plus supporting septic area, on a site that is entirely within the 100-year floodplain or floodway, is compatible with existing neighboring uses. KCC 17.60A.015(5).

The Project is not compatible with the rural and wildlife corridor-related uses on neighboring properties. *See* discussion, *infra*, Parts 6 & 7. The Project would be situated upon one of the most pristine and thriving sites along the Yakima River for salmon and wildlife. *See, e.g.*, Comments from WDFW and Yakama Nation.

Also, adjacent to the Project site is a roughly 9-acre private lake that has been developed by the neighboring property owners as a wildlife refuge. The approval of the Project would inevitably result in frequent trespassers and likely degradation of the wildlife

⁵ *See* note 1, *supra*.

sanctuary and private property. While a few single family residences or campsites might be compatible, a large 172-unit campground with 103 RVs, plus 18 cabins, a large kitchen and activity center and shower hall decidedly is not, and the likelihood of over 500 guests at any one time, decidedly is not.

6. The Project Is Not Consistent with the Intent and Character of the Zoning District.

For all intents and purposes, the relevant zoning of the subject property is Forest and Range, with land use of Rural Working.⁶ At a density of approximately 7.5 units per acre (as the balance of the site that is being left undeveloped is otherwise undevelopable floodway to begin with), this Project is of markedly different scale and intensity than any sort of campground use that could conceivably be made compatibly with the intent and character of the zoning district where it is located (KCC 17.60A.015(5), (6), (7)). The nature, scope, scale, and intensity of the Project is inconsistent with the policies for Rural and Resource Lands and with approximately 195 distinct guest accommodations and supporting recreational and hospitality facilities on 25 acres, all being either floodplain or floodway, and critical or sensitive areas to boot, this Project is decidedly inconsistent with, and threatening to the rural character of the area. Even at the scale of the 1985 abandoned CUP (which notably, predated the Growth Management Act and any County critical area ordinances) with 50 RV sites, 25 cabins, a caretakers residence, lodge, dining hall, 2 dormitories, and office (all of which are included in the current Project) the compatibility of the use and the propriety of such use would be highly questionable; here, the applicant is seeking approval for not just the above, but an *additional 122* RV/campsites and associated facilities, with additional guest vehicles, parking, traffic, and impacts that are incidental thereto. *Notably, by our calculations, the maximum single family residential density allowed under applicable land use zoning—even under cluster/conservation platting—would be 4 single family residences over the entire 86-acre site!* “Campground” and “outdoor recreation” may be conditional uses in the zone, but a 172-unit campground consisting of 103-RVs, plus a 6300 square foot activity center, a 2288 square foot shower/bathroom facility, a 1750 square foot caretaker’s residence, 18 cottages, and other associated improves clearly is not consistent with the intent or nature of the campgrounds and outdoor recreation that the BOCC or the public had in mind for this area.

7. The Project Is Not Consistent with the Comprehensive Plan and Fails to Preserve Rural Character.

The Project would be located almost entirely on land that is zoned Forest and Range and designated as a Rural Working land use area under the Comprehensive Plan. While campgrounds and outdoor recreation uses are permitted as conditional uses in the Forest and Range Zone and Rural Working land use—meaning that the BOCC *may* (but is not obligated) to allow the use where the use satisfies all seven of the conditions set forth in KCC 17.60A020—it is apparent that the sort of campground and outdoor recreation that

⁶ A small area of the western portion of Parcel 19-160-04020-0002 within the floodway appears to contain R-5 zoning, but the majority of the parcel is Forest and Range.

the application is proposing is a far cry from the sort of campground and outdoor recreation that would be consistent with the intent and purpose of the Forest and Range Zone and rural land uses. At an average density of roughly 7.5 units per acre, with 103-RVs, 69 additional campsites, 18 cabins, a 6300 square foot dining hall and activity center, a 1750 square foot caretaker's residence, and a 2288 square foot shower/restroom facility, plus incidental uses, the proposed use is decidedly neither rural in nature nor giving natural resource management the highest priority.

According to the GMA and the County's Rural Lands element of its Comprehensive Plan, requisite aspects of "rural character" are patterns of land use and development:

- Open space and visual and natural landscape predominate over the built environment
- Opportunities exist for traditional rural lifestyle and rural based economies
- Spaces and development are compatible with wildlife habitat

Kitt. County Comp. Plan 8.1.1 (Dec. 2014). The purpose of "rural lands" is to, among other things, "[p]reserve and maintain the rural character of Kittitas County, and [s]ustain and protect the westerly mountainous, recreational open space." Kittitas County Comp. Plan, 8.2.3.

The purposes of the Rural Working land use designation are to:

- Provide preservation of agriculture activities where producers can live and work on their own lands separate from Resource Lands
- To support the continuation, whenever possible, of agriculture, timber and mineral uses on lands not designated for long-term commercial significance.
- To provide some buffer between rural residential lands and resource lands.
- To provide areas of low intensity land use activities within the agriculture and forest activities.

2014 Kittitas County Comp. Plan 8.2.4.2. Goals, policies, and objectives for activities on Rural Working lands include a prohibiting on planned unit developments (PUDs) which, for all intents and circumstances, is tantamount to what the applicant is proposing. GPO 8.42; *see also, e.g.*, Teanaway Development LLC Rezone/PUD for 86 Units, 139 Parking Spots, and Undisclosed Number of RV Spaces on Yakima River (Rezone #Z-07-11) (Withdrawn).⁷

Moreover, the Rural Working GPOs repeatedly emphasize the importance that new development in the Rural Working area "meet standards or measures found needed to protect existing surface and groundwater uses from impairment and contamination." GP 8.44C; *see also* GPO 8.44, 8.44A. The Project, insofar as it seeks to rely on a 1985-

⁷ In 2007, the applicant filed an application for a very similar project on the same property, which sought a rezone/PUD for a similar project—which project, in its ultimate format, as revised at the eleventh hour, proposed a PUD with 160 RVs, 139 parking spaces, and 24 condominiums. After the public hearing, the applicant withdrew the application.

septic system that predated GMA, much less any of the important and current State or County public health standards for septic siting and construction, is anathema to the Rural Working GPOs.

Rural development can consist of a variety of uses and densities, including clustered development; but only when used “not to increase density creating suburban or urban-like environments.” Kitt. County Comp. Plan 8.2.1 (Dec. 2014). Interestingly, Kittitas County residents, through a public involvement process in 2012, noted that the “rural” elements that they found most important to preserve included “natural open spaces and streams,” and the County’s rural policies were designed to protect such qualities. Kitt. County Comp. Plan 8.2.1 (Dec. 2014). “Rural character” as such has been defined in Kittitas County as “predominate visual landscape of open spaces, mountains, forests, and farms and the activities which preserve such features.” Kitt. County Comp. Plan 8.2.1 (Dec. 2014).

One-hundred three (103) RVs and 69 mixed campsites packed on a few acres,⁸ in addition to 18 cabins, a caretaker’s residence, and a 6300 square foot activity center, a 2288 square foot restroom facility, and some undisclosed number of parking spaces for the guests seems the antithesis of the visual landscape contemplated by the County’s “rural character,” particularly where the maximum density that would be allowed on this 86 acres under applicable zoning, even using bonus density calculations allowed for conservation platting, would be just 4 dwellings over the entire 86 acres. Here, the application would have 18 cottages, a 6600 square foot activity center/lodge, a caretaker’s cottage, a 2288 square foot restroom facility, and 103 RVs, plus another 69 campsites with associated vehicles.

The purpose and intent of the Forest and Range 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. While a “campground”--defined as a tract where “two (2) or more recreational vehicle, recreational park trailer or other camping unit sites are offered for the use of the public...” is permitted as conditional use in the Forest and Range zone, the 171-unit campsite (of which 103 would be RVs) use, plus 18 cabins, a 6300 square foot activity center, an 1750 square foot caretaker’s residence, a 2288 square foot restroom facility, goes well beyond the intent and nature of the campground use contemplated in the Code.

The applicant’s alleged consistency with various policies of the County’s Comprehensive Plan for Rural Lands and Forest and Range is discomfoting. Review of the County’s Rural Land policies and Forest and Range zoning makes it self-evident that the Project is not consistent with “rural” character, or the rural uses and densities contemplated in the Comprehensive Plan or under GMA.

⁸ Most of the 172 campsites will be concentrated on the western most portion of the site which, notably, is next to the only house adjacent to the Project, and next to a lovely private lake.

The proposed use is not even within any reasonable—or technically “legal” definition of “rural.” Anywhere else in the country, a property being developed for 103 RVs, 69 campsites, 18 cabins, a 6300 square foot dining hall and activity center a 1750 square foot caretaker’s residence, a 2288 square foot restroom/shower facility, and associated amenities (not to mention whatever sort of parking is necessary to support such facility) would be considered a business or commercial enterprise. Here, such commercial activity is being proposed not only in a rural area, but in one that is designated for rural and resource activities and, notably, entirely within a 100-year floodplain or floodway. The Project would have a density of at least 7.5 units per acre given that the majority of the Project site is floodway (including that which the applicant seeks credit for setting aside as perpetual open space) and undevelopable.

The Project site is likely to appear as a roughly 200-car parking lot, or—more likely—an RV-sales facility; only, in addition to the 200 vehicles, the site will be teeming with upwards of 800 guests, many of whom may be concentrating their activity around an occasionally dangerous Yakima River, when not crossing the railroad track en route to or from home, or into town for supplies or a trip to a restaurant or bar.

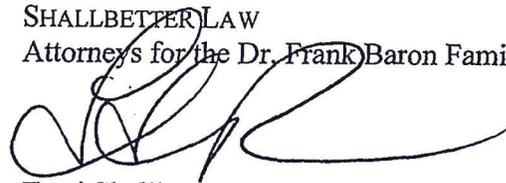
We are not aware of a case before the Growth Management Boards or Washington courts, much less any reasonable argument for, upholding densities of one unit per acre as rural in any context; and here, we are looking at a density that is over *one unit per half-acre* even when the entire 86 acre site is considered as developable (which, it is obviously not given that roughly 60 acres or more appears to be floodway). *See, e.g., Thurston County v. W. Wash. Growth Mgmt. Hearings Bd.*, 137 Wn.App. 781, 806-08, 154 P.3d 959 (2008) (densities less than even one unit per five acres are not rural), *rev’d in part* based on reliance on a bright line rule), No. 80115-1 (Aug. 4, 2008); *Concerned Friends of Ferry County et al. v. Ferry County*, EWGHB, Case No. 01-1-0019 (Third Order on Compliance June 14, 2006) (2.5 acre lots are urban in nature); *Bremerton v. Kitsap County*, CPSGMHB No. 95-3-0039, FDO Oct. 6, 1995) (adopting a bright-line urban density of a minimum of four dwelling units per acre); *Vashon-Maury v. King County*, CPSGMHB No. 95-3-0008 (FDO Oct. 23, 1995) (densities of one dwelling unit per 10 acres or less is rural and greater densities are subject to increased scrutiny); *Yanisch v. Lewis County*, WWGMHB No. 02-2-0007c (FDO Dec. 11, 2002) (densities greater than one dwelling unit per five acres are not rural).

The owners of the subject property are entitled to make reasonable use of their land, consistent with the applicable land use designation and zoning. Such uses, as evidenced by, and consistent with, neighboring land uses might include development with one to four single family residences, or perhaps a small campground that would be something in the range of the number of units that would be allowed in a cluster-platted development permitted on the subject property—which by our calculations is four units over the 86 acre-site. “Campground” and “outdoor recreation” may be conditional uses in the zone, but a 172-unit campground consisting of 103-RVs, and 69 campsites plus 18 cottages, a 6300 square foot activity center, a 2288 square foot shower/bathroom facility, a 1750 square foot caretaker’s residence, and other associated improves clearly is not consistent

with the what the BOCC or the public had in mind for an area where the maximum density for the entire 86 acres would normally be 4 dwellings.

Sincerely,

SHALLBETTER LAW
Attorneys for the Dr. Frank Baron Family

A handwritten signature in black ink, appearing to read 'Traci Shallbetter', written over the printed name below.

Traci Shallbetter