

From: [Theresa Dougherty](#)
To: [Kelly Bacon \(CD\)](#)
Cc: [Dan Carlson](#)
Subject: Letter re: Hidden Point; CU-20-00005
Date: Monday, January 4, 2021 3:58:03 PM
Attachments: [T. Dougherty Letter re Hidden Point with Exh 1.4.2021.pdf](#)

Ms. Bacon -

Attached please find a letter with my comments regarding the proposed Hidden Point Development, CU-20-00005. As we discussed in an earlier email, I also have videos, but am having difficulty sending them by email. I will drop off a memory stick with the photos later today.

Please confirm receipt and let me know if you have any trouble opening the attachment.

Many thanks,

Theresa

Theresa Dougherty

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January 4, 2021

Via Email Only – kelly.bacon.cd@co.kittitas.wa.us

Kelly Bacon
Kittitas County Community Development Services
411 N Ruby St., Suite 2
Ellensburg WA 98926

Re: CU-20-00005; Hidden Point LLC

Dear Ms. Bacon:

I write to you today regarding development already commenced by Hidden Point LLC and proposed under CU-20-00005. As you are aware, the community is gravely concerned by the proposal. I greatly appreciate all of your attention and other County staff to this very concerning matter.

As outlined in below, there are several reasons to deny the application. First, Hidden Point has already acted with disregard for the community, which raises significant concern for the future. Second, neither zoning laws nor the 2019 Comprehensive Plan allow the type of use in the proposed area. Third, the application contains insufficient information for any decisionmaker to make a meaningful and informed decision. Lastly, based on what information is presently available, the proposed development fails to satisfy the mandatory CUP criteria set forth in KCC 17.60A.015. For these various reasons, application CU-20-0005, Hidden Point should be denied.

I. History and Pattern of Disregard for the Community

Before examining the legality of the proposed project, Hidden Point's history and pattern of seeming disregard for the law and community should be mentioned. As an owner of property near the subject properties, over the past many months, I have grown increasingly concerned by what began ostensibly as appropriately permitted land use but evolved into repeated violation of zoning codes and disrespect for the community.

A. Zoning and permitting inconsistencies have already occurred.

The Hidden Point parcels currently contain a vast clear-cut area (that appears to span 50% of the collective parcels), a 4-car garage, a parked RV, two driveways connected by a web of roads covering the three parcels, a foundation with a partially built "bunkhouse," and another foundation next to and identical to the partially-built bunkhouse. In total, there are three foundations. Only some of this work appears to have been properly permitted.

Hidden Point's approach to building seems to be one of asking for forgiveness rather than seek permission (and risk being told "no"). The first indication of this is when the owners began speaking with me and my husband about their plans, which were described as building a "couple" cabins for their own personal use. But contractors had other things to say, consistently speaking to community members of much more significant plans, using words like "community" and "multiple cabins." We again asked the owners about their intentions and received only vague responses in return. Just days later, the CUP application became public, and it was clear that the

owners had been misleading us for many months. *See also* J. Wood Letter, dated Dec. 22, 2020 (stating the owners also told them the cabins were for personal use).

In addition to misleading the us, there are many indications that Hidden Point may have or continues to provide insufficient or inaccurate the County. To date, there are two building permits on the collective three parcels. There is one permit for a “pump house” (on parcel 877634;¹ permit BP-19-00347) and another for a residence (on parcel 797634; permit BP-20-00205). Neither of the structures appear to comply with the permits issued.

The “pump house” is now a multicar garage that we believe has been fitted with sleeping quarters and has hosted multiple overnight guests over several weekends. This explains why Hidden Point also obtained a permit for a wood stove (permit BP-19-00904), which would otherwise be a rather quizzical addition to a pump house. Under the Code, an accessory building is “subordinate building or use which is incidental to that of the main building or use and located on the same tract or lot as the main building or use.” *See* KCC 17.08.020. The structure that was built – a garage with heat and sleeping quarters – does not fit within the meaning of “accessory building” as defined by the code. It appears the structure that has been built is something different than was permitted.

The “residence” either does not exist or is also something different than was permitted. I personally spoke with a contractor working on the partially built “bunkhouse.” He informed me that there is no kitchen. I also personally viewed the foundation and could identify no kitchen plumbing or electrical wiring. Per the Code, a residence includes kitchen facilities. *See* KCC 17.08.266 (distinguishing a guest house from a residence by lack of kitchen); *see also* Exh. A attached hereto, Email from T. Berkshire, dated Nov. 5, 2020 (stating that a structure is not a residence or ADU if it does not have a kitchen). That the structure is not a “residence” is confirmed by the CUP Application which identifies the structure as a “bunkhouse” and contains no plan for any building suitable for residential dwelling. Thus, the Code and permits appear to have been violated in one of two ways. Either the structure being built was permitted as a residence, but is not being built as such, or the structure currently being built is not permitted at all.

Even more clear, is the existence of third foundation, which was poured at least two weeks before the CUP application was even filed and does not appear to be permitted at all. No matter how the two building permits for the “pump house” and “residence” are construed, as of the writing of this letter, there is no permit for a third foundation.

Unfortunately, the pending CUP application is no exception to this pattern. As explained in more detail below, the CUP application contains many factual errors and omissions. *See infra* § III.A. Moreover, despite the CUP Application being only in its earliest stages, Hidden Point continued to build its resort as if permission had already been granted. Hidden Point continued building its resort until approximately December 14, 2020, at which time the Department of Natural Resources (“DNR”) posted a sign on the property instructing the owners to contact DNR “before resuming operation.” *See* Exh. B attached hereto. DNR also instructed Hidden Point to file a Forest Practices Application. *Id.* Based on this, it therefore appears that Hidden Point failed to get permission from DNR for its clear-cutting activities. *See* Exh. C (photos of clear-cutting).

Based on these various known examples, there is much concern that Hidden Point will continue to develop its land in contravention to zoning regulations and other land use laws, and in excess of what is actually permitted. Should the pending CUP be granted as proposed, the history above begs the question – what will Hidden Point actually build? Will Hidden Point add kitchens to all 24 cabins, increasing water consumption and changing the nature of the project? Will Hidden Point add additional beds, thereby doubling the amount of people, traffic, and

¹ This permit was initially issued to parcel 867634. The structure was ultimately placed on parcel 877634 and it appears the parcel number was updated after-the-fact.

environmental impact? Will Hidden Point allow multiple cabins to be rented to the same group, effectively turning it into an event center? Will Hidden Point rent out motorized vehicles, which would increase traffic, noise, emissions, and environmental impact? Given the history, there is no limit to what Hidden Point may do if given even a crack in the door.

Regardless of what permits may ultimately be issued to Hidden Point in the future (which should not include the proposed CUP), the County should heavily monitor the actions of Hidden Point. As the examples above demonstrate, there is a large disconnect between permits applied for, permits obtained, and the actual land use activity occurring on the Hidden Point parcels.

B. Neighboring lands have been trespassed and littered upon.

In addition to failing to comply with land use laws, it appears the owners and visitors of Hidden Point seem to have little regard for the private property of their neighbors. Since Hidden Point purchased the property, there has been a significant increase of trash along this portion of Emerick Road. During the three years prior to Hidden Point's acquisition of the property, there was never any garbage along the road. Since Hidden Point began developing the land, there has been a significant increase in littering. *See also* G. Chambers Letter, dated Dec. 16, 2020; L. Seligmann Letter, dated Dec. 21, 2020.

But littering is only a minor issue compared to what neighbors have reportedly encountered. Gretchen Chambers has encountered motorcyclists trespassing on her land. *See also* G. Chambers Letter, dated Dec. 16, 2020. Other neighbors have seen a dozen persons trespassing through land to the Swuak Prairie Reserve where they lit a fire and left it unattended in June, in complete ignorance of the fire danger posed. *Id.* *See also* Schmieder Letter, dated Dec. 14, 2020 (stating they put out two fires near the subject parcels); L. Seligmann Letter, dated Dec. 21, 2020 (observing smoldering and neglected fires).

Also alarming was Hidden Point's brazen installation of a gate on land they did not own. Attached as Exhibit D is a photo of two gates. The gate on the right has been there for years and is used by the community to keep trespassers at bay. The gate on the left is on property not owned by Hidden Point. The property owner of the land on the left informed me that the gate on the left was installed by Hidden Point without permission. *See also* L. Seligmann Letter, dated Dec. 21, 2020 (same information).

In conjunction with the permitting issues summarized above, these actions raise big red flags. These are not the actions of a developer that appreciates the current nature and character of the community that wishes to enjoy them in the same manner. Rather, these actions are consistent with a developer who cares little about the community that will be affected by its land use and seems to have only a financial interest in exploiting it. This simply does not comport with the meaning or intent of land use regulations, particularly in a residential neighborhood.

II. Illegality of the Proposed "Guest Ranch"

Before a CUP application may be granted, the Director or Board must find that the proposed use complies with development standards and criteria. *See* KCC 17.60A.015(3). The proposed development fails this requirement. First, the proposed development is not a "guest ranch." Rather, it is a hotel/motel or resort, neither of which are allowed under the zoning regulations. Second, the 2019 Comprehensive Plan designates the subject land as "rural working," yet the proposed use is "rural recreational." For these reasons, the CUP application must be denied.

A. The proposed development is a hotel/motel or resort, neither of which is an allowed use.

The subject parcels are zoned Ag-20. "The agriculture (A-20) zone is an area wherein farming, ranching and rural life styles are dominant characteristics. The intent of this zoning

classification is to preserve fertile farmland from encroachment by nonagricultural land uses; and protect the rights and traditions of those engaged in agriculture.” KCC 17.29.010.

One of the permitted uses in Ag-20 include is a “guest ranch or guest farm.” However, hotels, motels, and resorts, are not allowed under any circumstance. *See* KCC 17.15.060.1. In order to give effect to zoning code, these terms must be given different meaning. Thus, it is critical to determine which of these uses is contemplated by the CUP application at issue. As explained below, while Hidden Point attempts to fit within the zoning code by labeling its project a “guest ranch,” the project is actually a hotel/motel or resort, neither of which is allowed on the subject property.

The following definitions are relevant:²

Guest Ranch or Guest Farm: “[A] business or an organization providing overnight lodging, dining and recreational facilities in a rural setting. The purpose of a guest ranch or guest farm shall relate primarily to vacation, recreation and similar pursuits, and does not include rehabilitation centers, group homes, clinics, nursing homes, churches and church camps, and other similar uses. Events such as auctions, barbecues and similar gatherings which do not provide overnight lodging or which are not conducted on a continuous basis shall not be considered as guest ranches or guest farms. Enhanced agricultural sales are allowed.” KCC 17.08.270.

Ranch: “[A] large farm for raising horses, beef cattle, or sheep” or “a farm or area devoted to a particular specialty.” Merriam Webster, RANCH, <https://www.merriam-webster.com/dictionary/ranch>.

Farm: “[A] tract of land devoted to agricultural purposes” or “a plot of land devoted to the raising of animals and especially domestic livestock.” Merriam Webster, FARM, <https://www.merriam-webster.com/dictionary/farm>.

Hotel: “[A]n establishment that provides lodging and usually meals, entertainment, and various personal services for the public.” Merriam Webster, HOTEL, <https://www.merriam-webster.com/dictionary/hotel>. While the Code does not currently define “hotel,” the prior definition was “a building or portion thereof designed or used for occupancy of individuals who are lodged with or without meals, and in which no provision is made for cooking in any individual room or suite.” *See* KCC Ord. 2013-001 (formerly 17.08.320).

Motel: “[A]n establishment which provides lodging and parking and in which the rooms are usually accessible from an outdoor parking area.” Merriam Webster, MOTEL, <https://www.merriam-webster.com/dictionary/motel>. While the Code does not currently define “motel,” the prior definition was “an individual building or group of attached or detached buildings containing guest rooms, together with conveniently located parking space on the same lot, which are designed, used or intended to be used for the accommodation of automobile transients.” *See* KCC Ord. 2013-001 (formerly 17.08.400).

Master Planned Resort: “[A] self-contained and fully integrated planned unit development, located in a setting of significant natural amenities, with a primary focus on destination resort facilities consisting of short-term visitor accommodations associated with a range of developed on-site indoor or outdoor recreational facilities. A master planned resort may include other residential uses within its boundaries, but only if the

² The KCC defines “guest ranch or guest farm” but does not provide a definition of ranch, farm, hotel, or resort. In the absence of a definition, common definitions apply. KCC 1.04.040 (“Words and phrases not specifically defined shall be construed according to the context and approved usage of the language.”).

residential uses are integrated into and support the on-site recreational nature of the resort.” KCC 17.37.020(2).

While the definition of “guest ranch or guest farm” seems to overlap substantially with the meaning of hotel, motel, and resort, one feature obviously sets them apart. As its name indicates, a guest *ranch* or guest *farm* must provide accommodations in conjunction with a *ranch* or *farm*. There is no ranch or farm at the Hidden Point properties, nor is one proposed. There are no horses, cattle, sheep, or agriculture. *See* definitions above.

Even assuming there were some kind of ranch or farm, in order to be a “guest ranch” within the meaning of the Kittitas County Code, dining and recreation must also be provided. *See* KCC 17.08.270. In attempt to meet the dining requirement, Hidden Point claims it may put in a community kitchen in the future. *See* SEPA Checklist, at 2. A communal kitchen, however, does not meet any definition of “dining.” In an attempt to meet the “recreational facilities” requirement, Hidden Point claims that it may put in a swimming pool. *See* SEPA Checklist, at 2. If Hidden Point does not put these facilities in, then it obviously no longer fits this definition and would not qualify for the CUP as a guest ranch.

Setting aside that Hidden Point may not even offer these “dining” and “recreational” facilities, this interpretation of the zoning code falls short. Under Hidden Point’s proffered definition, every business that offers a bed, mini-fridge and a pool would be a “guest ranch or guest farm.” This begs the question, what is a motel, hotel, or resort? This highlights the logical fallacy of Hidden Point’s application. The proposed development is simply not a guest ranch. It is a motel/hotel or resort. It strains common sense and logic to call it a guest ranch when there is no ranch. When viewed as what it is – a motel, hotel, or resort – it all becomes clear.

Furthermore, the proposed use does not further the purpose or intent of Ag-20 zoning, which seeks to “preserve fertile farmland from encroachment by nonagricultural land uses.” *See* KCC 17.29.010. The proposed use completely undermines this goal by preserving nothing and injecting nonagricultural land uses directly into the area. The land has already been decimated by clear cutting, depriving the land of the rich nutrients contained in the forest floor.

B. The proposed development does not conform with the Comprehensive Plan.

In addition to failing to meet zoning requirements, the proposed land use undermines the 2019 Kittitas County Comprehensive Plan (“Plan”). As background, it is necessary to review two relevant land use designations set forth in the Plan: Rural Working and Rural Recreation.³ The following chart summarizes these two land uses under the Plan.

	Rural Working	Rural Recreational
Zoning Classifications ⁴	<u>Ag 20 (at issue here)</u> Forest and Range	General Commercial Master Planned Resort Planned Unit Development Rural Recreation
Brief Description ⁵	Supports Ag, Timber and Mineral uses not in resource lands	Activities to support and enhance recreational opportunities

³ The Plan includes six other land use designations that are not discussed here: Commercial Agriculture, Commercial Forest, Mineral Lands, Rural Residential, LAMIRD, and Urban.

⁴ *See* Plan, at 9.

⁵ *See* Plan, at 9.

Detailed Description ⁶	Rural Working lands, generally encourage[] <u>farming, ranching</u> and storage of <u>agriculture</u> products, and some commercial and industrial uses compatible with rural environment and supporting <u>agriculture</u> and/or forest activities. Areas in this designation often have <u>low population densities</u> with larger parcel size compared to Rural Residential areas. <u>Agriculture</u> and forestry activities are generally less in scope than in the Resource lands	Rural Recreation lands often include scenic roadways, vistas, ski and <u>hiking areas</u> , and <u>recreational</u> and seasonal <u>recreation</u> residences. They include <u>resort</u> activities and provide limited commercial services to <u>tourists</u> and seasonal residents where rural character is preserved. Rural Recreation lands may be located in flood or other hazard areas where fishing and outdoor activities are prevalent.
Goals Include ⁷	RR-G22: Provide <u>preservation</u> of <u>agriculture</u> activities where producers can live and work on their own lands separate from Resource Lands.	RR-G26: Maintain and <u>enhance</u> the extraordinary and expansive <u>recreational</u> opportunities in Kittitas County.
	RR-G24: Provide some buffer between rural residential lands and resource lands.	RR-G27: Provide safe opportunities to develop public and private <u>recreational</u> spaces while preserving rural character.
	RR-G25: Provide areas of low intensity land use activities within the <u>agriculture</u> and forest activities.	RR-G28: Increase rural tourist and rural <u>recreational</u> spaces while maintaining environments characteristic to rural areas.
Policies Include ⁸	RR-P44: Planned Unit Developments (PUD) should be prohibited in Rural Working land zones.	RR-P56: Developments located for commercial, residential/ recreational purposes, such as Master Planned Resorts or Planned Unit Developments, shall have adequate water, septic and public facilities to service such development without over-burdening the County public services.
	RR-P45: Commercial/Industrial development in Rural Working lands shall be compatible to the rural environment, and must be developed as determined necessary to not significantly impact surface and groundwater.	RR-P57: Commercial service proposals in Rural Recreation areas shall have provisions within any conditional use decisions to assure compatibility with adjacent rural environments.
	RR-P51: Where proposed residential development is determined in conflict with	RR-P59: Rural recreation development should be promoted where there is potential for limited

⁶ See Plan, at 24 (underline added).

⁷ See Plan, at 93-96.

⁸ See Plan, at 93-96.

	natural resource activities, all mitigation measures to make the development compatible with the activities shall be completed and cost borne by the developer.	infill of seasonal recreation structure, in areas where seasonal structures are not uncommon, and upon soils and geologic conditions which can support structural development.
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As shown in the table above, Ag 20 land (the land at issue here) falls within the Rural Working land use designation. Noticeably absent from the goals for Rural Working land is activity commercializing the land in a non-agriculture manner. This is reflected in the zoning code by allowing guest *ranches* or *farms*, but not allowing hotels, motels, or resorts. Simply said, the type of activity proposed here does not conform with Rural Working land use under the 2019 Comprehensive Plan.

In contrast to Rural Working land use, Rural Recreational land use *does* allow for the type of commercialized recreational use proposed. The development proposed by Hidden Point is precisely the type of use envisioned for Rural Recreational land use. As summarized in the table above, Rural Recreational lands are zoned as General Commercial, Master Planned Resort, Planned Unit Development, and Rural Recreation. It bears repeating that the land at issue here is zoned Ag 20 and is in the Rural Working land use designation under the Plan, not Rural Recreational.

In fact, Hidden Point seems to admit this point in its SEPA Checklist. At page 9 of its SEPA Checklist, Hidden Point concedes that it offers “overnight lodging for *rural recreation*.” Rural recreation is **not**, however, within the goal or policies of Rural Working lands, nor is it allowed on Ag 20 zone property. Because it contravenes the 2019 Comprehensive Plan, the CUP applications should be denied.

III. Insufficient Information and Failure to Meet CUP Review Criteria

In addition to failing to comply with zoning laws and the 2019 Comprehensive Plan, the proposed development also fails to meet the mandatory CUP review criteria set forth in KCC 17.60A.015. At present, the application contains insufficient information for a decisionmaker to conclude that all review criteria have been satisfied. In order to consider granting the CUP application, additional studies must be provided by Hidden Point to evaluate impacts on the environment. Without additional studies, and based solely on information presently available, the CUP application fails to meet the CUP criteria and should be denied.

A. Additional studies and mitigation plans must be provided before the CUP can be granted.

As part of its CUP application, Hidden Point provided a SEPA Environmental Checklist. As stated in the preamble to that document, its purpose is to:

[T]o help determine whether the environmental impacts of [the] proposal are significant. This information is also helpful to determine if available avoidance, minimization or compensatory mitigation measures will address the probable significant impacts or if an environmental impact statement will be prepared to further analyze the proposal.

Unfortunately, as a new owner of property in the area, Hidden Point is not very familiar with the area. As a result, many of its responses on the SEPA Checklist are incomplete or inaccurate. By letter dated of this same date, Jason Dougherty submitted a detailed analysis of Hidden Point’s SEPA Checklist, identifying areas in which the information provided by Hidden Point was incomplete or mistaken, and supplementing the information provided therein. As can be seen in

J. Dougherty's letter, the potential environmental impact is much larger than Hidden Point appreciates.

In fact, many state agencies have already determined that additional information is necessary. As of the filing of this letter,⁹ the following agencies have expressed concern and/or requested additional information:

- (1) Washington Department of Fish and Wildlife
- (2) Washington Department of Health Office of Drinking Water
- (3) Yakama Nation
- (4) Fire District 7

Significantly, these agencies made these determinations based on the minimal information provided by Hidden Point in its SEPA Checklist and/or information obtained outside. Once these agencies become fully aware of all relevant facts, it is highly likely that these agencies and others may change and/or they may want additional information.

To allow meaningful review by all interested agencies, the agencies should be provided full and complete information about the land involved and its surrounding areas. Since it is new to the area, Hidden Point is not able to provide all relevant information. Through its letters, the community has provided a significant amount of additional information not provided by Hidden Point. But even the community's knowledge is insufficient. Studies performed by experts in the relevant fields should be obtained to assess the realistic impacts of the proposed development.

Based on information currently available, the following studies should be required, and paid for,¹⁰ by Hidden Point prior to review of its CUP application:

- (1) Wildlife Study – The community reports the presence of numerous wildlife that reside or migrate through the subject area. A letter from Gretchen Chambers, dated Dec. 26, 2020, is particularly instructive and identifies dozens of potentially affected species. Notable wildlife activity includes deer and elk migration, bears, rattlesnakes, various raptors and birds of prey, and possibly wolves. *See* Exh. E attached (possible wolf track). These community reports are anecdotal and may not be all-inclusive. More detailed study is necessary to fully assess the potential impact of the proposed use.
- (2) Transportation Study – There is significant concern with the impact on the local roads, which are privately maintained dirt roads. Hidden Point's response in the SEPA Checklist on this topic is abundantly sparse – claiming that there will be “minimal vehicle traffic” and that no improvements to the roads are needed. *See* SEPA Checklist, at 11-12. Hidden Point assumes that each of its 24-cabins will have only one car that travels the road once a day and claims that there are no access issues. *Id.* There is no basis to assume that each cabin will have only one car, and stating that the roads need no improvement or maintenance is a gross understatement.

The existing road is a one-lane dirt road with steep embankments. Currently, if residents encounter one another on the road, one must back-up anywhere from tens of

⁹ Due to the absence of Kelly Bacon from December 24, 2020 through January 3, 2021, the public file does not appear to have been updated since December 23, 2020. Responding agencies may be in excess of those listed here.

¹⁰ As stated in the 2019 Comprehensive Plan, “Where proposed residential development is determined in conflict with natural resource activities, all mitigation measures to make the development compatible with the activities shall be completed and cost borne by the developer.” *See* Plan, at 95, RR-P51.

feet to a quarter mile in order to find a spot wide enough in the road to pass. There are currently only three families that use the road the road. Twenty-four additional cars traversing the roads would be a **ten-fold increase** in travel. Safe passage along the one-lane road is called strongly into question, particularly in winter months when the roads are snowy and icy. Not only is safety a concern, but cost. Hidden Point would represent 90% of the usage of the road, yet Hidden Point makes no reference to any financial contribution to maintain the road participate in or snow and ice removal.

It is also unclear whether Hidden Point has any legal access for the proposed development. Hidden Point currently accesses the parcels by travelling through private property owned by others. Historically, the road has been used only for residential access. There is no precedent for commercial use and its legal viability is in doubt.

Lastly, the application also fails to address the impacts on Hidden Valley Road, which intersects with highway 970. There is no left turn lane from the highway onto Hidden Valley. The intersection at 970 is already experiencing challenges compared to just two years ago. Adding 24 cars that come and go throughout the day will place additional volume and stress on the intersection and will likely lead to increased backups and the need for a traffic light. The intersection is also the location of the school bus stop. The proposed use will add a significant number of additional vehicles passing while school-aged children get on and off of the bus. More detailed study is necessary to fully assess the potential impact of the proposed use.

- (3) Vegetation Report – Clear-cutting on the subject parcels has raised concern over removal of native plant species and introduction of invasive species. *See, e.g., G. Chambers Letter, dated Dec. 26, 2020.*
- (4) Critical Area Report – The subject parcels are very near to protected areas. The Yakama Nation has already filed a comment expressing concern about sacred and sensitive lands, and proximity to historic resources. The subject parcels are also very near to lands protected by the Nature Conservancy, including the Swauk Creek Ranch. *See, e.g., P. Galloway Letter, dated Dec. 14, 2020, at 2.* In conversation with the Department of Ecology, there is also some potential concern about Swauk Creek itself. More detailed study of the neighboring critical areas is necessary to fully assess the potential impact of the proposed use.
- (5) Public Service Impact Report – Of great concern is Hidden Point’s plan not to have any on-site management for its 24-cabin hotel/resort. This is concerning for many reasons, one of which is impact on the public services. Thousands of visitors would be coming to the area who are not educated in fire risk and prevention. Additional burdens will be placed upon the fire district in this regard. Should any disputes arise among guests, police would be called upon. Police would also be called upon for trespassing on neighboring lands, noise complaints, and blocking vehicles. If the event anyone has a health condition arise, local hospitals will be imposed upon. The proposed development would bring **thousands of visitors**¹¹ to a very rural area and no manager is proposed. The impact would be far from insignificant. More detailed study is necessary to fully assess the potential impact of the proposed use.

Also not discussed by Hidden Point is waste management. Twenty-four people create a lot of garbage. Where will that garbage be stored? How will it be stored? Bears have been known to travel the area and explore garbage and/or compost bins. Mice

¹¹ Assuming only 50% capacity is booked, there would be approximately 4,400 visitors each year (12 guests x 365 days).

are abundant and packrats have also been found. There is no garbage service past the end of the county road. How does Hidden Point plan to handle the vast amount of waste that will be produced? Will there be recycling?

- (6) Water Impact Study – Unfortunately, water is becoming a more scarce resource. Already there are rumors of water access issues on Leo Lane, which is believed to share the same aquifer as the neighborhood at large and the subject parcels. This is a low-density area. A 24-cabin hotel/resort would dedicate a disproportionately large amount of water to visitors over residents. The current demand on the aquifer also does not take into consideration all parcels on which a house could be built but has not yet built. Collectively, the expansion in the area may place an unsustainable demand on water resources. The Department of Health has already suggested that a more expansive permit would be required.

In addition to water access, the impact of the septic tanks and run-off is of concern. The proposed development includes at least 24 toilets, 24 showers, 24 sinks, and a swimming pool. The impact on the groundwater and aquifer is unclear and should be studied to fully assess the potential impact of the proposed use.

Should any of these studies reveal an area of concern, Hidden Point's CUP application should also include related mitigation plans. Based on information currently available, management plans would likely include:

- (1) Wildlife Mitigation Plan
- (2) Vegetation Management Plan
- (3) Transportation/Road Plan
- (4) Water Mitigation Plan

Without these studies and plans, the decisionmaker will not be able to make a meaningful decision regarding the CUP. The County should require that Hidden Point provide this additional information. Alternatively, the CUP should be denied.

B. On present information, the CUP application fails to meet KCC 17.60A.015 review criteria.

Without the additional information described above, and based on the information presently known, the proposed land use fails to satisfy Kittitas Code CUP criteria and should therefore be denied.

KCC 17.60A.015 sets forth seven criteria that must be met for the development to be considered. If any of the criteria is not satisfied, the application must be denied. *Id.* (stating that the use “may” be allowed “when” the criteria “have been met”). The community has provided overwhelming evidence that the mandatory criteria have not been satisfied. As of the filing of this letter, over twenty community letters in opposition to the development have been filed with the County.¹² Without restating all of the arguments therein, below is a brief summary.

- 1. The proposed use is not essential or desirable to the public convenience and is detrimental or injurious to the public health, peace, or safety or to the character of the surrounding neighborhood [KCC 17.60A.015(1)].**

¹² Notably, the public file does not appear to have been updated since December 23, 2020. The number of letters received is likely in excess of this.

Overwhelming letters from the community express concern regarding a multitude of factors including noise, appearance, safety, wildlife, trespassing, fire safety, all of which are very real. The area is entirely residential. There are currently **no** parcels on which there is a business without someone also living here. Any business done is done by the property owner who also resides there. The proposed development would be a sharp departure from this.

Not only is it a departure in nature, but scale. While there are a few daily rentals available in the neighborhood, there is nothing approaching a commercial accommodation facility such as the one proposed. That there is no on-site manager will exacerbate every negative impact on the community. The change in character will be immense.

I personally moved to this area to get away from the hustle and bustle of things. I wanted abundant wildlife, sparse traffic, starry nights, deafening silence. I wanted to know every person walking down the road, and wanted my young children to be able to play safely with limited risk of strangers or getting hit by a car. Sacrifices and financial investments were made to achieve that dream. The proposed development threatens all of it. The neighborhood will be rife with strangers numbering in the thousands. Noise and light pollution will invade the serenity. Rural life as it is currently known will cease. Property values will decrease.

Simply said, there is nothing desirable about the proposed hotel/resort. To the contrary, it offers only injury to the safety, peace, and character of the neighborhood.

2. The proposed use will be unreasonably detrimental to the economic welfare of the county and will create excessive public cost for facilities and services [KCC 17.60A.015(2)].

As discussed above, the impact of the proposed resort on public services is presently unknown, but is expected to be great. Thousands of additional visitors each year will undoubtedly have an impact on fire protection, police, private and public local roads, highway 970, and potentially the school bus stop. To date, Hidden Point has planned no accommodation for these impacts.

3. The proposed use conflicts with relevant development standards and criteria for approval set forth in this title or other applicable provisions of Kittitas County Code [KCC 17.60A.015(3)].

Please see section II above, entitled “Illegality of the Proposed “Guest Ranch.” As stated above, the proposed use is not permitted under local zoning or under the 2019 Comprehensive Plan.

4. The proposed use does not mitigate material impacts of the development, whether environmental or otherwise [KCC 17.60A.015(4)].

Throughout this letter, wide ranging impacts of the proposed use are discussed. To date, Hidden Point has proposed minimal plans to mitigate any impacts (suggesting, for example, motion sensed lights, shielded lights, a non-reflective roof, and french drains as needed). The minimal proposals are inadequate to address light and water run-off. Motion sensed lights will only serve to scare animals that may be walking by and with 24-cabins, will barely reduce outside lights. The proposed measures do nothing about light coming out of the windows of the cabins, which appear to have floor-to-ceiling windows. The development is up on a hill, so downward facing lights do nothing to protect neighbors from light pollution. The clear-cutting is so vast that the ground cannot absorb the water fast enough.

Hidden Point has also not proposed any mitigation of noise, road conditions, snow removal, fire risk, wildlife preservation, water access, garbage removal and most critically, the dramatic effect on the character of the neighborhood. Hidden Point claims that trees shield neighbors from the development, but a cursory drive by belies this claim. Attached as Exhibit F are photos and filed herewith are videos of the subject parcels.

5. The proposed use does not ensure compatibility with existing neighboring land uses [KCC 17.60A.015(5)].

There is no other commercial operation in the area that also does not host a full-time owner-resident. There are a few landowners who work from home and/or have run a business from their property, but those owners also have residences and live full-time on the property. The owners monitor and manage their business to ensure compatibility with the neighborhood character.¹³ See also RCW 36.70A.030(20) (the definition of “rural character” includes fostering opportunities to live and work in rural areas”). The proposed hotel/resort is a sharp diversion from this use. The proposed use, which is 100% commercial in nature, is not compatible with the residential neighborhood in which it is proposed.

6. The proposed use is not consistent with the intent and character of the zoning district in which it is located [KCC 17.60A.015(6)].

Please see section II above, entitled “Illegality of the Proposed “Guest Ranch.” As stated above, the proposed use is not permitted under local zoning or under the 2019 Comprehensive Plan. The subject land is designated for Rural Working land use, but the proposed use is Rural Recreational. Zoning reflects this by allowing a guest ranch or farm, but not a hotel or resort. The proposed project is not a guest ranch or farm because there is no ranch or farm. *Contra* Flying Horse Shoe Ranch. Instead, the development is a motel/hotel or resort, which is not allowed.

7. The proposed use is not consistent with the intent, goals, policies, and objectives of the Kittitas County Comprehensive Plan; it does not preserve “rural character”; it is unknown whether it requires only rural government services; and it may compromise long term viability of designated resource lands [KCC 17.60A.015(7)].

The final criteria that must be met applies if the land is outside of the Urban Growth Area, as is the case here. As discussed above, the proposed use is not consistent with the intent, goals, or objectives of the Comprehensive Plan. See § II.B.

As discussed throughout this letter, and in the many letters submitted by the community, the proposed use does not preserve the rural character of the area. RCW 36.70A.030(20) defines “rural character” as including seven characteristics. The proposed use does not offer any hybrid of living and working in rural areas. Instead, it is solely a commercial enterprise. Hidden Point is not providing visual landscapes that are traditional found. Instead, they have clear-cut the land and offers views of buildings to the neighboring parcels. The proposed use threatens the natural migration patterns and habitation of many wildlife species.

¹³ Hidden Point cites to two other “guest ranches” that are not in the neighborhood (Huntley Lodge and Flying Horse Shoe Ranch). See Project Narrative, at 2. Because they are not in the neighborhood, they have little bearing on the character of this community. Notwithstanding their irrelevance, it must be noted that they are materially different from the proposed hotel/resort. Huntley Lodge is located right next to highway 970 and visitors need not drive through a neighborhood to access it. It also appears to be rented out to one group at a time, not 24 separate groups. The Flying Horse Shoe Ranch is an actual guest ranch where there is a working horse ranch as the primary business and guests can choose to stay. It is also unknown how those development occurred and whether the community opposed their construction.

Finally, as stated above, additional studies are necessary to determine the impact on government services and nearby resources lands.

In sum, based on information currently available, the proposed use fails to satisfy the CUP criteria. Because the criteria are not met, the CUP must be denied.

IV. Three Parcels, Not One

Finally, while not critical to the CUP application, it is noteworthy that the CUP application proposes development of three separate parcels that are treated with as one. Hidden Point's application encompasses three separate parcels that total 34 acres in size. Special attention should be given to avoid inadvertently allowing Hidden Point to develop any one parcel beyond that which is legally permitted.

For example, in Ag 20, each parcel is only allowed to have one residence unless the parcel exceeds 40 acres in size. *See* KCC 17.29.040. As three parcels, Hidden Point is be entitled to have three residences, one on each parcel. If, however, all three residences were placed on one parcel and the other two parcels sold, the result would be three residences on one parcel, which overwhelmingly violates the zoning code. *See* 17.29.080 (“No sale or conveyance of any portion of a lot for other than a public purpose shall leave a structure or the remainder of the lot with less than the minimum lot, yard, or setback requirements of this zone.”).

Such confusion appears to have occurred in at least three instances already. In August 2019, Hidden Point obtained a building permit (BP-19-00347) for the aforementioned “pump house” on its middle parcel (#867634). Yet Hidden Point wound up building the “pump house” on the northern most parcel (#877634).

The second example involves adequate water supply determinations and a well site inspection, which have been made only on the southernmost parcel (#797634), but the proposed CUP application spans all three parcels. Curiously, the pump house is located on the northernmost parcel (#877634) so it is unclear how the well could have been inspected on the southernmost parcel (#797634).

As a final example, sewage evaluations have been done on the southern and middle parcels (#797634 and 867634), but not the northern parcel (#877634). The northern parcel contains the pump house/4-car garage, RV, and is the site of the proposed communal kitchen, yet there does not appear to be any sewage evaluation for that property.

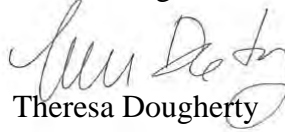
So long as the parcels remain three separate parcels that can be sold individually, they should be treated separately. The failure to do so may inadvertently result in one parcel being encumbered far in excess of that allowed by the zoning regulations. If Hidden Point wishes to treat all three parcels as one, it should be legally combined into one parcel. Conversely, if Hidden Point wishes to treat them all separately, then permits should be issued and monitored accordingly.

V. Conclusion

The development proposed by Hidden Point is concerning for many reasons. Most significantly, it does not comply with zoning or the 2019 Comprehensive Plan. Second, even if the land use were allowed, it fails to satisfy the mandatory review criteria of KCC 17.60A.015. The impact on the character of the community is particularly concerning in light of Hidden Point's demonstrated history of failing to comply with many zoning laws to date. For all of these reasons, CU-20-00005 for Hidden Point should be denied. At a minimum, additional studies and mitigation plans should be required before a decision can be made.

Thank you for your attention and consideration to this matter that is of great concern to myself and the community at large.

Kindest Regards,



Theresa Dougherty

cc: Dan Carlson – dan.carlson@co.kittitas.wa.us

Enclosures:

- Exhibit A – Email from T. Berkshire, dated Nov. 5, 2020
- Exhibit B – Sign posted by Dept. Natural Resources, Dec. 14, 2020
- Exhibit C – Photos of Clear-Cutting
- Exhibit D – Photo of Gate
- Exhibit E – Photos of Wildlife
- Exhibit F – Photos of View of Development

From: Jason Dougherty <rckclimbon@hotmail.com>
Date: Nov 5, 2020 3:35 PM
Subject: RE: Concern about inaccurate permitting/land use (framing happening tomorrow)
To: Toni Berkshire <toni.berkshire@co.kittitas.wa.us>
Cc:

So you're telling me you have an art studio ;)

Thanks again!

On Nov 5, 2020 3:15 PM, Toni Berkshire <toni.berkshire@co.kittitas.wa.us> wrote:

Jason,

No worries, I used the word panic because I've received so many complaints prior to the point I would usually receive them, so that's my fault. I should have used a different word, I apologize. I appreciate you letting me know what's going on up there. Our inspectors will also let me know if there's something out of place during construction, so that will be covered as well. I'll definitely stay aware of what's going on at these parcels. In regards to the 2 bathrooms and 1 kitchen, the definitions I shared earlier of an ADU or accessory building or accessory use are helpful. For the definition of ADU to apply, the structure must have a kitchen (with **range**). Two structures and only one kitchen would generally be one residence and an accessory structure. For instance, I could build an art studio next to my residence that has a bathroom in it and it'd be an accessory structure. But, if I add a kitchen and move my mom in, then the use (definition) would change and I'd have to meet the requirements for an ADU. This is purely an example and not anything the parcel owners have shared with me. I just thought it would be helpful to have a scenario. I hope this helps!

Regards,

Toni Berkshire

Code Enforcement, CDS

(509) 962-7001

Please Note: In an effort to mitigate the spread of COVID-19 and the Governor's "Safe Start" reopening plan, Kittitas County Community Development Services is currently in Phase 3 and is open to the public in a limited capacity. At this time many of us are on a rotating schedule working from home and in the office; during this time I will do my best to respond to you as promptly as possible.

From: Jason Dougherty <rckclimbon@hotmail.com>
Sent: Thursday, November 5, 2020 2:33 PM
To: Toni Berkshire <toni.berkshire@co.kittitas.wa.us>
Subject: Re: Concern about inaccurate permitting/land use (framing happening tomorrow)

Toni,

Thank you for your prompt and detailed reply. I hope you don't take what I'm saying as panic... I apologize if it sounds that way. I know you are spread thin in our county and merely wanted to make sure you were aware of the happenings up here because Sven has been misleading and disrespectful with his construction. Thank you for giving me your assurance that you are all over the permit compliance here as well as other areas of the county!

Oh, just one other thing Sven told me on Tuesday is that he is putting 2 bathrooms and 1 Kitchen on those 2 foundations. Sounds like a primary living unit and a secondary living unit.

Thanks again and enjoy the rest of your day.

Jason

From: Toni Berkshire <toni.berkshire@co.kittitas.wa.us>
Sent: Thursday, November 5, 2020 11:57 AM
To: 'Jason Dougherty' <rckclimbon@hotmail.com>
Cc: Jeremy Johnston <jeremy.johnston@co.kittitas.wa.us>
Subject: RE: Concern about inaccurate permitting/land use (framing happening tomorrow)

Hi Jason,

I received your complaint this morning in addition to your email yesterday. Thank you for reaching out with your concerns. I've actually received multiple complaints from concerned neighbors and have already toured the parcel with the parcel owners. I'm aware of, observed, and discussed the extra foundation with the parcel owners and our Building Official. For the specific complaints submitted with your complaint form:

1. KCC 17.08.022 Accessory dwelling unit means separate living quarters detached from the primary residence. There's an active permit for parcel 797634 for a new residence. If an ADU is created from the second foundation it will be permitted and allowed at the parcel if it meets the requirements of KCC Title 17. Currently, there's no residence or ADU on the property, so there's no violation to enforce.
2. At this time, we cannot make a determination on whether an extra foundation will be defined as an accessory building or accessory use per KCC 17.08.020 or as an accessory dwelling unit per KCC 17.08.022.
3. There's a new residence permit associated with the parcel and there's currently no ADU. Enforcement does not proceed based on intent or absence of intent and I cannot enforce an ADU violation unless there's one present. A foundation is not an ADU.
4. I have checked the parcel number discrepancy, verified this with our Building Official, and the error has been corrected. Thank you for bringing this to our attention.

5. The project description for BP-19-00347 is a pumphouse/storage, but the structure is listed as a garage/shop in our program. This permit has had multiple inspections, is on track, and is consistent with the plans.
6. Parcel owners may build their structures where they would like on their parcels while adhering to building setbacks, critical areas, etc. If they choose to keep 34 acres free and build on one acre, that's their prerogative. The owners have been removing burned trees under the guidance of the Department of Natural Resources and I observed first-hand the status of the parcel. I'm aware of the uses allowed in the AG20 zone as are our Plans Examiners, Permit Technicians and Planners. Any permit applications received will be reviewed appropriately, and will include the uses allowed at the parcel.

The building permit for the residence has passed inspections and the parcel owners/contractors are allowed to proceed with their construction and call for the next inspection. In regards to your statement that the parcel owners have built a gate on another parcel owner's property, this is a civil matter. Even as the County Code Enforcement Officer, I prefer to educate and assist parcel owners especially when there's an open line of communication and they've permitted me onto their property for first-hand observations. I've also discussed allowable uses and activity with the parcel owners. I know there's a panic in the neighborhood and I assure you I'm monitoring the progress and activity at this parcel. I hope this alleviates some of your concerns. Have a wonderful day!

Regards,

Toni Berkshire

Code Enforcement, CDS

(509) 962-7001

Please Note: In an effort to mitigate the spread of COVID-19 and the Governor's "Safe Start" reopening plan, Kittitas County Community Development Services is currently in Phase 3 and is open to the public in a limited capacity. At this time many of us are on a rotating schedule working from home and in the office; during this time I will do my best to respond to you as promptly as possible.

From: Jason Dougherty <rckclimbon@hotmail.com>
Sent: Wednesday, November 4, 2020 4:22 PM
To: Toni Berkshire <toni.berkshire@co.kittitas.wa.us>
Subject: Concern about inaccurate permitting/land use (framing happening tomorrow)

Toni,

I was told to send you an email about a concern I have about one of my neighbors and their property use. The address of the property is:

2090 Emerick Road, Cle Elum (Attached Parcel map of Hidden Point LLC)

I have spoken with the owner a few times and he has been very cagey about what he is doing saying (I'm building a couple cabins for my kids). Yesterday I discovered there are at least 2 concrete foundations poured complete with drainage for septic (I'm unsure whether he has installed a septic system).

I found a permit for a single residence issued for parcel 797634 in July of this year. The two foundations appear to be on parcel 877634 not 797634 as the permit indicates and there are at least 2 foundations not 1). Sven, the owner told me his crew is coming to frame tomorrow 11/5/2020. I know it's asking a lot but I am concerned he is significantly changing the character of the area, building roads, and installing gates on property that isn't his without the owner's permission and think he needs a swift kick in the butt to keep in line and a visit by you while they are framing may help with that.

I'm sorry for the short notice I'm trying to react to the information I just received from Sven, compared with information he has previously given me, and what I've seen happening... Something clearly is not adding up and he is hiding something.

I would happily talk with you if you have any questions.

Thank you in advance.

Jason Dougherty

1272 Emerick Road, Cle Elum.

206-578-2696

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message id: 38eb45916c6dcdbdac24bb8719d004a14

NOTICE

This operation is in violation of the Washington Forest Practices Act:
Chapter 76.09 RCW
Rules Title 222 WAC

Notice posted on: 12/14/2020 at 3:30 by Marty Mauney
month/year time name/forepost no.

Please cooperate by taking the following action(s):

Obtain and return a completed Forest Practices Application to
S.E. Region DNR
713 Bowers Rd. by immediately
region/address/city/state/zip day/month/year
Ellensburg, WA 98926

STOP all activity IMMEDIATELY!

It is your responsibility as operator/and/or landowner to correct or prevent damage to water, fish, wildlife or public capital improvements.

Comments: _____

Contact Marty Mauney at 509-856-7054
name location/work phone number

for details before resuming operation.



WASHINGTON STATE DEPT
Natural Resources



Marty Mauney
Forest Practices Forester
Southeast Region
713 Bowers Road
Ellensburg, WA 98926-9301
www.dnr.wa.gov
Region: (509) 925-8510
Desk: (509) 925-8510
Cell: (509) 856-7054
marty.mauney@dnr.wa.gov

Posted on tree at driveway to Hidden Point parcels.



Hidden Point; Nov. 4, 2020



Hidden Point; Nov. 4, 2020



Hidden Point; Nov. 4, 2020



Gate on left installed by Hidden Point on property Hidden Point does not own. SE corner of subject area. Gate on the right has been there for many years.



June 2020; Emerick Road



December 24, 2020; Emerick Road



December 29, 2020; Emerick Road



January 2020; Emerick Road



May 2020; Emerick Road

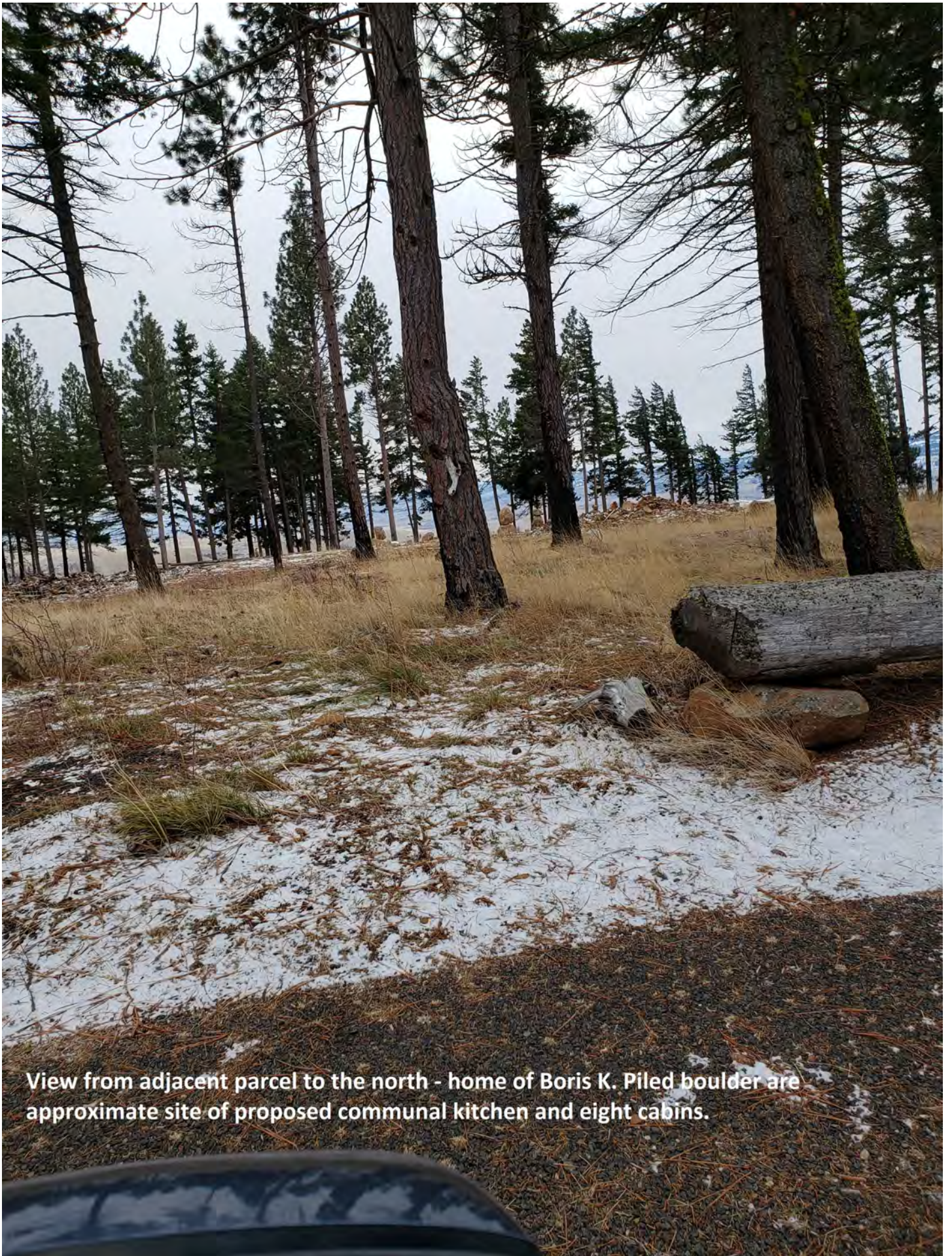




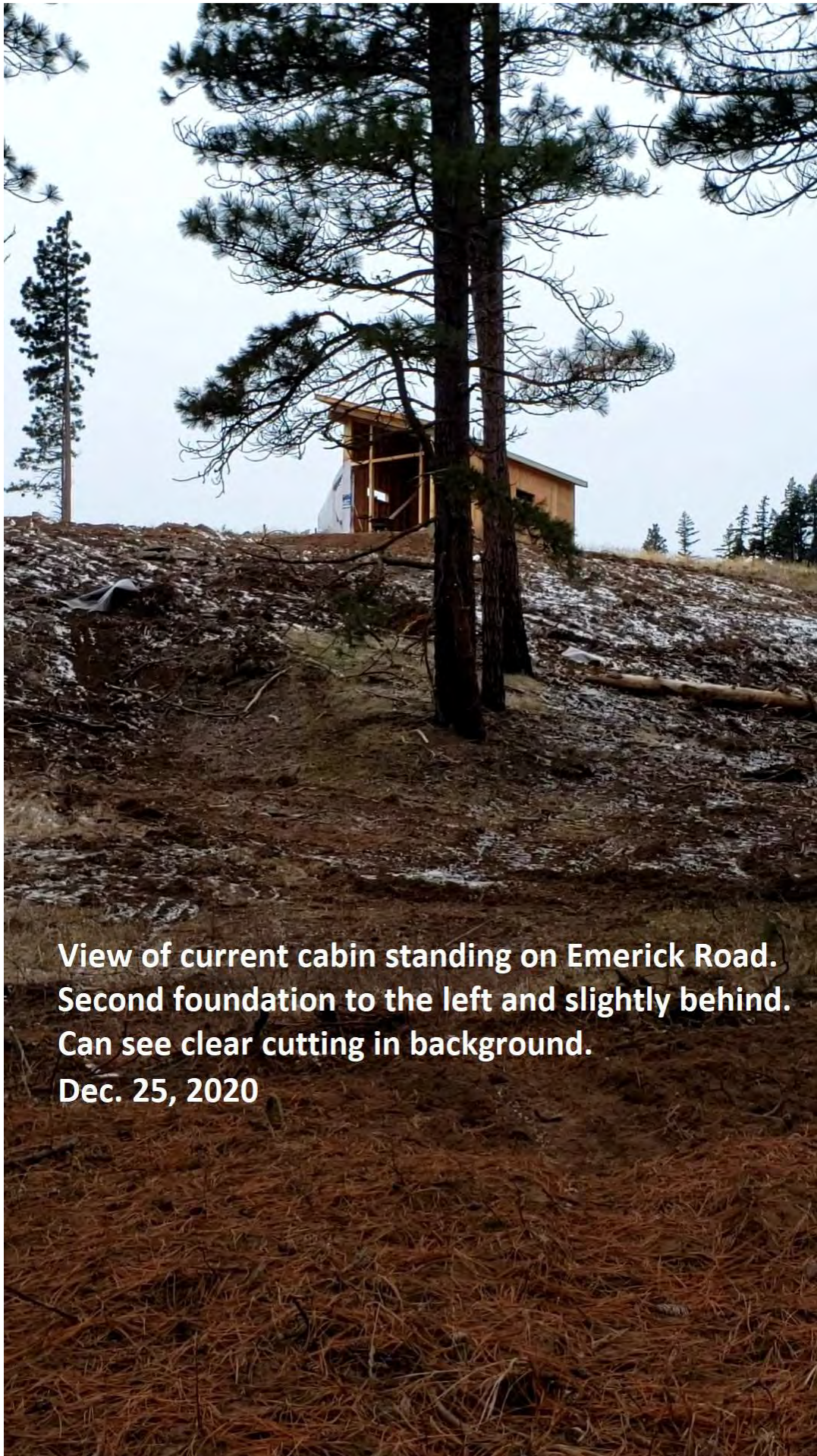
Rattlesnake seen on Hidden Point parcel June 2018. Another one seen June 2019.
One was not seen in 2020 (since development commenced)



Animal track seen in neighborhood that appears to possibly be wolf.



View from adjacent parcel to the north - home of Boris K. Piled boulder are approximate site of proposed communal kitchen and eight cabins.



**View of current cabin standing on Emerick Road.
Second foundation to the left and slightly behind.
Can see clear cutting in background.
Dec. 25, 2020**