



## KITTITAS COUNTY COMMUNITY DEVELOPMENT SERVICES

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"Building Partnerships – Building Communities"

### Calvary Ellensburg Reasonable Use File Number RU-22-00003 FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

#### I. GENERAL INFORMATION

Requested Action: Calvary Ellensburg, property owner, submitted a reasonable use exception request to the 100-foot Type F stream and 15-foot building setback critical area buffer to accommodate an expanded church, accessory buildings and associated parking within the buffer. Reasonable use exceptions are processed under KCC 17A.01.060.

Location: The subject property is at 840 Cowboy Lane, parcels # 194734, 064734, located approximately .45 miles east of the intersection of Pfenning Road and Vantage Hwy, in Section 31, Township 18, Range 19, W.M; Kittitas County assessor's map numbers 18-19-31030-0043 and 18-19-31030-0031. The property is zoned Urban Residential within the Ellensburg Urban Growth Area.

#### II. SITE INFORMATION

Total Property Size:	5
Number of Lots:	2
Domestic Water:	Well (Proposal includes connection to City of Ellensburg Water)
Sewage Disposal:	Septic (Proposal includes connection to City of Ellensburg Sewer)
Fire Protection:	Kittitas Valley Fire and Rescue (KVFR)

#### Site Characteristics:

<u>North:</u>	Residential Development
<u>South:</u>	Residential Development
<u>East:</u>	Residential Development
<u>West:</u>	Residential Development

Access: The site is accessed off Cowboy Lane, a private road from Vantage Highway, approximately .44 miles east from the intersection of Vantage Highway and Pfenning Road.

#### III. ZONING, ENVIRONMENTAL AND DEVELOPMENT STANDARDS

The subject properties have a zoning designation of Urban Residential (UR). The purpose and intent of the Urban Residential zone is to provide for and protect areas for homesite development and/or urban levels of development in where municipal services can be provided or is already available.

The Urban Residential zoning designation has required setbacks of 25 feet for the front and rear property lines and 15 feet for the side. It also has a 2.5 stories or 35-foot height limit (whichever is less). Some of the proposed building pads (outdoor restroom and utility building) in Phase 2 of Calvary Ellensburg plans do not meet the required side setback, however they could be met if they did a lot line encroachment as seen in KCC 16.10.065 since they own both properties. All other proposed buildings meet the current setback requirements.

The applicant is requesting to utilize the reasonable use exception process pursuant to KCC 17.A.01.060(2), to deviate from the prescribed critical area setback requirements in KCC 17A.04.030 regarding the required Type F stream setbacks (100 ft) and building setback (15 ft). Title 17A.01.060(2)(c) of the Kittitas County Code outlines seven criteria in which a reasonable use can be granted. The applicant must demonstrate that the proposal **has met all seven criteria**. The following is a summary describing whether or not each criterion has been satisfactorily demonstrated:

**KCC 17A.01.060(2)(c) Granting Criteria (all seven must be met):**

1. The application of this Title would deny all economic use of the property.

Applicant Response

*“The current zoning is UR Urban Residential, and as the stream buffer takes up the entire parcel, any building, whether it be residential or a church, would deny all reasonable economic use of the property.”*

Staff Response

CDS staff have reviewed the complete file information, including but not limited to the applicant submitted information and comments received during the comment period. KCC 17A.01.060(2)(a) allows consideration of additional information such as zoning and adjacent land uses to determine what is considered reasonable use for a site. The surrounding zoning is mostly residential with some commercial uses not far away. A church can be and is incorporated into residential neighborhoods in many areas throughout the country. With the creek towards the western edge of the property, it denies reasonable economic use as it would push as the current buffer (effective 2/7/2022) into the lot and would deny the applicant of uses customarily associated with a church. Therefore, the application of the buffer denies all reasonable economic use of the property. CDS finds that the applicant has satisfied the criteria outlined in KCC17A.01.060(2)(c)(i).

2. No other reasonable economic use of the property has less impact on the critical area and its buffer

Applicant Response

*“There is no other use of these parcels with less impact on the stream buffer that proposed on the existing attached site plan and critical area evaluation and mitigation report.”*

Staff Response

CDS staff have reviewed the complete file information, including but not limited to the applicant’s submitted information and comments received during the comment period. The existing creek has very little function per the critical area report and the Washington State Department of Fish and Wildlife, and a church use would likely have no more impact than any other use on the critical area.

3. The proposed impact to the critical area is the minimum necessary to allow for reasonable economic use of the property.

Applicant Response

*“See attached site plan and critical area evaluation and mitigation report.”*

Staff Response

As the creek has little ecological value as demonstrated in the critical areas report, the proposed impact is the minimum necessary to allow for reasonable economic use of the property.

4. The inability of the applicant to derive reasonable economic use of the property is not the result of actions by the applicant after the effective date of this Title

Applicant Response

Applicant provided no response.

Staff Response

Lyle Creek and branches of it, including the east branch have existed over a long period of time, and the creek has been rerouted many times through no fault of the applicant. The current critical areas buffer (effective 2/7/2022) increased the buffers on this property that derived the property of reasonable economic use.

5. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site

Applicant Response

Applicant provided no response.

Staff Response

The proposal has similar qualities to other churches near residential areas in the area and United States and will not pose an unreasonable threat to public health, safety and welfare. The applicant has already completed a SEPA checklist for their conditional use permit and will be issued a Mitigated Determination of Non-Significance (MDNS) that addresses any of these concerns. The creek does not serve as drinking water for any residents and is only used for irrigation deliveries.

6. The proposal will result in no net loss of critical area functions and values consistent with the best available science

Applicant Response

Applicant provided no response.

Staff Response

The applicant's proposal for mitigation results in no net loss of ecological functions through replanting and enhancement of vegetation habitat along the stream. There is very little ecological value to the stream and the proposed mitigation is in accordance with the best available science. The associated SEPA MDNS with the church's conditional use permit application ensures consistency with the Kittitas County Critical Areas Ordinance.

7. The proposal is consistent with other application regulations and standards.

Applicant Response

*"The proposal is consistent with other applicable regulations and standards."*

Staff Response

The proposal is conditioned to be consistent with all other applicable regulations and standards.

### **Staff Conclusions**

Staff finds that the reasonable use exception request **does** meet all seven criteria outlined in KCC 17A.01.060(2)(c) as described above. Therefore, the critical areas reasonable use request is consistent with the conditions necessary to grant a reasonable use exception under KCC 17A.01.060(2)(c)

## **IV. ADMINISTRATIVE REVIEW**

**Deem Complete:** The application was determined complete on October 5, 2022.

**Notice of Application:** Notice of Application was sent to property owners within 500 feet and all agencies with jurisdiction, published in the official newspaper of record for Kittitas County, and posted on the Kittitas County website on October 6, 2022, all in conformance with the Kittitas County Project Permit Application Process (Title 15A). The comment period ended at 5:00 pm on October 21, 2022 and all comments were transmitted to the applicant on October 24, 2022.

## **V. ENVIRONMENTAL REVIEW**

CDS performed a critical area review of the subject parcels and found that GIS indicated a Type U stream on adjacent property. During the review process for the church's conditional use permit (CU-22-00002), the Department of Fish and Wildlife identified what appeared to be a Type F stream named East Branch of Lyle Creek on Calvary Ellensburg property. Due to concerns about the stream from the comments from the conditional use application, a site visit was conducted with County Staff and Fish & Wildlife to verify that there was a Type F stream on the property. The current required setback in KCC 17A.04.030.4 is a 100-foot buffer from the Ordinary High-Water Mark (OHWM) of the creek since it is within the Columbia Plateau Ecoregion. This does not include the additional 15' setback in KCC 17A.01.090.5 which is also required for any new buildings or structures. The applicant included a proposed site plan for the expanded church, accessory buildings, and parking lots. The specific placement of these structures and uses was a consideration in the reasonable use review. The proposal is within the required setback and requires a reasonable use since a buffer averaging plan could not meet the setback requirements of the stream. The reasonable use would alleviate concerns regarding encroachments to the setback of the stream with a full mitigation plan. CDS has determined that the Calvary Ellensburg church expansion plans are not exempt from SEPA review and the applicant has applied and will receive a Mitigated Determination of Non-Significance (MDNS) for the project.

## **VI. AGENCY AND PUBLIC COMMENTS**

Applicable agencies, adjacent property owners, and interested parties have been given the opportunity to review this proposal. All comments are on file and available for public review.

### **Agency Comments:**

Timely comments were received from the following agencies during the comment period: Cascade Irrigation, Snoqualmie Tribe, City of Ellensburg and Kittitas County Public Health. All comments are on file and available for public review.

### **Cascade Irrigation**

Cascade Irrigation stated that they have no objection to the reasonable use as long as it does not interfere with water to downstream customers.

### **Staff Response**

CDS has provided these comments to the applicant and conditioned this determination to ensure the applicant maintains water deliveries for Cascade Irrigation to downstream customers.

Snoqualmie Tribe

Snoqualmie Tribe commented that they have no substantive comments at this time but if the scope of the project or parameter of the project changes, they reserve the right to modify their current position.

Staff Response

CDS has provided these comments to the applicant.

City of Ellensburg

City of Ellensburg commented saying that these are the same comments they had for the conditional use permit for Calvary Ellensburg (CU-22-00002). City of Ellensburg commented on various water and sewer line locations and hookups as well as roadway and stormwater requirements. They mentioned civil review will be done jointly between the City and County.

Staff Response

Staff has provided these comments to the applicant and do not believe any of the City comments would hinder the reasonable use mitigation plans.

Kittitas County Public Health (KCPH)

KCPH commented that they reviewed the project and while the intention is to connect to the City of Ellensburg sewer and water with the next two years, in the interim the current well must be tested by bacteria and nitrates and the septic system must be pumped and inspected with records to the health department as such to make sure that it is currently functional. They mentioned if it had recently been pumped, that records should be submitted to the health department.

Staff Response

Staff has provided these comments to the applicant. The reasonable use and planting of vegetation would likely would not affect current well and septic systems but these concerns will be more readily addressed through the SEPA MDNS and Conditional Use Permit conditions.

Staff Note:

*The critical areas report was given to Washington Department of Fish and Wildlife (WDFW) on 9/5/2022 by County staff after completion and submission to the County prior to the reasonable use application being submitted. WDFW responded to County staff on 9/6/2022 saying that the “plan looks reasonable from WDFW’s perspective”.*

Public Comments:

There were no public comments for this reasonable use request.

All comments received during the comment period were transmitted to the applicant on October 24, 2022. The applicant responded on October 24, 2022 and said they did not have any response to the comments submitted.

**VII. PROJECT ANALYSIS**

In review of this proposal, it is important to consider the applicable county code, public and agency comments, any identified environmental concerns and state and federal requirements. Identified below is planning staff's analysis and consistency review for the subject application.

Consistency with the provisions of KCC 17A, Critical Areas:

CDS performed a critical area review of the subject parcels and found that GIS indicated a Type U stream on adjacent property. During the review process for the church's conditional use permit (CU-22-00002), the Department of Fish and Wildlife identified what appeared to be a Type F stream named East Branch of Lyle Creek on Calvary Ellensburg property. Due to concerns about the stream from the comments from the conditional use application, a site visit was conducted with County Staff and Fish & Wildlife to verify that there was a Type F stream on the property. The current required setback in KCC 17A.04.030.4 is a 100-foot buffer from the Ordinary High-Water Mark (OHWM) of the creek since it is within the Columbia Plateau Ecoregion. This does not include the additional 15' setback in KCC 17A.01.090.5 which is also required for any new buildings or structures. The applicant included a proposed site plan for the expanded church, accessory buildings, and parking lots. The specific placement of these structures and uses was a consideration in the reasonable use review. The proposal is within the required setback and requires a reasonable use since a buffer averaging plan could not meet the setback requirements of the stream. The reasonable use would alleviate concerns regarding encroachments to the setback of the stream with a full mitigation plan. CDS has determined that the Calvary Ellensburg church expansion plans are not exempt from SEPA review and the applicant has applied and will receive an Mitigated Determination of Non-Significance (MDNS) for the project.

Consistency with the provisions of KCC 17.22 – Urban Residential Zone:

This proposal is not consistent with the setbacks outlined in Kittitas County Zoning Code 17.22 Residential Zone but as conditioned, the proposal can meet the setbacks of 17.22 either through a lot combination or lot line encroachment form since they own both properties.

Consistency with the provisions of the KCC Title 12, Roads and bridges:

All proposed roads and parking lots must be consistent with KCC Title 12.

Consistency with the provisions of the KCC Title 14.04, Building Code:

All buildings must be consistent with International Building Codes and approved building plans as issued by Kittitas County.

Consistency with the provisions of the KCC Title 14.05, Grading:

All proposed improvements must be consistent with KCC Title 14.05 Grading.

Consistency with the provisions of KCC Title 20, Fire and Life Safety:

The proposal must be consistent with the provisions of KCC Title 20.

Consistent with the provisions of KCC Title 13 Water And Sewers:

The proposal must be consistent with the provisions of KCC Title 13.

## VIII. FINDINGS OF FACT

1. Calvary Ellensburg, property owner, submitted a reasonable use exception request to the 100-foot Type F stream and 15-foot building setback critical area buffer to accommodate an expanded church, accessory buildings and associated parking within the buffer. Reasonable use exceptions are processed under KCC 17A.01.060.

2. The location of the reasonable use request is at 840 Cowboy Lane, parcels # 194734, 064734, located approximately .45 miles east of the intersection of Pfenning Road and Vantage Hwy, in Section 31, Township 18, Range 19, W.M; Kittitas County assessor's map numbers 18-19-31030-0043 and 18-19-31030-0031. The property is zoned Urban Residential within the Ellensburg Urban Growth Area.

3. Site Information

Total Property Size:	Approximately 5 acres
Number of Lots:	2
Domestic Water:	Well (Proposal includes connection to City of Ellensburg Water)
Sewage Disposal:	Septic (Proposal includes connection to City of Ellensburg Sewer)
Fire Protection:	Kittitas Valley Fire and Rescue (KVFR)

4. Site Characteristics:

North:	Residential Development
South:	Residential Development
East:	Residential Development
West:	Residential Development

The site is accessed off Cowboy Ln, A private road from Vantage Highway, approximately .44 miles east from the intersection of Vantage Highway and Pfenning Road.

5. The Comprehensive Plan land use designation is "Urban Land Use" with a zoning designation of Urban Residential.
6. The purpose and intent of the Urban Residential zone is to provide for and protect areas for homesite development and/or urban levels of development where municipal services can be provided or is already available.
7. A Reasonable Use Application was submitted to Kittitas County Community Development Services department on October 5, 2022.
8. The application was determined complete on October 5, 2022.
9. Notice of Application was sent to property owners within 500 feet and all agencies with jurisdiction, published in the official newspaper of record for Kittitas County, and posted on the Kittitas County website on October 6, 2022, all in conformance with the Kittitas County Project Permit Application Process (Title 15A). The comment period ended at 5:00 pm on October 21, 2022 and all comments were transmitted to the applicant on October 24, 2022.
10. CDS performed a critical area review of the subject parcels and found that GIS indicated a Type U stream on adjacent property. During the review process for the church's conditional use permit (CU-22-00002), the Department of Fish and Wildlife identified what appeared to be a Type F stream named East Branch of Lyle Creek on Calvary Ellensburg property. Due to concerns about the stream from the comments from the conditional use application, a site visit was conducted with County Staff and Fish & Wildlife to verify that there was a Type F stream on the property. The current required setback in KCC 17A.04.030.4 is a 100-foot buffer from the Ordinary High-Water Mark (OHWM) of the creek since it is within the Columbia Plateau Ecoregion. This does not include the additional 15' setback in KCC 17A.01.090.5 which is also required for any new buildings or structures. The applicant included a proposed site plan for the expanded church, accessory buildings, and parking lots. The specific placement of these structures and uses was a consideration in the reasonable use

review. The proposal is within the required setback and requires a reasonable use since a buffer averaging plan could not meet the setback requirements of the stream. The reasonable use would alleviate concerns regarding encroachments to the setback of the stream with a full mitigation plan. CDS has determined that the Calvary Ellensburg church expansion plans are not exempt from SEPA review and the applicant has applied and will receive an Mitigated Determination of Non-Significance (MDNS) for the project.

11. The critical areas report was given to Washington Department of Fish and Wildlife (WDFW) on 9/5/2022 by County staff after completion and submission to the County prior to the reasonable use application being submitted. WDFW responded to County staff on 9/6/2022 saying that the “plan looks reasonable from WDFW’s perspective”.
12. The proposal is consistent with the provisions of KCC 17A, Critical Areas as conditioned.
13. The proposal is consistent with the reasonable use exception criteria in KCC 17A.01.060(2)(c). All seven criteria have been satisfied.
14. The proposal is not consistent with the provisions of KCC 17.22, UR- Urban Residential zoning but as conditioned, the proposal can meet the provision of KCC 17.22 through a lot combination or lot line encroachment as seen in KCC 17.22.060 and KCC 16.10.065.
15. This proposal is consistent with the provisions of the KCC Title 14.04, Building Code as conditioned.
16. The proposal is consistent with the provisions of KCC Title 20, Fire and Life Safety, as conditioned.
17. The proposal is consistent with the provisions of KCC Title 12, Roads and Bridges as conditioned.
18. The proposal is consistent with the provisions of KCC Title 14.05, Grading as conditioned.
19. The proposal is consistent with the provisions of KCC Title 13, Waters and Sewers as conditioned
20. Comments were received from the following agencies during the comment period: Cascade Irrigation District, Snoqualmie Tribe, City of Ellensburg and Kittitas County Public Health. All comments are on file and available for public review.
21. No public comment was received.

#### **IX. STAFF CONCLUSIONS:**

1. This proposal has satisfied all seven criteria of KCC Title 17A.01.060(2)(c).
2. The proposal is consistent with state and federal regulations.
3. The proposal, as conditioned is consistent with local regulations including Kittitas County Code Title 12 Roads and Bridges, Title 14.04 Building Code, Title 14.05 Grading, Title 17 Zoning, Title 17A Critical Areas, and Title 20 Fire and Life Safety.

#### **X. DECISION AND CONDITIONS OF APPROVAL:**


Kittitas County Community Development Services finds that the Calvary Ellensburg Reasonable Use Exemption Request (RU-22-00003) is hereby **approved**. The Calvary Ellensburg Reasonable Use Exemption



Request has satisfied the requirements of a reasonable use exception pursuant to KCC 17A.01.060(2)(c).

**CONDITIONS OF APPROVAL:**

1. The project shall proceed in substantial conformance with the application materials including the “Stream Critical Areas Evaluation and Mitigation Plan- East Branch Lyle Creek” on file with CDS dated October 4, 2022 and subsequent information included in the complete file index except as amended by the conditions herein.
2. The applicant shall comply with all local, State and Federal environmental standards and regulations in place at the time of building permit application submittal.
3. The applicant shall obtain all necessary permits required by Kittitas County Public Works for this development, and no structure shall encroach upon any easement or right-of-way.
4. All property corners disturbed or destroyed by this construction shall be replaced by a Surveyor licensed to practice in the State of Washington.
5. This project shall not interfere with water to downstream customers of Cascade Irrigation District.
6. All current and future owners must comply with International Fire Code.
7. As described in the report, an as-built report shall be submitted to the County within 30 days of plant installation. The planting shall occur within two years of this approval. Once planted a monitoring report shall be submitted to the county by January 1<sup>st</sup> of each year following monitoring efforts from the monitoring plan post planting years 1-3.
8. Should ground disturbing or other activities related to this proposal result in the inadvertent discovery of cultural or archaeological materials, work shall be stopped in the immediate area and contact be made with the Washington State Department of Archaeology and Historic Preservation (DAHP), and the Snoqualmie Tribe. Work shall remain suspended until the find is assessed and appropriate consultation is conducted. Should human remains be inadvertently discovered, as dictated by Washington State RCW 27.44.055, work shall be immediately halted in the area and contact made with the coroner and local law enforcement in the most expeditious manner possible.
9. This associated critical areas report is valid for 5 years. The report shall be updated in 5 years and submitted to Kittitas County for review, if substantial construction has not taken place. Substantial construction shall mean a poured foundation on approved building pads (Building permit required).
10. This reasonable use approval and conditions shall become unnecessary if a fish screen is installed at the diversion into the East Branch of Lyle Creek at Judge Ronald Road in accordance with Department of Fish and Wildlife standards. Documentation and appropriate permits shall be provided to Kittitas County prior to deeming this reasonable use exemption unnecessary.

**Responsible Official**  \_\_\_\_\_  
Dan Carlson

**Title:** Community Development Services Director

**Address:** Kittitas County Community Development Services

411 N. Ruby Street, Suite 2  
Ellensburg, WA. 98926  
Phone: (509) 962-7046

**Date:** November 3, 2022

**Pursuant to Chapter 15A.07 KCC, this determination may be appealed by submitting specific factual objections in writing with a fee of \$1550 to the Kittitas County Community Development Services at 411 N Ruby St Ste. 2, Ellensburg, WA 98926. Timely appeals must be received no later than 5:00pm November 18, 2022. Aggrieved parties are encouraged to contact Community Development Services at (509) 962-7506 for more information on the appeal process.**