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Sent via Email Only (cds@co.kittitas.wa.us; jamey.ayling@co.kittitas.wa.us)

Kittitas County Community Development Services
Attn: Jamey Ayling, Staff Planner
411 N. Ruby St. Suite 2
Ellensburg, WA 98926

RE: Fowler Creek Guest Ranch (CU-23-00003)
Applicant: Fowler Creek Trails, LLC (Owner)

Dear Ms. Ayling and Kittitas County Community Development Services:

1. INTRODUCTION AND REQUESTED OUTCOME

This office represents Friends of Fowler Creek (FOFC) concerning the above-noted proposal, which was recently revised by Fowler Creek Trails, LLC (“Fowler Creek Trails” or “Applicant”). By email and notice received June 27, 2024, the County established a public comment period ending July 26, 2024, at 5:00 p.m. for additional public comments on the revised proposal. *See* June 27, 2024, email from Jamey Ayling, Subject: CU-23-00003 Fowler Creek Guest Ranch - Notice of Revised Application with attached Notice of Revised Application.

Accordingly, these comments regarding the revised application are submitted on FOFC’s behalf and should be read in conjunction with all comments submitted by FOFC members and supporters, including earlier submitted comments as well as the more recent comments submitted in response to the July 26, 2024, comment deadline.

We emphasize at the outset that, although the application has been revised to reduce the proposal’s theoretical overall footprint by approximately 50% from 84.3 total acres to 34.9 acres,¹ the elements of the proposal which are the most intensive and detrimental to public health, peace, safety and character of the surrounding residential neighborhood not only remain with the same intensity as proposed previously, but remain in the same locations previously proposed -- literally abutting preexisting residential properties. Thus, while the footprint of the proposal has been reduced, the intensity of the proposal and the detrimental impacts it will have on the surrounding neighborhood have been reduced little if any. Further, while the Kittitas County Code (KCC)

¹ Although the application has been revised to reduce the footprint, certain application materials continue to reference 84.3 acres. *See, e.g.,* Applicant Response to Submitted Comments, Exhibit 1 at 1.

contemplates an application for a singular conditional use, this application impermissibly stacks several conditional uses, some mutually inconsistent per KCC definitions. In addition, it fails to address vital issues of roads, traffic, and safety, including with regard to safe and viable evacuation.

Therefore:

- 1. As explained below and in other public comments, this application must be denied in its entirety as an invalid CUP proposal under the Kittitas County Code because, as Applicant has admitted, it is not just for a “guest ranch” but instead stacks discrete uses into one application.**
- 2. If this application nonetheless remains under consideration, it should be denied because it fails to satisfy the Code’s mandatory CUP criteria.**
- 3. If this application nonetheless is not denied in its entirety for failure to satisfy mandatory CUP criteria, then its campground/ 30 recreational vehicle park portion(s) immediately adjacent to existing residential properties, the most detrimental and incompatible aspect of the proposal, should be eliminated. *See KCC 17.60A.020.***
- 4. If the 30 RV use nonetheless is not eliminated in its entirety, then, at a minimum it should be reduced to five parking spots and re-located to minimize impacts and provide a buffer for existing residential properties. *See KCC 17.60A.020.***
- 5. If the application is not dismissed in its entirety, a SEPA EIS must be prepared, focusing, inter alia, on roads and traffic, fire safety (including wildfires and evacuation), land use impacts/consistency with the Comprehensive Plan.**

FOFC reserves all rights to objections and appeals in the event that a SEPA EIS is not prepared and/or the application is not denied in its entirety.

2. THE APPLICATION FAILS TO SATISFY KCC 17.60A.015 MANDATORY CRITERIA FOR CUP APPROVAL

The Washington Supreme Court has explained the role of a CUP in zoning codes as follows: “A business attempting to establish a use prohibited by the zoning ordinance must obtain a conditional use permit unless it is a valid nonconforming use. A conditional use permit allows otherwise prohibited activities based on certain restrictions.” *Rhod-A-Zalea v. Snohomish Cty.*, 136 Wn.2d 1, 4, 959 P.2d 1024 (1998).

The Court of Appeals has amplified this explanation:

Zoning codes regulate the use of property and control the dimensions of improvements placed on property to ensure that adjacent land uses are compatible with one another. *Sammamish Cmty. Council v. City of Bellevue*, 108 Wn. App. 46, 53, 29 P.3d 728 (2001). Zoning codes, then, divide land into various “use districts” and “zones,” where certain uses are expressly permitted and, necessarily, others are excluded. 6 Washington State Bar Ass’n, Washington Real Property Deskbook § 97.1, at 97-3 § 97.3(1)(c) at 97-10 (3d ed. 1996). Those uses not expressly permitted or prohibited are conditional uses—uses “allowed only when specific and special conditions on use or operation are required.” *Id.* § 97.7(2), at 97-27.

Kelly v. Chelan Cty., 157 Wn. App. 417, 426, 237 P.3d 346 (2010).

As explained in our October 19, 2023, comment letter on behalf of FOFC:

KCC 17.60A.015 establishes multiple review criteria for CUP applications. The burden is on the Applicant to demonstrate that all CUP criteria are met. Even then, application approval is not required: if the criteria are met, the Code only states that the application “may” be granted. The use of “may,” not the mandatory “shall,” is legally significant. *Gorman v. Pierce County*, 176 Wn. App. 63, 79, 307 P.3d 795, 803, 2013 Wash. App. LEXIS 1884, *18-19, 2013 WL 4103314 (“Where a statute uses both ‘shall’ and ‘may,’ we presume that the clause using ‘shall’ is mandatory and the clause using ‘may’ is permissive.”).

Applicant’s attorney takes issue with this statement, citing three appellate decisions and arguing that our statement is in conflict with applicable case law and constitutional requirements. *See* Applicant Response to Submitted Comments, Exhibit 20 at 8-9.² However, none of the decisions cited by Appellant are controlling or even on point.

Cingular Wireless v. Thurston Cty., 131 Wn. App. 756, 775, 129 P.3d 300, 309 (2006) stands for the proposition that where there is an actual conflict between a specific provision and a general one, the specific provision controls. *Anderson v. City of Issaquah*, 70 Wn. App. 64, 851 P.2d 744, (1993) concerned whether design standards were too unconstitutionally vague to be enforced. *Mission Springs, Inc. v. City of Spokane*, 134 Wn.2d 947, 961, 954 P.2d 250 (1998) stands at most for the proposition that a ministerial permit such as building or grading permit cannot be withheld at the discretion of a local official when issuance is mandatory under applicable code.

None of these decisions concerned a conditional use permit (CUP). None held that a CUP must be issued despite the fact that the applicable criteria provided express discretion, specifying

² Exhibit 20 consists of a single-page cover letter from Applicant’s attorney dated May 22, 2024, along with an enclosed 22-page document titled “Comment Response Summary Fowler Creek Trails Fowler Creek Guest Ranch (CU-23-00003).” All references herein to Exhibit 20 are to the 22-page enclosure.

only that a CUP “may” be issued. *See* KCC 17.60A.015 (“The Director or Board, upon receiving a properly filed application or petition, may permit and authorize a conditional use when the following requirements:” (emphasis added)). In the context of a CUP, where the use is not allowed outright, the KCC choice to provide discretion to the permit decisionmaker as to whether or not a CUP should ultimately issue makes sense and does not run afoul of any legal restrictions.

Again, the mandatory KCC 17.60A.015 CUP criteria with which the Applicant must demonstrate compliance as a threshold matter are:

1. The proposed use 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.
2. The 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
 - A. The proposed use will be adequately serviced by existing facilities such as highways, roads, police and fire protection, irrigation and drainage structures, refuse disposal, water and sewers, and schools; or
 - B. The applicant shall provide such facilities; or
 - C. The proposed use will be of sufficient economic benefit to offset additional public costs or economic detriment.
3. The proposed use complies with relevant development standards and criteria for approval set forth in this title or other applicable provisions of Kittitas County Code.
4. The proposed use will mitigate material impacts of the development, whether environmental or otherwise.
5. The proposed use will ensure compatibility with existing neighboring land uses.
6. The proposed use is consistent with the intent and character of the zoning district in which it is located.
7. For conditional uses outside of Urban Growth Areas, the proposed use:
 - A. Is consistent with the intent, goals, policies, and objectives of the Kittitas County Comprehensive Plan, including the policies of Chapter 8, Rural and Resource Lands;
 - B. Preserves "rural character" as defined in the Growth Management Act (RCW 36.70A.030(20));³
 - C. Requires only rural government services; and
 - D. Does not compromise the long term viability of designated resource lands.

³ Applicant has now acknowledged that the “caselaw” it previously cited and relied upon to support its claims regarding “rural character” was made up by an AI “hallucination.” *See* Applicant Response to Submitted Comments, Exhibit 24.

Even when all CUP criteria are met and the County exercises its discretion to grant a CUP, the County retains exceptionally broad authority to impose conditions to protect the best interests of the surrounding property and neighborhood. Specifically, KCC 17.60A.020 provides:

In permitting such uses the Director or Board **may impose in addition to the regulations specified herein, such conditions as it deems necessary to protect the best interests of the surrounding property or neighborhood** or the county as a whole. These conditions **may include, but are not limited to,** the following:

1. Increasing the required lot size, setback or yard dimensions;
2. Limiting the height of buildings or structures;
3. Controlling the number and location of vehicular access points (subject to approval by the reviewing authority with jurisdiction to issue approach or access permits);
4. Requiring the dedication of additional rights-of-way for future public street improvements;
5. Requiring the designation of public use easements;
6. Increasing or decreasing the number of required off-street parking and/or loading spaces as well as designating the location, screening, drainage, surfacing or other improvement of a parking area;
7. Limiting the number, size, height, shape, location and lighting of signs;
8. Requiring or limiting view-obscuring fencing, landscaping or other facilities to protect adjacent or nearby properties;
9. Designating sites for and/or the size of open space or recreational areas;
10. Requiring site reclamation upon discontinuance of use and/or expiration or revocation of the project permit;
11. Limiting hours and size of operation;
12. Controlling the siting of the use and/or structures on the property;
13. Requiring mitigation measures to effectively reduce the potential for land use conflicts with agricultural and resource lands, such as: landscape buffers, special setbacks, screening, and/or site design using physical features such as rock outcrops, ravines, and roads.
14. Demonstrating that the requirements of Chapter 13.35, Kittitas County Code, Adequate Water Supply Determination, can be met.

KCC 17.60A.020 (emphasis added).

A. Applicant's Use Stacking Does Not Comply with the KCC. (KCC 17.60A.015(3))

In our October 19, 2023 comment letter on behalf of FOFC, we explained how, given the nature of the proposal and its "guest ranch" focus, the application is inconsistent with the Zoning Code and therefore also does not meet KCC CUP criteria. Applicant's attorney has responded, arguing that the Applicant is proposing a variety of different kinds of uses above, beyond, and

distinct from just a “guest ranch” and that the uses can all be approved together under one conditional use permit application because each use could individually be approved. *See* Applicant Response to Submitted Comments, Exhibit 20 at 1, 12-14. These arguments, for stuffing into one CUP an array of uses which are each only permitted by CUP, are inconsistent with the KCC including the governing CUP criteria. The CUP process is a means of allowing a singular proposed use, which the Zoning Code does not permit outright in the site zone, to be located in that zone if the CUP criteria are met. The concept is not to convert CUP dispensation into a means for overturning the underlying zoning by “stacking” uses, as if they were internet promo codes.

The KCC specifically defines various types of uses that a property might be put to. KCC 17.08 “Definitions.” The definitions are not only specific, but in many cases go to great lengths to identify what is and is not included within a specific use and what other uses are distinguishable. It then specifically identifies where each use may occur and what type of approval is necessary for it, as well as what additional use-related conditions are applicable, etc. *See generally* KCC 17.15.⁴ And KCC 17.60A.015 which establishes CUP review standards makes clear that an application is for a singular “conditional use”. *See* KCC 17.60A.015 (“The Director or Board, upon receiving a properly filed application or petition, may permit and authorize a conditional use when the following requirements have been met:”) (emphasis added). Each of the 7 separate requirements within KCC 17.60A.015 in turn specifically reference a singular “proposed use.”

The KCC contains two narrow exceptions for unique situations to (a) address uses that are substantially similar to another allowed use but not specifically called out and (b) allow secondary “accessory” uses incidental to a primary use:

KCC 17.15.030(4)-(5) provides:

4. The Director has the authority to allow uses that are substantially similar to an allowed use listed on the table subject to the same review procedures as the substantially similar use. In such cases, all adjacent property owners shall be given official notification for an opportunity to appeal such decisions within ten working days pursuant to Title 15A of this code, Project permit application process, except in the case of PUDs located inside the UGA where determination of substantially similar uses shall be made by the planning commission during review of the development plan required under KCC 17.36.030.

⁴ Uses which are specifically defined in the KCC have an asterisk by them, while uses that the County did not need to define in the KCC because their definitions are commonly understood have no asterisk by them.

5. Accessory uses. The administrative official has the authority to permit uses that are customarily incidental to an allowed use listed on the table.⁵

Here, the Applicant acknowledges that the application is for a broad array of different and distinguishable uses including a “campground,” a “recreational vehicle park,” a “guest ranch,” a “bed and breakfast,” a “small-scale event center,” and “outdoor recreation facilities,” i.e., “recreation, outdoor” use. Applicant Response to Submitted Comments, Exhibit 20 at 1, 12-14. Each one of these is a separate and distinct use with its own definition in the KCC. The KCC does not permit the Applicant to stack multiple, different uses, cramming one use after another into a single application. If it did, the KCC use definitions and zoning would be largely meaningless. An applicant could propose one type of use that allowed certain activities, but not others, a second use that allowed the activities not allowed under the first use but not others, a third use that allowed the activities not allowed under the second use, etc., thereby evading all of the definitions, limitations and restrictions specified in the KCC. That is exactly what the Applicant is doing here, proposing 6 uses, all of which are different, so as to avoid limitations on the uses the KCC deemed necessary for each use.⁶ Because that is not allowed under the KCC, the application should be denied. *See* KCC 17.60A.015(3)

Applicant’s approach to land uses is not only contrary to the KCC, but also magnifies exponentially the adverse impacts of the proposal. This is not only because there are many more uses proposed, i.e., 6 uses rather than 1, but also because it eliminates the guard rails/limitations inherent in each specific use, overriding them with another use that allows that which the previous one did not. Even if the KCC allowed limited stacking of different uses into one conditional use application, the stacking proposed by Applicant here of the 6 different uses proposed is especially improper.

The definitions for each of the 6 proposed uses are as follows:

17.08.155 Campground.

"Campground" means any parcel or tract of land under the control of any person, organization, or governmental entity wherein two (2) or more recreational vehicle, recreational park trailer or other camping unit sites are offered for the use of the public or members of an organization. Typically the length of stay for a majority of the guests will range from one (1) to fourteen (14) days. The purpose of a campground use shall relate primarily to vacation, recreation and similar pursuits, and is not a place of permanent residence for the campers. A single-family residence may be allowed for the owner or caretaker. Very limited service commercial activities may be allowed which are intended for campers of the

⁵ With regard to the current application, KCC 17.15.030(4) has not been invoked and the many different uses proposed by Applicant are clearly not accessory to one another under KCC 17.15.030(5); each use proposed has its own distinct KCC definition as discussed further below.

⁶ None of the uses proposed are allowed outright.

campground and must be approved as part of a conditional use permit. Youth Camps may offer additional education and child-care assistance elements as secondary uses to the Campground. These secondary uses shall comply with all applicable Federal, State and local regulations.

17.08.465A Recreational vehicle park.

"Recreational vehicle park" means land designed to accommodate predominantly recreational vehicles (RVs) used as temporary living quarters for recreation or vacation purposes with sewage facilities approved by the County Health Department and a maximum allowable stay of one hundred eighty (180) days in a calendar year.

17.08.270 Guest ranch or guest farm.

"Guest ranch or guest farm" means 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.

17.08.105 Bed and breakfast.

"Bed and breakfast" means any establishment located in a structure designed for a single family residence that has more than two (2) rooms for rent on a daily basis and offers a meal as part of the cost of a room, regardless of whether the owner or operator of the establishment resides in any of the structures. Excludes rehabilitation centers, group homes, clinics, nursing homes, church camps, and other similar uses.

17.08.490 Small-scale event facility.

"Small-scale event facility" means a facility that is open to the public for events, seminars, wedding or other social gatherings. May include eating and food preparation facilities provided meals are only served to guests attending events.

17.08.464 Recreation, outdoor

"Recreation, outdoor" means a place designed and equipped for the conduct of sports and leisure-time activities with little or no enclosed space. Examples include: outdoor theaters, tennis courts, swimming pools, batting cages, amusement parks, miniature golf courses, boat launches and driving ranges. This definition excludes golf courses and stadiums. Outdoor recreation uses for the private use of the landowner are permitted outright.

These various proposed uses are by definition inconsistent with one another. The proposed Barn which will be used as a purported “small-scale event facility”⁷ for non-overnight guests conflicts with not only the expressed “guest ranch” use purpose but also the specific limitation on events in the “guest ranch” definition. *See* KCC 17.08.270 (“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.”). Even the Applicant acknowledges that the “guest ranch” use does not allow for such events. *See* Applicant Response to Submitted Comments, Exhibit 20 at 13. Stacking the “small-scale event facility” use on top of the “guest ranch” use to avoid the limitations of the “guest ranch” results in an agglomeration that is contrary to KCC restrictions.

Similarly, the proposal includes a robust store that will sell groceries, snacks, souvenirs, apparel as well as a “selection of recreational retail and rental items:” mountain bikes, road bikes, cruisers, telescopes and binoculars, hiking gear (backpacks, tents, sleeping bags, and hiking poles), camping gear (coolers, stoves, lanterns, and cookware), fishing gear (including rods, reels, lures, and bait) and “a variety of other recreational items available for rent, such as kayaks, canoes, paddleboards, and scooters.” *See* Original Application, Section 14 - Exhibit 7, Fowler Creek Guest Ranch, Buildings and Recreation Facilities at pages 3-4. However, such retail uses are not permitted in the Rural 5 zone.⁸ The store is also inconsistent with and contrary to the “guest ranch” use.⁹

Applicant argues that the store is allowed under the “campground” use. *See* Applicant Response to Submitted Comments, Exhibit 20 at 13. Even if that were true, the stacking of uses to avoid these restrictions is improper and defeats the purpose of the Zoning Code, allowing impacts to burgeon inappropriately and in ways never anticipated.

Further, the “campground” use does not allow a store of this nature. The definition of “campground” only allows for “very limited commercial activities. . . which are intended for campers of the campground.” KCC 17.08.155. The store proposed is clearly not “very limited”

⁷ The proposed Barn can accommodate up to 200 guests. While the KCC definition for “small-scale event facility” does not contain any specific numeric limits, it strains credulity to consider an event with 200 people in attendance as “small-scale”, particularly in a rural environment.

⁸ Per KCC 17.15.060 “Allowed uses in rural non-LAMIRD lands and KCC 17.15.060.1

“Rural Non-LAMIRD Use Table” retail sales are not allowed in the existing zoning.

⁹ As previously explained in our October 9, 2023, letter:

Based on this description, the store will not be small. Regardless, there is no authorization in the KCC definition of “guest farm or guest ranch” for a store as part of the facility, which is only allowed, if at all, by CUP. The definition is limited to overnight lodging, dining, and recreation. Further, the Code does not permit stores at all in the Rural Residential 5 zone.

October 9, 2023, Comment Letter on Behalf of FOFC at 6.

and the proposal does not begin to describe a realistic and enforceable method for barring persons who are not campers at the door. The Application description of the proposed store sounds more akin to an REI with a grocery store than a “very limited,” modest store providing essentials to campers.

Another notable conflict is between the “recreational vehicle park” use and the “campground” use. Specifically, a “recreational vehicle park” has “maximum allowable stay of one hundred eighty (180) days in a calendar year.” In contrast, a “campground” has a typical length of stay for a majority of guests ranging from 1 to 14 days. While some may camp at a campground slightly longer than 14 days, that is clearly an exception to the norm, and, in any event, the “campground” use does not contemplate stays of up to half a year as a seasonal home unlike the “recreational vehicle park” use. By inappropriately stacking uses, the Application again attempts an end run around the limitations imposed on various uses within the KCC.

The application is inconsistent with the KCC and should therefore be denied per KCC 17.60A.015(3).

B. The Proposal Is Detrimental, Does Not Mitigate Material Impacts, and is Incompatible with the Existing Neighborhood. (KCC 17.60A.015(1), (4)-(5))

Although the following CUP criteria are separate and independent and the failure to meet any one of them is sufficient to justify a denial, they overlap significantly, particularly with regard to the specific proposal and circumstances at issue here:

1. The proposed use 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.
...
4. The proposed use will mitigate material impacts of the development, whether environmental or otherwise.
5. The proposed use will ensure compatibility with existing neighboring land uses.
...

KCC 17.60A.015(1), (4)-(5).

The Applicant gives exceptionally short shrift to these three mandatory CUP criteria, summarily concluding with little to no analysis that they are all met. With respect to KCC 17.60A.015(1), the Applicant provides general block quotes from the Comprehensive Plan and then just asserts in conclusory fashion that the many different uses they have proposed are

conditional uses,¹⁰ that they are not requesting any variances; that streams, wetlands, and their buffers will be protected; and that the proposal will not be detrimental or injurious to the public health, peace or safety or to the character of the surrounding neighborhood. Applicant Response to Submitted Comments, Exhibit 20 at 9-10.

No real analysis or discussion is provided, especially with regard to Applicant's conclusion that the proposal will not be detrimental to the surrounding neighborhood. *Id.* With respect to KCC 17.60A.015(4) & (5), the Applicant offers even less explanation just stating, again in conclusory mode, that any significant adverse environmental impacts will be mitigated through SEPA (without specifying what mitigations will be), and that the proposal has been designed to "eliminate any and all potential or theoretical impacts on the existing neighborhood" – a rare and cursory acknowledgment that there is an existing residential neighborhood that the proposal will impact. *Id.* at 16-17.

This cursory acknowledgement is followed by an Applicant assertion that its proposal's density is significantly less than development of thirty-five single family residences, what the underlying zoning allows, as if that justifies the proposal as preferable. *Id.* at 18. However, that assertion reflects a fundamental misunderstanding of the Zoning Code and, in particular, of the purpose of the CUP criteria. The Zoning Code permits outright single family residential use in this zone reflecting a judgment that such uses are preferred, and their modest impacts are acceptable in this zone. Conditional uses are not permitted outright and must meet every one of the CUP criteria because the Zoning Code reflects a judgment that a conditional use's impacts are not per se acceptable in the zone.

The Applicant is proposing uses that are not permitted outright and which have associated impacts different and greater than those of single family residences. It is nonsense to suggest that the proposal, which includes a 5 bedroom bed and breakfast, a 7 bedroom guest ranch, a campground/recreational vehicle park with 30 recreational vehicle parking spots, a commercial store (not permitted in this zone), and on top of all of that a Barn/event center permitted to host events of up to 200 guests, is somehow less intense and preferable.

Applicant's fundamental misconception is exacerbated by its failure to forthrightly address the detrimental impacts the proposal will have on the existing residential community. When actually considered, the proposal is starkly incompatible and fails to meet the criteria in KCC 17.60A.015(1), (4) and (5).

As explained in the Introduction, the parts of the proposal that Applicant has retained (while eliminating a few rental cabins) are the most intensive and detrimental to the surrounding

¹⁰ Of course, as discussed above, the fact that an individual use might be approvable as a conditional use does not mean that all the various uses can be stacked on top of one another.

residential neighborhood.¹¹ They not only remain with the same intensity as proposed previously but remain in the same locations previously proposed -- literally abutting preexisting residential properties. The recreational vehicle park/campground that will serve a transient RV camper population is still in the same location immediately adjacent to residential properties and remains the same size, with capacity for 30 RVs per night. The so called “small-scale event center,” also remains unchanged with capacity for 200 guests and the Applicant has now made clear that the intent is to definitely hold more than 8 events per year. Applicant Response to Submitted Comments, Exhibit 20 at 14, fn. 6. The 7 bedroom “guest ranch” and 5 bedroom “bed and breakfast” remain unchanged as well, as does the multi-faceted store.

It cannot be emphasized enough that, if approved, the revised proposal, which is on 34.9 acres zoned R-5, would result in a substantial increase in occupant density. With a 200-person event center, 5-bedroom bed and breakfast, 7-bedroom guest ranch and 30 RV sites, the total occupancy of the proposal is potentially on the order of 350 people.¹² Even at maximum development capacity, a single-family residential development scenario would be less intensive than the one proposed here.

Further, some of the revisions cited by Applicant as eliminating problems are questionable. The revised proposal purports to eliminate “personal” outdoor fire pits at the campground/recreational vehicle park, replacing them with what the Applicant labels as “community” fire pits. Applicant Response to Submitted Comments, Exhibit 11. This is largely semantics. A fire is a fire -- whether it is a “community” fire or a personal fire. Further, Exhibit 11 indicates the “community” fire pits will supposedly be designed, constructed and operated with input from the Fire District and Fire Marshal, implying that the Fire District has approved fire pits in the first place and signed on to take responsibility for them. However, no specifics to support those implications are provided nor is it clear how many such fire pits there will be. *Id.* at 1. It also indicates that the fire plan was created in collaboration with the Fire District and the Fire Marshal. *Id.* at 1. However, nothing in the materials provided by the Applicant confirms that the Fire District or the Fire Marshal have actually approved any fire management plan.

The application gets over its skis in implying official validation that has not actually been granted. This problem manifests itself in various memos in the Application Responses to public comments. *See* Response to Submitted Comments, Exhibit 19. The wording gives the impression that the cited agency has actually validated and signed off on the revised proposal. *See, e.g.,* Applicant Response to Submitted Comments, Exhibit 20 at 2 (“There has been further consultation with the Department of Ecology and the Department of Fish & Wildlife with the site design

¹¹ Because the main and most problematic aspects of the proposal remain unchanged, all prior comment letters remain relevant to the proposal as revised and are therefore incorporated by reference.

¹² Assuming maximum party capacity of 200 for an event, 4 guests per RV site, 20 guests at the 7-bedroom ranch and 2 guests per room at the bed and breakfast results in a total of 350 guests. Even if lower assumptions are made the total occupancy would still be near or in excess of 300 people. Applicant’s own estimated water and sewer usage assumes use by 294 people. Applicant Response to Submitted Comments, Exhibit 25 at 2.

providing additional wetland buffers and protection based upon agency input and comment.”); *Id.* at 3 (“A proposed Fire Management Plan has been created in collaboration with Kittitas County Fire District 7 and the Kittitas County Fire Marshal.”). However, the Applicant’s submissions do not support the desired impression. There are no actual responses from the governmental agencies to the memos Applicant prepared and no separate statements from them indicating that the proposal as revised addresses all the concerns they have raised.

The impacts of this proposed development would be significant and cannot be sufficiently mitigated in light of the inherent intensity and multi-faceted nature of the proposal, unless additional elements of the proposal are removed and/or downsized significantly. *See* KCC 17.60A.015(4) (CUP criterion which asks whether “[t]he proposed use will mitigate material impacts of the development, whether environmental or otherwise”) (emphasis added). Dovetailing with this criterion, as noted, the CUP criteria recognize that, when evaluating a proposal, two key questions are whether it will be detrimental to the surrounding neighborhood and/or incompatible with it. *See* KCC 17.60A.015(1), (5). The answers here are obvious: the proposal will be detrimental to the surrounding neighborhood and incompatible with it.

The proposal is located in very close proximity to residential development. The southwest portion of the proposal is immediately adjacent to residential properties.¹³ The southwest portion of the proposal is the area that includes the campground/recreational vehicle park, fire water storage, emergency access road and turnaround area.¹⁴

As a threshold matter, a campground/RV park is detrimental to the surrounding rural residential neighborhood and incompatible with it, particularly when located in such close proximity and stacked on top of the other elements of the proposal which are themselves intensive. The 30 RV sites will accommodate RVs along with ORVs, snowmobiles and other vehicles brought in tow as transient RV campers come and go daily. The traffic, noise, light and fire hazards posed by the campground/RV park cannot be overstated. Although the Applicant has purported to eliminate personal fire pits, fire pits will remain; individuals will also smoke, barbeque, etc. RV campers, who could total up to 120 people at a time,¹⁵ will obviously congregate day and night

¹³ Applicant has provided a document titled “Adjacent Surrounding Properties Review” which purports to identify distances from certain locations on nearby residential properties and specific locations selected by the Applicant within the proposal. Applicant Response to Submitted Comments, Exhibit 16. It is not clear how exactly the measurements were made and/or from what points precisely. However, what it is clear is that, by any metric, all of the residential properties are very close to the proposal. Indeed, some share boundary lines with the proposal. The distances to/from various points provided by Applicant are thus misleading.

¹⁴ The construction and ongoing maintenance of these various features in these areas will also have detrimental noise and dust impacts on the residential properties that are directly in front of them, separate and apart from their ultimate use.

¹⁵ This assumes 4 people per RV spot. But even if a lesser number is assumed, it would still be a significant concentration of density.

with resulting noise and light. They will utilize generators and snowmobiles,¹⁶ both of which are allowed and produce significant noise.¹⁷

Noise from the RV park, immediately adjacent to residential development, will be prevalent day and night as long as there are campers and regardless of purported 10pm to 8am quiet hours.¹⁸

Even if quiet hours were strictly enforced (which would be next to impossible without an overnight police force), a campground/ RV park with transient campers and all of the attendant noise and commotion throughout the day as well as light pollution in the evening/night is simply incompatible with and detrimental to the surrounding rural residential neighborhood.

A campground/RV park is also visually inconsistent with the surrounding rural neighborhood. In contrast, the much more circumscribed actual 7-bedroom guest ranch and 5-bedroom bed and breakfast are at least located more distant from the neighboring residential properties, are more visually consistent, and are more akin to a residential type use.

On top of all the noise associated with traffic, assembly of campers, generators, snowmobiles, etc., ORV use presents a very real and significant noise generator. ORVs are already a noisome factor in the rural residential area where the proposal is located even without the proximity and intensification inherent in the proposal. Although the Applicant has claimed at least certain ORVs are not *supposed* to be actually used on site,¹⁹ the proposal is designed to encourage and facilitate ORV use and there is no practical way to prevent them from being used on site. Once ORVs are brought on to the site, campers will be able to readily figure out that it would be much easier to ride their ORV to nearby trails rather than hauling them 4 miles up the road to Evergreen Sno-Park²⁰ with their car/truck/RV. In fact, the proposal includes an emergency access road to the Forest Service Road. This access point is immediately next to the campground/RV park. Although it will be gated, it is a simple matter and a common practice for ORVs to simply go around the

¹⁶ Applicant Response to Submitted Comments, Exhibit 14 at 1 (“... snowmobiling will be permitted within a designated area in the southwest portion of Fowler Creek Guest Ranch.”). The designated snowmobile area is also located in the area closest to the residential properties.

¹⁷ Additional comments concerning, *inter alia*, generator and snowmobile noise and the ineffectiveness of vegetation to ameliorate noise is being submitted by FOFC under separate covers.

¹⁸ In Washington State Parks, engine-driven electric generators may only be operated between 8 a.m. and 9 p.m. See: <https://parks.wa.gov/about/rules-and-safety/park-rules-and-regulations#:~:text=Engine%2Ddriven%20electric%20generators%20may.have%20specific%20rules%20to%20follow.>

Applicant’s proposal would allow such generators beyond what Washington State Parks have deemed appropriate.

¹⁹ Although Applicant has submitted some materials suggesting that no ORV use is allowed on site, Applicant in the very first exhibit provided qualifies that statement: “Off-Road Vehicles: Unlicensed off-road vehicle use will not be allowed within Fowler Creek Guest Ranch.” [Underlining added.] Applicant Response to Submitted Comments, Exhibit 1 at 4.

²⁰ See Applicant Response to Submitted Comments, Exhibit 14 at 1 (“off-road vehicles will be directed to the Evergreen Sno-Park”).

gate and drive on the Forest Service Road to nearby trails. Or they could use other routes through and off the property. There is no practical way to prevent that, particularly when there is easy access to the Forest Service Road right next to the campground/RV park.²¹ The only way to ensure ORVs will not be used on site or in the surrounding neighborhood is to preclude them entirely. Even a condition providing that ORVs must be kept on a trailer at all times while on site would be easy to evade; campers could simply drive their trailer immediately off site, unload the ORV quickly, and go from there.

Applicant has submitted a “Light Pollution Mitigation Statement.” This impressive-sounding title masks a hollow shell that provides very few if any specifics. It is clear from the Statement that, in addition to all of the various lights the RV campers will use (including vehicle lights, RV lights, lanterns, flashlights, etc.), there will be outdoor lights installed throughout the facility. Due to the concentration of activity, there would necessarily be a substantial amount of lighting in the campground/RV park area, by the single family residential properties. *See* Applicant Response to Submitted Comments, Exhibit 8 at 1 (“Fowler Creek Guest Ranch will include the judicious placement of lights only in necessary locations such as main roads, lodging sites, essential buildings, and selected trails.”) (emphasis added). However, beyond the adjective “judicious,” the Proposal’s lighting statement does not offer concrete specifications, performance standards, and design conditions for outdoor lighting.

Similar traffic, light and noise concerns are also attendant to the other proposed uses. The guest ranch and bed and breakfast are perhaps less impactful than the other aspects of the proposal and more consistent with the existing neighborhood, if viewed in isolation. However, a 200-person event center and a retail store are clearly incompatible with the residential neighborhood. The “Barn” event center, while more distant from the residential properties than the campground/RV park portion of the proposal, will unquestionably generate substantial traffic and noise and spillover impacts.

Another significant aspect of the proposal which is detrimental to the surrounding neighborhood centers on fire risk and evacuation in the event of wildfires. Simply put, the road infrastructure in this rural residential neighborhood is grossly insufficient to accommodate hundreds of vehicles in the event an evacuation becomes necessary. This acknowledgment is implicit in the July 19, 2024, comments from Fire District 7 which sets out road standards that must be met, including by Forest Service roads, and requires in particular a competent fire evacuation plan and provisions for gate access.

Roads are, even apart from District 7 comments, a significant point of lapse by the Application. It is not just Forest Service roads that will require improvements. Yet, there is no demonstration that such improvements can actually be carried out, for example, in terms of rights

²¹ Some ORVs are street legal, and some are not, but regardless there is little traffic enforcement in this rural area. ORV owners are not going to choose to tow their ORVs even if that is the so called “rule” when they could more easily drive them to the trails on which they plan to ride.

to the real estate necessary to do so. It would not only be contrary to the mandatory CUP criteria, but irresponsible to approve a CUP without a demonstration that the road improvements necessary for the proposal's safe and responsible operation are assured without qualification.

Further, a preliminary review by an experienced Professional Civil Engineer engaged by FOFC, Tom Hansen, P.E.²², describes five significant issues concerning the traffic and road questions associated with the proposal:

1. Kittitas County Code (KCC) 12.10.040.D requires submission of a Traffic Impact Analysis (TIA) prepared by a licensed engineer in the State of Washington for a project of this size and impact (creating more than 9 peak hour trips). The applicant's preliminary submissions indicate that there will be at least 15 peak hour trips generated by the development. Yet, I have not been able to find in the public record for this project the required TIA prepared by a licensed engineer. I have also not been able to find any documentation of a waiver of this requirement by the County Public Works Director. In my several decades of experience as a transportation engineer and public works director, and based as well on KCC 12.10.040.J, such a waiver and its rationale must be documented before it is granted, to ensure that it was given proper consideration. This is also to ensure that they are reviewable if there are questions raised about the basis for granting the waiver to a particular applicant. Until a TIA has been prepared by a licensed engineer, submitted by the applicant, subjected to public comment, and reviewed and approved by County Staff, it is not appropriate to make any determination or recommendations about traffic impacts or transportation concurrency. However, as noted below, even at this preliminary stage, at least one significant safety hazard and functional deficiency is apparent.
2. That hazard is at the intersection of Westside Road and Fowler Creek Road. The existing alignments of these two roads meet at an extreme acute angle affecting both safety and function. A recommendation on the Conditional Use Permit (CUP) should not occur until a Professional Civil Engineer has determined that there is adequate intersection sight distance meeting County code and design standards for all turning movements at this intersection. In addition, the applicant acknowledges that the proposed Guest Ranch would result in the introduction to this intersection of numerous large vehicles, motorhomes, motorhomes towing cars or trailers, and pickups towing trailers. The application should therefore not proceed until a Professional Civil Engineer determines that these types of vehicles can make all four turning movements without encroachment into the opposing lane of traffic at this intersection. If these critical safety and functionality deficiencies are not fully resolved, then the applicant must be required to improve this intersection to meet these requirements. Please refer to Kittitas County Code Sections 12.01.090A, 12.05.080-Table 5-2, 12.04.030.G, 12.04.050.I.
3. The trip generation information submitted by the applicant did not consider or include trips created by employee traffic and trips made by delivery vehicles. These trips may occur in the peak hour and need to be included in the overall calculation to determine the total number of peak hour trips that are generated by the proposed development.

²² Mr. Hansen, now retired, served as a Design Engineer for WSDOT, a Road Engineer for Snohomish County and then served as Public Works Director/City Engineer successively for the Cities of Mukilteo, Snohomish and, ultimately, Woodinville.

4. Kittitas County Code Section 12.01.090B requires that the applicant construct road frontage improvements to abutting County roads to the parcel on which the development is proposed at, and all contiguous, adjoining parcels owned by the same property owner. There is no indication in the information that is released to the public that Kittitas County is requiring the applicant to meet this requirement. The County must impose this requirement as a condition of the CUP in order to comply with its own codes, unless Fowler Creek Road currently meets County Code and design standards.
5. In their application, Fowler Creek Guest Ranch states that they intend to operate the “Party Barn” (event center) only on weekends, Saturday and Sunday. There may be some incidental traffic on Friday if guests are staying at the Ranch in their motorhomes or trailers, but that traffic may be accounted for in the trip generation projections for the RV park portion of the proposed project. With weekend only operation, no “peak hour trips” are theoretically generated because peak hour trips normally only occur during the week, Monday through Friday. To ensure that the true extent of the proposal is being evaluated at the outset, any CUP approval should affirmatively prohibit Party Barn (event center) use on weekdays and provide that the CUP will be automatically null and void if this condition is violated.²³

C. The Proposal is Inconsistent with the Intent and Character of the R-5 Rural Zoning District and the Intent, Goals, Policies and Objectives of the Kittitas County Comprehensive Plan

Mandatory CUP criteria 6 and 7 require that:

6. The proposed use is consistent with the intent and character of the zoning district in which it is located.
7. For conditional uses outside of Urban Growth Areas, the proposed use:
 - A. Is consistent with the intent, goals, policies, and objectives of the Kittitas County Comprehensive Plan, including the policies of Chapter 8, Rural and Resource Lands;
 - B. Preserves "rural character" as defined in the Growth Management Act (RCW 36.70A.030(20));
 - C. Requires only rural government services; and
 - D. Does not compromise the long term viability of designated resource lands.

When reviewed objectively, it is clear that the proposal fails to comply with both CUP criteria 6 and 7. Applicant quotes various policies, goals and statements from the Comprehensive Plan as if quoting them demonstrates the proposal is consistent with the R-5 zoning district and the Comprehensive Plan, while preserving “rural character.” *See* Applicant Response to Submitted Comments, Exhibit 20 at 18-22. However, Applicant’s references selectively gloss over key

²³ Mr. Hansen’s letter and resume have been submitted as separate comments on the CUP application.

language in the provisions quoted. Further, they fail to acknowledge other applicable policies, goals and statements. Moreover, the Applicant ignores how the provisions apply to this proposal, which stacks six distinct uses on the pretext that they are one conditional use. The majority of those stacked uses are not permitted outright in the underlying zone: they may (not must) be allowed at sufferance and only if they meet all the mandatory CUP criteria. Yet the Applicant myopically places the RV park, which is particularly impactful and inconsistent with applicable policies, next to an existing residential community which is the preferred use, permitted outright, in the zone.

Per KCC 17.30A.010:

The purpose and intent of the Rural-5 zone is to provide areas where residential development may occur on a low density basis. A primary goal and intent in siting R-5 zones will be to minimize adverse effects on adjacent natural resource lands.

KCC 17.30A.010 (emphasis added). Applicant's proposal does not include any residential development; all aspects of the proposal are commercial/retail in nature and the proposal is targeted at campers, vacationers, and a large number of event goers. The proposal also entails a large number of different uses resulting in a very high density that is inappropriate for the area.

Per the Comprehensive Plan:

One of the main attractions of the rural residential lifestyle is the low intensity of development and the corresponding sense of a slower pace of living. Part of what creates that attraction is the rural-level facilities and services. This Comprehensive Plan supports and preserves this rural lifestyle by limiting service levels to those historically provided in the County's rural areas. (Emphasis added.)

2021 Comprehensive Plan 8.4.1.²⁴ The Comprehensive Plan also explains:

²⁴ The Comprehensive Plan emphasizes that "rural character" is community specific:

This research demonstrates that "rural character" is not identical in all areas and must be determined by communities. Overall, the research shows that "rural character" is best determined by concepts existing within the community such as existing densities and building materials (Tilt, et. al., 2006), "nature-related areas" particularly having forest, not just trees, and open spaces related to the community (Kaplan, Austin, 2004, 2003, and 2001), and "natural amenities and perception of recreational and (individual community) residential development" (Mascouriller, 2002).

2021 Comprehensive Plan 8.4.1. It further emphasizes the need for balancing uses to preserve rural character:

"Rural character" in Kittitas County is predominantly a visual landscape of open spaces, mountains, forests, and farms and the activities which preserve such features. It balances environmental, forest, and farm protection with a variety of rural development and recreational opportunities.

Id.

This Element also provides for a variety of rural uses which are compatible with the County's rural character, and decrease the need for road and utility improvements, police and fire protection, schools in rural areas and other services often found in more urban environments. (Emphasis added.)

2021 Comprehensive Plan 8.4.2. While Applicant's proposal may not include many new buildings aside from the bed and breakfast structure, it does entail significant development, paving, and other improvements, etc. that cannot be characterized as low intensity. Moreover, the proposal entails a very high density and intensity of individuals camping, congregating, partying (e.g. "event center"), coming and going frequently in many, many vehicles – all of which is not consistent with a "slower pace of living."

The high-density nature of the proposal also clearly increases²⁵ the need for road improvements and police and fire protection at a minimum.

The Comprehensive Plan explains:

Rural Residential lands are characterized by activities generally associated with small-scale farms, dispersed single-family homes, and some types of recreational uses and open spaces. Lands are typically too far from the urban area to enable cost-effective provision of public services, and the typical uses do not require urban services.

2021 Comprehensive Plan 8.4.5 (emphasis added). Thus, the focus is on small-scale farms and single-family homes with only *some* types of recreational uses. Paramount is compatibility between nearby uses and balancing where specific uses occur to avoid incompatibility. Further such uses are not to increase the need for fire and police services. A destination facility for transient guests and event attendees is not only a traffic generator, but as a practical common sense matter a source of calls requiring police and fire services.

The proposal is also inconsistent with the following goals and policies within the Comprehensive Plan:

RR-G14: Provide opportunity for development for recreational purposes which are consistent with rural character and protect public health and safety.

RR-G15: Provide opportunity for limited development of rural community.

²⁵ Fire District 7 comments and those of Engineer Tom Hansen suggest that road improvements are required, not just needed.

RR-G17: Generally, provide services supporting rural development and lower population densities.

RR-P1: The County shall promote the retention of its overall character by establishing zoning classifications that preserve rural character identified to Kittitas County.

RR-P8: Incentive-based land use strategies will be examined and adopted to encourage land uses which are compatible to the rural environment.

RP-14: Uses common in rural areas of Kittitas County enhancing rural character, such as agriculture uses in Lower Kittitas and rural residential uses and recreation uses in Upper Kittitas shall be protected from activities which encumber them.

RR-P17: Limit development in rural areas through density requirements that protect and maintain existing rural character, natural open space, critical areas, and recreation areas. Direct rural development to lands that have adequate public services.

(Emphasis added.)

In addition to the County's authority per KCC 17.60A.020 to impose a wide array of CUP conditions, the Comprehensive Plan sets the following policies that apply though the CUP criteria and are aimed at ensuring that new uses are not incompatible with preexisting, established uses:

RR-P18: Buffer standards and regulations should continue to be developed that will be used between incompatible rural uses.

RR-P21: Functional separation and setbacks found necessary for the protection of water resources, rural character and/or visual compatibility with surrounding rural areas shall be required where development is proposed.

The Applicant's proposed agglomeration of conditional uses is intense, in stark contrast to the rural character of the residential neighborhood that already exists in the immediate area. Applicant argues that its proposal appropriately "clusters camping, recreational vehicle parking, and minimal lodging opportunities in a clustered location that preserves open space and protects critical areas." *See* Applicant Response to Submitted Comments, Exhibit 20 at 21. However, this "clustering" actually benefits Applicant to the detriment of the existing residential community. It leaves Applicant free to develop the remaining forty acres of his parcel which are farther away from the existing residential community. Meanwhile, it imposes the most intensive and incompatible aspects of the proposal directly adjacent to the pre-existing surrounding residential neighborhood. The "traditional rural lifestyle" that the existing residential property owners enjoy and the "rural character" of the neighborhood would be destroyed by the proposal.

The fact that a use is listed as one that might be permitted if the CUP criteria are all met does not mean that the use is appropriate immediately by a pre-existing rural residential community, such as here. Neither the KCC nor the Comprehensive Plan support such an outcome.

One Energy Dev., LLC v. Kittitas Cty., No. 36240-0-III, 2019 Wash. App. LEXIS 1755 (Ct. App. July 9, 2019) (Unpublished Opinion)²⁶, which Applicant relies upon,²⁷ is distinguishable. *One Energy Dev.* focused exclusively on one aspect of the GMA definition of “rural character. The GMA defines “rural character” as:

(35) "Rural character" refers to the patterns of land use and development established by a county in the rural element of its comprehensive plan:

- (a) In which open space, the natural landscape, and vegetation predominate over the built environment;
- (b) That foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;
- (c) That provide visual landscapes that are traditionally found in rural areas and communities;
- (d) That are compatible with the use of the land by wildlife and for fish and wildlife habitat;
- (e) That reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;
- (f) That generally do not require the extension of urban governmental services; and
- (g) That are consistent with the protection of natural surface water flows and groundwater and surface water recharge and discharge areas.

RCW 36.70A.030(35).

In *One Energy Dev.*, the Court of Appeals concluded that the County misinterpreted, by applying it too narrowly, subsection (a) of the “rural character” definition, which focuses on whether open space predominates over the built environment. Specifically, the Court of Appeals explained:

Viewing RCW 36.70A.030(16) in context, it is apparent that the question of whether open space will predominate over the built environment must be considered in the context of patterns of development within “the rural element” of the county's “comprehensive plan.” This is a broad standard, and for good reason. The GMA was written to address county-wide planning issues, not specific land use determinations. *See Citizens for Mount Vernon v. City of Mount Vernon*, 133

²⁶ The Court of Appeals Unpublished Opinion in *One Energy Dev.* is reported at 9 Wn.App. 2d 1057 (2019).

²⁷ Applicant Response to Submitted Comments, Exhibit 20 at 22; *see also* Applicant Response to Submitted Comments, Exhibit 20 at 8, 18.

Wn.2d 861, 873, 947 P.2d 1208 (1997). The GMA affords counties the flexibility to include a variety of densities within the rural element of their comprehensive plans. RCW 36.70A.070(5)(b). Given this circumstance, the question of whether open space predominates over the built environment cannot be viewed from a myopic perspective, specific to one piece of property or a particular project. Although an individual land use decision can properly take into account larger goals set by the GMA and a county's comprehensive plan, *see Cingular Wireless*, 131 Wn. App. at 770-72, this individualized context does not alter the meaning of the GMA's statutory terminology.

One Energy Dev., LLC v. Kittitas Cty., No. 36240-0-III, 2019 Wash. App. LEXIS 1755, at *12-13 (Ct. App. July 9, 2019).²⁸ Because the County's decision was based exclusively on its narrow interpretation of whether open space predominated over the built environment, the Court of Appeals in *One Energy Dev.* reversed the County. *One Energy Dev., LLC v. Kittitas Cty.*, No. 36240-0-III, 2019 Wash. App. LEXIS 1755, at *15-16 (Ct. App. July 9, 2019) ("Because the sole finding in support of the Commissioners' legal conclusions reflects a misinterpretation of the governing law, the written decision is not sufficient to withstand appellate scrutiny.").

However, the Court took pains to state that it was just remanding the matter to the County for further proceedings; the decision did not require the County to ultimately grant the CUP and the Court acknowledged that there was evidence in the record that would support denial, if it had been relied upon. *One Energy Dev., LLC v. Kittitas Cty.*, No. 36240-0-III, 2019 Wash. App. LEXIS 1755, at *16 (Ct. App. July 9, 2019) ("as documented by the superior court, there are numerous facts in the record that could support denial of the CUP based on KCC 17.60A.015(1), (5), and (7)(B)").

Here, FOFC is not arguing that the built environment predominates over open space. And "rural character" is much broader than just that one isolated element of the GMA definition. The GMA definition itself includes multiple other elements, including fostering a traditional rural lifestyle and providing visual landscapes traditionally found in rural areas and communities. RCW 36.70A.030(35)(b)-(c). Moreover, the Court of Appeals expressly acknowledged that when considering "rural character" the County can, indeed must, obviously consider larger goals set by its Comprehensive Plan. *One Energy Dev., LLC v. Kittitas Cty.*, No. 36240-0-III, 2019 Wash. App. LEXIS 1755, at *13 (Ct. App. July 9, 2019) ("Although an individual land use decision can properly take into account larger goals set by the GMA and a county's comprehensive plan, *see Cingular Wireless*, 131 Wn. App. at 770-72, this individualized context does not alter the meaning of the GMA's statutory terminology.")²⁹

²⁸ The GMA definition of "rural character" was in paragraph (16) of RCW 36.70A.030 at the time of the *One Energy Dev.* decision. It is now located in paragraph (35) of RCW 36.70A.030.

²⁹ In *Cingular Wireless* the Court of Appeals emphasized "where, as here, the zoning code itself expressly requires that a proposed use comply with a comprehensive plan, the proposed use must satisfy both the zoning code and the comprehensive plan." *Cingular Wireless v. Thurston Cty.*, 131 Wn. App. 756, 770, 129 P.3d 300 (2006).

In fact, the Court of Appeals in *One Energy Dev.* went on to emphasize:

It bears emphasis that, under the Kittitas County Code, the GMA's rural character assessment is only one of several general standards governing CUP approval. In addition to preserving rural character as defined by the GMA, a CUP applicant must also establish that a proposed project is “not detrimental or injurious ... to the character of the surrounding neighborhood” and “will ensure compatibility with existing neighboring land uses.” KCC 17.60A.015(1), (5). Such considerations are, by definition, highly localized, though not necessarily confined to a particular project site. Local considerations are important to ensuring that a zoning decision is compatible with the goals of the GMA and a county's comprehensive plan. But they are not the same thing as the broader GMA rural character inquiry.

One Energy Dev., LLC v. Kittitas Cty., No. 36240-0-III, 2019 Wash. App. LEXIS 1755, at *13-14 (Ct. App. July 9, 2019).

Significantly, KCC CUP criteria also require, as an element separate and distinct from whether the proposal preserves “rural character” as defined in the GMA, that the proposal also must be consistent “with the intent, goals, policies, and objectives of the Kittitas County Comprehensive Plan, including the policies of Chapter 8, Rural and Resource Lands”. *Compare* KCC 17.60A.015(7)(A) v. (B). The proposal here as previously discussed is detrimental to the character of the surrounding neighborhood and incompatible with it. It is also not consistent with the intent, goals, policies and objectives of the Comprehensive Plan, does not preserve “rural character,” and is inconsistent with the intent and character of the zoning district.

3. THE COUNTY SHOULD ISSUE A SEPA DETERMINATION OF SIGNIFICANCE REQUIRING AN ENVIRONMENTAL IMPACT STATEMENT FOR THIS SIGNIFICANT, MULTI-FACETED PROPOSAL

This proposal is a good example of why SEPA was adopted. Its potential significant adverse impacts implicate a broad range of elements listed in WAC 197-11-160 including Air, Water, Plants, Environmental Health [noise], Land Use, Aesthetics, Light and Glare, Recreation, Transportation, Public Services, and Utilities. The multi-faceted, non-residential proposal includes 6 different use types on 34.9 acres of rural residential land, including a 30 space RV park literally next door to residential properties.

An EIS “shall be prepared” for “major actions having a probable significant, adverse environmental impact.” RCW 43.21C.031; WAC 197-11-330; *see also* WAC 197-11-360 (DS must be issued requiring EIS where proposal “may have” a probable significant adverse impact) (emphasis added). Applicant attempts to avoid environmental review by arguing generally that application of existing regulations along with a few changes made to the project warrant a Mitigated Determination of Nonsignificance (MDNS). Applicant Response to Submitted

Comments, Exhibit 20 at 5-7. However, neither existing regulations, nor Applicant's tweaks eliminate the proposal's inherent significant adverse impacts.

This proposal is not run-of-the-mill and is not one anticipated by the KCC. Even if stacking many conditional uses were allowed, which it is not, existing Code requirements do not anticipate and address such an attempt. That is especially true for this proposal which involves 6 discrete conditional uses, some of which as defined by KCC have aspects inconsistent with one another and none of which are the primary allowed use in the rural residential R-5 zone.

The proposal's significant light, noise, fire hazard, land use, traffic and roadway impacts are unmitigated and will directly and adversely affect the surrounding community and environment. Its arrangements for water, wastewater, and for protection of wetlands and streams consist largely of nonbinding assurances and nonspecific plans.

The proposal in its current form will grossly increase the number of people and vehicles in the area at any point in time. In the event of a wildfire, all of them will need to evacuate. Evacuation efforts will be severely and perhaps fatally compromised by the number of people and vehicles the proposal will add to the area relying on the limited road infrastructure. Fire authorities have already gone on record with concerns about fire safety. Here, evacuation is clearly a topic that should be fully explored and addressed in an EIS. *See, e.g., Lanzce G. Douglass, Inc. v. City of Spokane Valley*, 154 Wn. App. 408, 427, 225 P.3d 448, 458 (2010) (MDNS improper and EIS required where evacuation not adequately considered). The consequences of not doing so are potentially irretrievable and dire.

Not requiring an EIS for this particular proposal would be erroneous and potentially reckless. The County should issue a Determination of Significance (DS) here requiring preparation of an environmental impact statement (EIS) if the proposal is to proceed in any way remotely analogous to its current form.

4. CONCLUSION

For all the reasons discussed herein and in prior comments, FOFC therefore reiterates its requests:

- 1. This application must be denied in its entirety as an invalid CUP proposal under the Kittitas County Code because, as Applicant has admitted, is not just for a "guest ranch" but instead stacks discrete uses into one application.**
- 2. If this application nonetheless remains under consideration, it should be denied because it fails to satisfy the Code's mandatory CUP criteria.**
- 3. If this application nonetheless is not denied in its entirety for failure to satisfy mandatory CUP criteria, then its campground/ 30 recreational vehicle park**

portion(s) immediately adjacent to existing residential properties, the most detrimental and incompatible aspect of the proposal, should be eliminated. *See* KCC 17.60A.020.

- 4. If the 30 RV use nonetheless is not eliminated in its entirety, then, at a minimum it should be reduced to five parking spots and re-located to minimize impacts and provide a buffer for existing residential properties. *See* KCC 17.60A.020.**
- 5. If the application is not dismissed in its entirety, a SEPA EIS must be prepared, focusing, inter alia, on roads and traffic, fire safety (including wildfires and evacuation), land use impacts/consistency with the Comprehensive Plan.**

Sincerely,

EGLICK & WHITED PLLC

A handwritten signature in black ink, appearing to read 'P. Eglick', with a stylized flourish at the end.

Peter J. Eglick
Joshua A. Whited