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March 21, 2024

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

Re: Lewington Rezone & Comprehensive Plan Amendment (CP-24-00001)

Dear Manager Ayling,

For over 25 years, Conservation Northwest has partnered with natural resource agencies, stakeholders, and Tribes to identify, plan, fund, and implement landscape-scale watershed restoration investments to address the barrier effects of I-90 and connect and enhance habitat to provide migratory corridors for fish and wildlife in the Snoqualmie Pass area – an area identified as a Connectivity Emphasis Area in the Snoqualmie Pass Adaptive Management Area Plan and critically important for wildlife movement (USFS 1997).

From 2000-2004, we spearheaded The Cascades Conservation Partnership (TCCP) to raise nearly \$16 million in private donations and \$68 million in public funds to protect nearly 45,000 acres of forest lands from logging and development and reduce habitat fragmentation. Just last week, our partners secured the final \$12 million from Congress needed to complete decades of work to protect critical lands and waters along the I-90 corridor in the Central Cascades.

Through the I-90 Wildlife Bridges Coalition, we led efforts to reconnect Washington's north and south Cascades by protecting and restoring habitat and establishing safe wildlife crossings under and over I-90. We worked with the Washington Department of Transportation (WSDOT), elected officials and community allies to make a critical 15-mile stretch of freeway safer for both people and wildlife by building wildlife undercrossings and overcrossings. From a wildlife perspective, these are ecological movement corridors that help maintain genetic diversity, and connect food, water, shelter and space needed for long term survival, especially as species adapt through a rapidly changing climate.

Today we continue to monitor wildlife movement in the area through our Community Wildlife Monitoring Program, restore fragmented and degraded habitat in adjacent watersheds through our Central Cascades Watershed Restoration Program, and advocate for land uses that are compatible with wildlife needs and movement. The vision is a fisher, a wolf, or any number of species moving through these spaces, finding all that they need in the environment to thrive.

As detailed below, the proposed rezoning and associated potential development would undermine the benefits of decades of collaborative work in this area to protect, connect, and restore habitat for wildlife.

We note that we litigated against the county's 2023 SEPA Determination of Non-Significance related to these parcels (RZ-22-00005) and won our case with the Eastern Washington Growth

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Hearings Board. Many of our concerns remain from the first Mardee Lake Rezone and Comp Plan amendment application. We request that the county prepare a Critical Areas Report, declare a Determination of Significance (DS) for the SEPA determination, and develop the associated Environmental Impact Statement (EIS).

SEPA Checklist

Mardee Lake Inc. is proposing to rezone four tax parcels totaling 150.98 acres from Forest and Range with a Rural Working Land Use to Rural Recreation Zoning and Land Use. We appreciate that the 2023 project application is more transparent about potential future development, acknowledges the historic and current presence of threatened and endangered species, and recognizes that the parcels have "...environmentally sensitive areas on site that would require the implementation of existing County Codes such as Flood Damage Protection, Critical Areas, Shorelines, and other regulations in order to ensure protections of these areas." However, the proposal continues to rely on the application's "non-project action" stating (at least 36 times) that future proposed projects will be subject to site specific environmental review and that measures to avoid and mitigate environmental degradation can be evaluated and implemented at that time (for example: "the building code provides standards sufficient to evaluate and mitigate potential impact" page 17). In other words, the application is relying on future "site specific environmental review" and that existing codes and regulations will "ensure protection measures" during design and development.

In contrast, the law requires that a SEPA review of rezoning must include consideration of the probable environmental impacts of development that is authorized by the rezoning. For example, in *King County v. King County Boundary Review Board*, 122 Wn.2d 648, 860 P.2d 1024 (1993), the Washington Supreme Court required that an environmental impact statement be prepared for a boundary line adjustment, because development was likely to follow.

The land is currently designated as Forest and Range, "wherein natural resource management is the highest priority and where the subdivision and development of lands for uses and activities incompatible with resource management are discouraged." KCC 17.56.010. The minimum lot size is 20 acres. KCC 17.56.040.

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

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

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

A proposal may to a significant degree:

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

As explained herein, the Mardee Lake proposal raises each of the listed issues. The SEPA Checklist is deficient because it fails to evaluate all of the probable environmental impacts of the project and displaces such evaluations to “site specific environmental review.” The application states that “[i]ndividual projects and development consistent with this proposal will occur over time and cannot be evaluated at this stage” (page 17) which suggests an inability to assess for cumulative impacts now, and maybe not in the future. All direct, indirect, and cumulative impacts of the proposal must be considered in the SEPA threshold determination.

- The SEPA checklist fails to consider the impacts of potential development associated with the rezone. It incorrectly presumes that a change in designation lacks environmental impact because there are not pending development permits or associated actions. This is incorrect and violates SEPA and the KCC’s SEPA provisions. The SEPA checklist and subsequent threshold determination must account for reasonably likely future development. SEPA requires consideration of impacts at the earliest possible time and prohibits segmentation of projects. It violates SEPA to simply defer consideration of environmental impacts into the future.
- The SEPA checklist defers potential conflict with the Federal Endangered Species Act.
- The SEPA checklist defers potential impacts to the wildlife corridor, Mardee Lake, and associated streams and wetlands, which are environmentally sensitive and special areas.
- The rezone request conflicts with the Kittitas County Comprehensive Plan and associated County Code, and Kittitas County Critical Areas Regulations that recognize the need to protect critical habitat areas and connectivity corridors-

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

The application itself does not state that there is a need for additional housing in the Snoqualmie Subarea and, to our knowledge, nor has Kittitas Co stated that there’s a need. Nonetheless, several times in the SEPA checklist, the applicant suggests that they are fulfilling the Kittitas County Comprehensive Plan, Rural Recreational Land Use policies, and Snoqualmie Pass Subarea Plan: “[c]onsistent with [various county code] amendments... the proposed action is intended to promote development within Kittitas County in the manner consistent with the GMA and the newly created Rural Recreational land use policies/designations and the Rural Recreational zoning (Ord 2013-001)... This proposal would allow for Rural Recreational uses and other uses allowed under the Rural Recreational zoning... The rezone would allow for potential future growth of a maximum of 30 residential units (150.98/5) on the subject properties” (pages 3-4).

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

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

NATURAL ENVIRONMENT GOALS AND POLICIES:

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

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

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

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

D. SUBAREA “D”

Location and General Description

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

Natural Features

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

Development Constraints

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

D. OVERALL GOALS

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

SUBAREA D LAND USE PLAN

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

IV. OPEN SPACE AND CRITICAL AREAS

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

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

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

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

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

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

OPEN SPACE AND CRITICAL AREAS

Recommended Actions

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

Kittitas County Critical Areas Regulations

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

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

The parcels owned by Mardee Lake Inc. exist in the heart of the Snoqualmie Pass Corridor, also known as the Snoqualmie Pass Adaptive Management Area in the Northwest Forest Plan which states that planning here "should recognize the area as a critical connective link in north-south movement of organisms in the Cascade Range" (NWFP D-16).¹ The 1997 USFS Snoqualmie Pass Adaptive Management Area Plan Final EIS and Record of Decision focus on maintaining critical connectivity corridors in the area with restrictive standards and guidelines regarding recreational uses and facilities.

¹ Northwest Forest Plan Standards and Guidelines.

https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprd3843203.pdf

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

Kittitas County adopted WDFW Priority Habitats and Species (PHS) when they updated their Critical Areas Ordinance (CAO) in February 2022. The CAO regulates the following critical areas: Critical Aquifer Recharge Areas, Fish and Wildlife Conservation Areas, Frequently Flooded Areas, Geologically Hazardous Areas, Wetlands. The Mardee Lake parcels fall under both 'Fish and Wildlife Conservation Areas' and 'Wetlands' critical areas.

The resulting SEPA Decision must adequately consider WDFW PHS Critical Areas, and the wildlife connectivity corridor critical area in particular, and be consistent with the Kittitas County Comprehensive Plan and the county's Critical Areas Ordinance.

Recreation & Development

Conservation Northwest released a report last year on the best available science pertaining to recreation and wildlife co-existence.² Research has shown repeatedly that higher densities of human presence either on foot or motorized travel, and in higher densities fragmented by development, influence wildlife behavior and decrease the use of available habitat.^{3,4} Even low levels of human activity can change wildlife behavior and habitat use.⁵ "Passive" activities such as hiking, snowshoeing, or cross-country skiing in critical areas can have adverse effects on wildlife if concentrated in large numbers. Wildlife use and function in this critical wildlife migration corridor will be impaired by a rezoning (to Rural Recreation) that increases residential development, recreational pressures, and the number of people in this area. The Gold Creek Area, including Mardee Lake, acts as a "funnel" for traveling wildlife, and already has high levels of recreation that often spill over the bounds of available parking. Simply put, recreational developments at Snoqualmie Pass need to be focused outside of these critical habitat areas and wildlife migration corridors.

Completed wildlife crossing structures in the Gold Creek Valley have largely been funded by tax-payer dollars as part of the I-90 Snoqualmie Pass East Project. These investments have provided great benefits to all species that depend on the critical wildlife corridor that connects habitat the north and the south of I-90. From 2014 (when structures were installed) to 2022, 8000+ successful wildlife crossings have been made by animals at the Gold Creek crossing

² Machowicz, A., Vanbianchi, C., and Windell, R. 2022. Recreation and Wildlife in Washington: Considerations for Conservation. Home Range Wildlife Research. https://conservationnw.org/wp-content/uploads/2022/09/Recreation-and-wildlife-in-Washington-Considerations-for-conservation_FINALreduced.pdf

³ Larson CL, Reed SE, Merenlender AM, Crooks KR (2016) Effects of Recreation on Animals Revealed as Widespread through a Global Systematic Review. PLOS ONE 11(12): e0167259. <https://doi.org/10.1371/journal.pone.0167259>

⁴ Miller, A.B.; King, D.; Rowland, M.; Chapman, J.; Tomosy, M.; Liang, C.; Abelson, E.S.; Truex, R. 2020. Sustaining wildlife with recreation on public lands: a synthesis of research findings, management practices, and research needs. Gen. Tech. Rep. PNW-GTR-993. Portland, OR: U.S. Department of Agriculture, Forest Service, Pacific Northwest Research Station. 226 p.

⁵ Sytsma, M., Lewis, T., Gardner, B., and Prugh, L. 2022. Low levels of outdoor recreation alter wildlife behavior. People and Nature/Early View. <https://doi.org/10.1002/pan3.10402>

structures. Use of these structures has ensured successful population connections and a reduction in animal-vehicle collisions. Moreover, WSDOT designed these projects and structures to be consistent with the Snoqualmie Pass Adaptive Management Area Plan and the Kittitas County Comprehensive Plan/Snoqualmie Pass Sub-Area Comprehensive Plan which support connectivity corridors. As a result of this rezoning, significantly increased land use densities and development within and adjacent to Gold Creek Valley will negatively affect public investments in these wildlife connectivity structures (bridges, culverts and overcrossings), affect habitat restoration areas, and further displace wildlife that are moving through this corridor. It is essential that recently restored ecosystem functions, ongoing connectivity and restoration efforts, and animal movement is not impaired by increased human presence from development or recreation that would result from this rezoning.

The application states that the “surrounding properties are predominantly Rural Recreation Lands” and that the “proposed zoning designation of Rural Recreation is consistent with the existing and surrounding recreational uses in the vicinity,” (pages 10, 11) but a map of current zoning and land use shows that, while there is certainly development at the Pass and on the south side of I-90, the Mardee Lake parcels are contiguous with Forest and Range Zoning (Rural Working Land Use) except for 4.22 private acres and 11.06 WSDOT acres zoned Rural Recreation along the south end of the 50 acre southeast parcel (Figure 2). We believe that the current Forest and Range with a Rural Working Land Use with protections for critical areas/habitat is better aligned with the Kittitas County Comprehensive Plan/Snoqualmie Pass Sub-Area Comprehensive Plan, Kittitas County Critical Areas Ordinance, and the USFS Snoqualmie Pass Adaptive Management Area Plan, then would be Rural Recreation Zoning and Land Use.

Any of the listed uses for Rural Recreation could be allowed if this type of rezoning is allowed, including but not limited to: increased residential development, Lodges, B&B, Restaurant, Retail, Campground, Golf Course, ORV Park, Rec Vehicle Storage. As noted by the Growth Management Hearings Board Decision, “the County must evaluate the environmental impacts that are probable as a result of the change proposed. Those impacts should be measured in terms of the maximum potential development of the property under the changed land use designation.”⁶ In other words, the SEPA checklist must account for all such reasonably likely potential uses and associated effects. We believe that a rezone to allow intensive recreational development is not consistent with critical areas protection. In other words, Rural Recreation Zoning and Land Use and its listed uses are incompatible within and adjacent to a critical area – in this case, a wildlife connectivity zone.

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

Although the application is a non-project action, disclosure of potential impacts to the environment (i.e. critical areas and species) must be identified during the rezone application and considered during the SEPA decision. Identifying potential impacts to ecological connectivity in

⁶ Growth Management Hearings Board. Final Decision and Order Case No. 23-1-0002c. August 23, 2023.

the Gold Creek Valley is needed to ensure that public investments and commitments are maintained.

Conclusion

Rezoning of this parcel to Rural Recreation is likely to have a significant environmental impact on Critical Areas and thus we request that the county prepare a Critical Areas Report, declare a Determination of Significance (DS) for the SEPA determination, and develop the associated Environmental Impact Statement (EIS).

A Critical Areas report will more accurately identify the extent of critical areas (streams, wetlands, species habitat, and connectivity corridor), address potential impacts in or adjacent to the critical areas from future development and increased recreation, and how the proposed application proposes to avoid impacts to the critical areas and species it supports. We believe the results of this report would support a Determination of Significance (DS) and subsequent Environmental Impact Statement (EIS).

Thank you for the opportunity to comment on this application. We hope the county will reach out to us with questions and for any assistance we may be able to provide through this process.



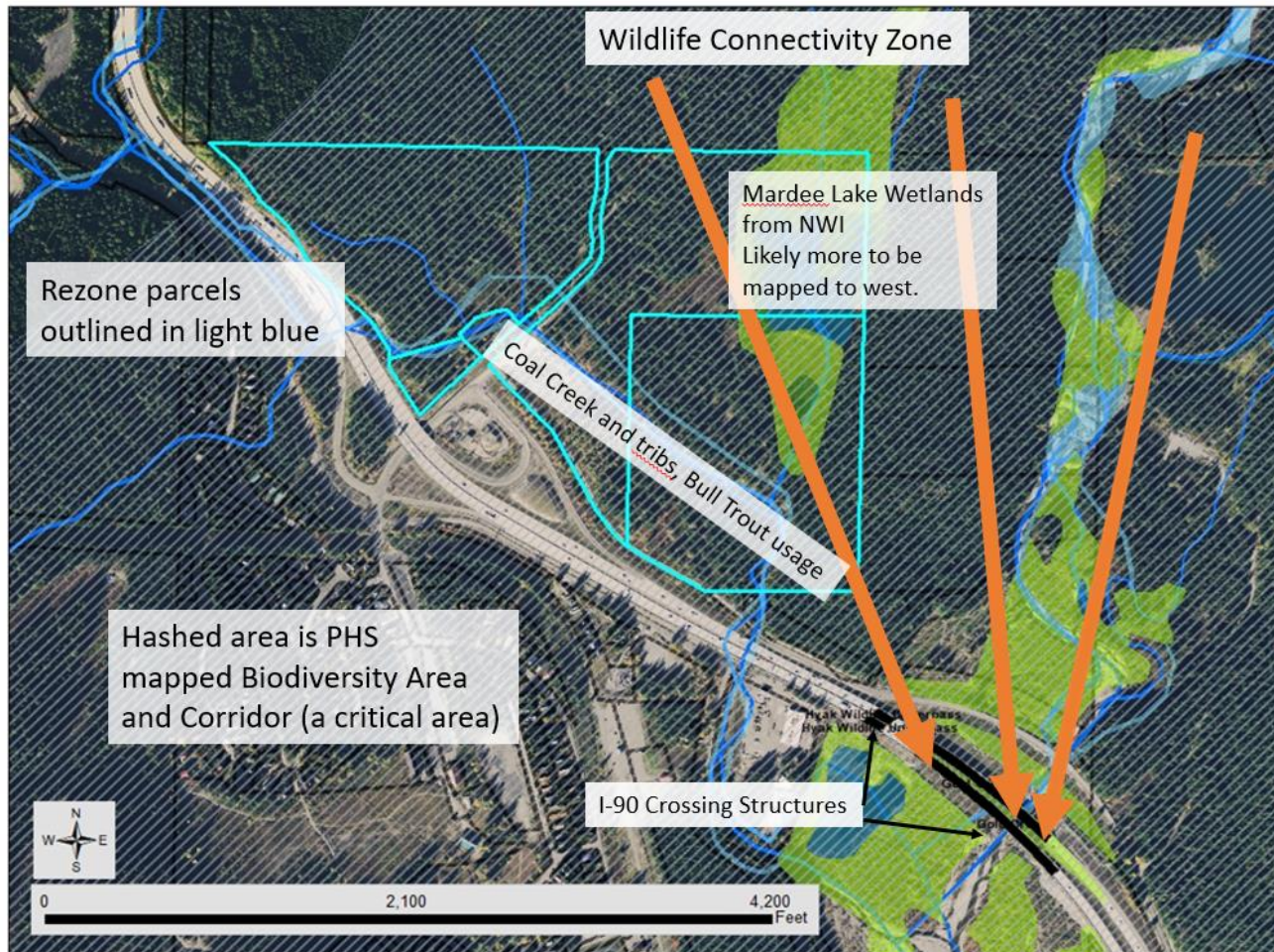
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Figure 1. Mardee Lake Critical Area – Identified by Washington Department of Fish and Wildlife – Hashed Area is Priority Habitat and Species (PHS) mapped Biodiversity Area (Critical Area). Kittitas County adopted WDFW PHS when they updated their Critical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



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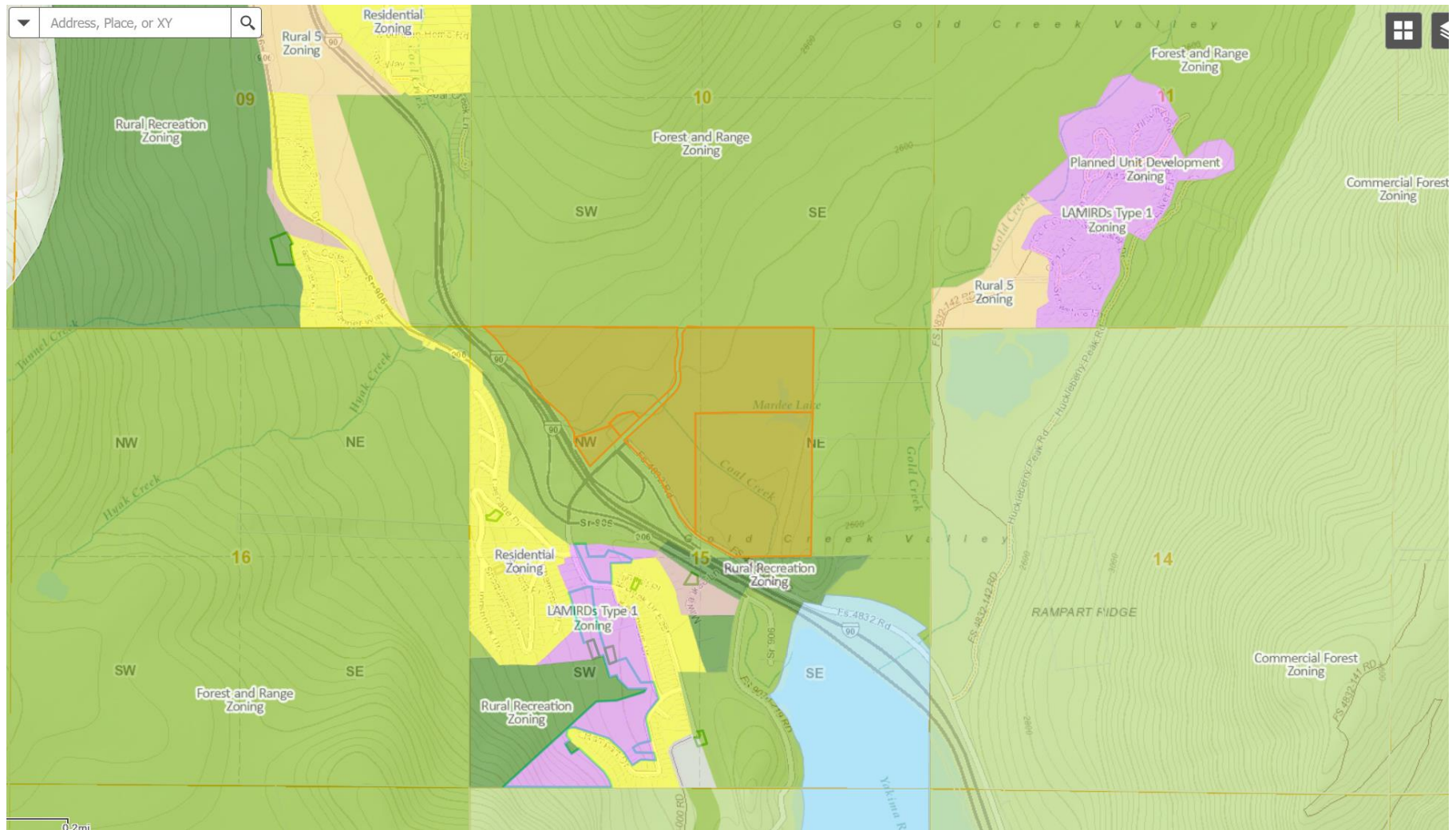
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Figure 2. Zoning – Mardee Lake parcels are highlighted orange and are contiguous with Forest and Range Zoning (Rural Working Land Use) except for 4.22 private acres and 11.06 WSDOT acres zoned Rural Recreation along the south end of parcel number 808335.



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