

18 October, 2023

From: Rosemary Baisch Dunkle, Director
Fowler Creek Ranch / FC RANCH LLC
2040 Fowler Creek Road Cle Elum, WA 98922

To: Jamey Ayling, Senior Planner and Responsible Official
Kittitas County Community Development Services
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RE: Conditional Use Permit Application CU 23-00003
Fowler Creek Guest Ranch

Dear Mr. Ayling:

I am the owner of Fowler Creek Ranch, which is just a few hundred yards South of the proposed Fowler Creek Guest Ranch. I previously submitted comments on this proposal by letter dated October 3, 2023. Thank you for extending the comment period on this proposed application, and please accept this letter as supplemental targeted comments on a few additional key issues. My prior comments on October 3, 2023 are incorporated by reference here, and both the prior comments and this letter should be considered as comments on both the conditional use permit (CUP) application and SEPA comments on the proposal, including the County's proposed Preliminary Mitigated Determination of Nonsignificance (PMDNS).

As this process proceeds, I would like to be added to any communication plan for the community that informs residents of decisions and timelines.

Comments

Fowler Creek Guest Ranch Proposal

The scale of the proposal is significant and should be reviewed as such. As best as I am able to discern from the application materials, the proposal includes the siting of 30 new RV sites, a bed and breakfast with five bedrooms, a ranch house with seven bedrooms (described as being proposed to accommodate groups, large families, and reunions), ten separate rental "cabins" with up to four bedrooms, up to ten "residential habitats," a large special event "barn" facility (with up to 200-person capacity) for large gatherings, weddings, and special events, a swimming pool, dining facility, and other associated commercial amenities. While being characterized as a "guest ranch," there are no apparent retained ranch attributes, and the project appears more properly characterized as a master planned resort and full-scale commercial operations, inconsistent with the rural character.

Water Supply

The property has no appurtenant water rights necessary to serve the development. While the property currently relies on permit exempt wells, such use is limited to 5,000 gallons per day. RCW 90.44.050. How the project will use water, whether the water supply is legally or physically available, and the impacts of such proposed new water use remains entirely unknown.

As the County is aware, the Yakima River Drainage Basin, which comprises the majority of Kittitas County, including the area proposed for development, is fully appropriated, and there is no water available for new appropriations. In fact, due to drought conditions, earlier this year use of water by all existing water right holders with priority dates after 1905 was curtailed. The applicant now proposes a new appropriation of water for commercial purposes. In the absence of water rights sufficient to support the proposed conditional use development, no approval can be granted. See KCC 17.60A.015 (requiring a finding that the proposed use will be adequately serviced by existing facilities, including “water and sewers” or that the “applicant shall provide such facilities”). Similarly, the County Code requires an Adequate Water Supply Determination and compliance with KCC 13.35.027 (Permanent Measures) for all applicants seeking conditional uses. KCC 13.35.020(2). Such determination and compliance must be made at the time a land use application is made proposing a conditional use. KCC 13.35.020(2). Here, while the applicant has provided a general narrative, and outlined various proposed “options” further certainty is required now to ensure protection of the County’s limited water supply and resources and ensure no impairment of existing water rights or detriment to instream flows. Further, KCC 13.35.027 expressly requires that “[a]ll new uses of ground water shall require either: 1) a letter from a water purveyor stating that the purveyor has adequate water rights and will provide the necessary water for the new use; 2) an adequate water right for the proposed new use; or 3) a certificate of water budget neutrality or other adequate interest in water rights from a water bank.” Relevant here, the Code provides that “[n]o new use to which this chapter is applicable” (expressly including conditional use) “shall be approved without one of these required submissions.” The applicant has provided none of these required submissions. Ultimately, consistent with its Code, the County should require Adequate Water Supply Determination prior to any approval.

While the applicant proposes various “piping options,” given the proposed intensity of use, ultimately, such proposed new appropriations will require a new water right permit from the Department of Ecology.

Separate from the above, the applicant also appears to propose the “use of cisterns to provide water to the various cabins as allowed by KCC 13.25.” However, this proposed use of cisterns is expressly disallowed under the Kittitas County Code. County Code provides that “[c]istern systems are only permissible as a water source for a single dwelling unit in a designated location that is unable to provide water through physical, or legal means.” KCC 13.25.020. It is not available for use in commercial developments. Rather, the Code further clarifies that: “No potable water hauling or cistern system shall be permitted for two or more dwelling units

served by a common storage and piping system” and that “no potable water hauling or cistern system shall be permitted for any commercial use.” KCC 13.25.020. In short, the proposed commercial use cannot rely on the use of cisterns to demonstrate suitable provision of water supply.

Given the critical nature of the water supply in Upper Kittitas County, the proposed general narrative description is wholly inadequate to support any approval now.

Critical Areas

Based on the application materials, the County’s review of the CUP application is premature. Prior to approval, the application materials do not include a critical areas report for the County’s review. As the applicant notes, the subject property includes a significant wetland complex and associated wetland buffers centrally located on-site. According to County GIS mapping, the property also has two streams bisecting the southern portion of the site, identified as Type 4 Seasonal (N) and Type 2 (F). While the applicant provides a general narrative describing these acknowledged critical areas, the County Code requires submission of a critical areas report prepared by a qualified professional. KCC 17A.01.080; KCC 17A.01.110 (requiring critical area review “[p]rior to the county's consideration of any proposed alteration or development not found to be exempt under KCC 17A.01.050”). Notably, again according to County GIS mapping, over 50% of the property is identified as “Wetland” or “Wetland Investigation Area,” including areas that appear on the proposed site plan for development. The proposal actually proposes structures described as “residential habitats” within identified wetlands. It is impossible to determine the feasibility of the project or its impacts to wetlands and associated buffers without a critical area report and review. As Ecology has commented:

The report should delineate any wetlands using the US Army Corps of Engineers Wetland Rating Manual (1987) and the Regional Supplement for the Arid West. Any wetlands should be rated following guidelines in the Washington State Wetland Rating System for Eastern Washington: 2014 Update. The wetland report should provide all information required in Kittitas County Code 17A.07 WETLANDS.

This critical area review should and must be conducted now and inform the County’s decision on the proposed conditional use permit, and not deferred to later stages.

Fire and Emergency Access

As the risk of wildfire is increasing in terms of both frequency and intensity throughout the Western United States and specifically in Eastern Washington, this project requires special attention to fire mitigation, emergency access, and evacuation. As Fire Chief John Sinclair of Kittitas Valley Fire Rescue has noted, this is an area of the county “that concerns me greatly due to wildland firefighting risk, topographical features, and local weather including historical winds” and that “we run the risk of future loss of life in a rapidly moving wildland fire.” Despite

these very real concerns, there appears to have been little attention given to these risks. Prior to approval, the County should ensure early consultation with Fire District 7 and the Fire Marshal. This review should include, at a minimum, whether secondary access should be required, the adequacy of all access roads for fire apparatus, a circulation plan, fire risk mitigation requirements (spark arrestors, restrictions on outdoor burning, and others), and an analysis of evacuation feasibility, and a suitable and approved evacuation plan. Based on my review, none of this has occurred or been sufficiently evaluated in order to consider the feasibility of this project or its impact.

Noise

As a property owner just a few hundred yards from the proposed development, I am also concerned that the large-scale nature of the commercial facility will have significant noise impacts. In this regard, the project description notes, in addition to the well over 100-person occupancy, a large special event “barn” facility with a 200-person capacity, and contemplating large gatherings, weddings, and special events. It further notes enforcing quiet hours starting at 12:00 am (midnight) on weekends associated with such special events. The impact of this cannot be understated. Placing a special event facility for hundreds of people in a rural area with existing residential and farming activities will have a significant impact.

Traffic Impacts

The applicant’s application materials describe the proposal as a “full-service recreation facility” purportedly generating approximately 92 additional trips per day (ADT). A transportation impact analysis (TIA) is required for the County to evaluate this proposal. KCC 12.10.040. The application notes that peak hour vehicle trips per day in excess of 9 ADT would be generated by the project, triggering the TIA requirement. While the applicant includes a general narrative describing their perceived traffic impacts, this issue cannot be properly evaluated without the submission of a required TIA.

Furthermore, the County cannot neglect to evaluate the impact the proposal may have on the proliferation and increased all-terrain vehicle (ATV) and similar recreational motorized vehicles associated with the resort development would have on the limited rural roadway infrastructure and associated traffic impacts, as well as the associated impacts to law enforcement and emergency response, and associated environmental impact required in any SEPA determination.

SEPA Comments

The Notice of Application Comment Period Extension notes that “The County expects to issue a Mitigated Determination of Non-Significance (MDNS) for this proposal and will use the optional MDNS process authorized by WAC 197-11-350, meaning this may be the only opportunity for the public to comment on the environmental impacts of the proposal.” This same language is included in the Preliminary Mitigated Determination of Nonsignificance (PDMS). The Notice of

Application Comment Period Extension extended the comment period through October 19. The above comments (and those provided on October 3, 2023) should also be considered as SEPA comments on the environmental review of the project, and the County's draft PMDNS.

SEPA Comments (General)

First, the WAC cited in the notice (WAC 197-11-350) describes mitigated DNSs generally but does not outline the "Optional MDNS" process. The Optional DNS process is described in WAC 197-11-355. That provision contemplates the use of the Optional DNS process only when the lead agency "has a reasonable basis for determining significant adverse environmental impacts are unlikely." Here, given the number of comments, lack of detail in the application materials, unexplained facets of the proposal, and lack of required reports (i.e. critical area reports, traffic impact analysis, and others) it is premature and likely unsupported that the County can now have a reasonable basis for determining significant adverse environmental impacts are unlikely. Given the outstanding issues and level of concerns, I would ask the County not to follow this process and provide for a second comment period following issuance of any threshold determination.

Second, based on the comments provided, the information provided by the applicant is presently not reasonably sufficient to evaluate the environmental impacts of the proposal. See WAC 197-11-100(2). Issuance of any threshold determination would be premature at this time. Instead, I would ask that the County require the applicant to provide sufficient additional detail, including required reports, prior to making any such determination and consideration of necessary mitigation measures.

SEPA Comments (Specific)

In addition to the above, below are some targeted comments on the environmental checklist prepared by the applicant:

A.10 (Government Approval or Permits)

As described, the Project's proposed water use will require a State of Washington Department of Ecology Water Right Permit. The SEPA checklist does not properly identify this requirement. As noted above, protection of water supply and groundwater resources is of critical importance.

B.3.b. (Groundwater)

The applicant's SEPA checklist, in addressing groundwater impacts, merely directs the County to its Exhibit 8 (Domestic Water Plans and Options). However, as set out above, there is insufficient detail in this narrative to evaluate whether water may actually be available, proposes potential options that are disallowed, and provides no firm proposal. In the absence of any firm proposal, it is not possible to evaluate the potential impacts. There is further no

indication that Ecology would ultimately approve the withdrawal of water from one area or basin for use in another area or basin, and no evaluation of the same has occurred. The County should require a more definite plan and evaluation of impacts before proceeding, and considering whether there may be substantial adverse environmental impacts and whether those impacts can be mitigated.

B.3.c. (Water runoff – including stormwater)

The applicant's SEPA checklist notes that "[a]ny new runoff caused by the creation and use of the guest ranch facilities will be treated on-site and infiltrated into the ground or captured and directed to a detention pond." No actual stormwater plan appears to have been developed. According to County GIS mapping, nearly the entirety of the property is located within a designated Critical Aquifer Recharge Area (CARA). For designated CARAs, the County Code regulates the development of new manmade detention or infiltration ponds, KCC 17A.03.030, and requires "County review and approval of a special hydrogeological assessment prepared by a qualified professional." KCC 17A.03.050. No such assessment appears in the application materials.

B.5.b (Threatened or Endangered Species)

The applicant notes, in response to the SEPA checklist's request to identify "threatened or endangered species known to be on or near the site" merely that "None that are known." However, without a critical area report, this response is lacking in the appropriate level of inquiry or analysis. At a minimum, it is well understood that bull trout and mi-Columbia steelhead in the Yakima basin are listed for protection under the Endangered Species Act. The applicants proposed new water withdrawals from the basin need further evaluation as to whether they may impact threatened or endangered species. Further, whether the existing wetland complex and streams bisecting the property may also support ESA protected species habitat is unknown as such evaluation has occurred.

B.7.a.4 (Emergency services)

In response to emergency services, the applicant merely states that in the "rare case that emergency services might be needed, they would be fulfilled by first responders from Fire District 7." Given the increased frequency and risk associated with wildfire, describing this situation as "rare" is concerning. There is no apparent evaluation of whether Fire District 7 has sufficient resources, or whether the proposed commercial facility would impact those resources, appropriate levels of service, or other community members. Given this serious concern, the County should require additional detail and evaluation and consider the impacts and associated required mitigation.

B.7.b (Noise)

The SEPA checklist acknowledges there will be “recreational sounds” and that such “will be taking place at a higher rate during events.” The generalized description in Exhibit 11 provides little additional clarity as to the actual impacts. However, the impacts of the proposal to host an unlimited and unquantified number of large special events in a rural setting have not been evaluated, and no mitigating conditions applied. Given this serious concern, the County should require additional detail and evaluation and consider the impacts and associated required mitigation. Presently, and alarming, there are no conditions in the PMDNS addressing noise impacts.

B.14 (Traffic)

The SEPA checklist’s response to traffic impacts is also wholly lacking in detail. A TIA should be required, should include the expected off-site use of ATVs and other recreational vehicles by its residents, and any identified mitigation measures required.

B.15 (Public Services)

The SEPA checklist’s response to public service impacts is similarly wholly lacking in detail. For example, with respect to fire and emergency services, the Checklist merely states that “Fire wising will be regularly done within and around the proposed facility to lessen the danger of creating fires.” Yet, there is no description of what this would entail, if anything. There is also no evaluation of the increased demand for actual public services (fire and emergency) response in the event of a fire and the feasibility of evacuation. Further and actual analysis of this issue must be required before the County can make a determination, including whether any mitigation would alleviate the impacts and should be required.

PMDNS Mitigating Conditions

The mitigating conditions imposed in the draft PMDNS are based on insufficient information and inadequate. The purpose of SEPA review is to inform decision-makers at the earliest stage possible. The County should request additional details before moving forward with a threshold determination. Deferring further consideration of actual impacts merely leads to inevitable administrative inertia as a project moves forward. While the applicant includes some general narrative intended to limit impacts (relating to various issues such as lighting, noise, occupancy, etc.) the County has not demonstrated that they have evaluated these impacts and associated “mitigation” measures, and none of those project details are formalized as conditions. As such are unlikely to actually be enforced in the future. If an MDNS is appropriate at all, further consideration is required regarding additional mitigating conditions.

Thank you for your consideration of these comments.