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Via email

Kittitas County Community Development Services
Attn: Jamey Ayling, Planning Manager
411 North Ruby Street, Suite 2
Ellensburg, WA 98926
jamey.ayling@co.kittitas.wa.us

Re: Fowler Creek Guest Ranch (CU-23-00003)

Dear Mr. Ayling:

We have enclosed Fowler Creek Trails responses to comments submitted with respect to the conditional use application together with additional reports and summaries. We look forward to continuing the review process and proceeding towards a public hearing on the land use application. If there is any additional information or materials required for completion of your review, please let us know and we would be happy to cooperate and provide such materials and information.

Very truly yours,
MEYER, FLUEGGE & TENNEY, P.S.


James C. Carmody

Enclosure

COMMENT RESPONSE SUMMARY

FOWLER CREEK TRAILS FOWLER CREEK GUEST RANCH

(CU-23-00003)

Fowler Creek Trails, LLC (“Fowler Creek Trails” or “Applicant”) provides this response summary to comments submitted by agencies and the public with regard to Fowler Creek Trails’ application for conditional use permit for an integrated rural recreational facility providing recreational and vacationing opportunities and amenities including guest ranch, campground, recreational vehicle park, bed and breakfast, and outdoor recreation facilities. (CU-22-00003).¹

A. Overview of Project Proposal.

Fowler Creek Trails has proposed an integrated rural recreational development on an 84.3-acre parcel of land located at 981 Fowler Creek Road, Cle Elum, Washington. The proposal is for a sustainable and environmentally friendly destination campground and guest ranch that provides a wide range of recreational opportunities for Kittitas County residents and visitors. The project proposal includes a variety of camping and recreation options, including thirty (30) recreational vehicle parking spots, a bed and breakfast with five rentable rooms, a large barn for gatherings and/or events, and a ranch house available for private rental. The project has been denominated “Fowler Creek Guest Ranch”.

While the project is named “Fowler Creek Guest Ranch”, it is more than just a “guest ranch.” From a land use perspective, the integrated rural recreational project includes a campground, recreational vehicle park, guest ranch, bed and breakfast, small-scale event center, and outdoor recreation facilities.² Each of the proposed uses are permitted within the Rural-5 zoning district. The application is being reviewed under the highest level of review as a conditional use permit.³

In response to comments from community members, state agencies, and county officials, Fowler Creek Trails has modified the scope of the original land use application and eliminated the following components:

- *Elimination of Rental Cabins:* The ten short-term cabin rentals will be removed from the project proposal. This will mitigate several aspects of potential impacts including permanent lodging

¹ Peter J. Eglick, as legal counsel to Friends of Fowler Creek (FOFC), provided written comment on the application for Fowler Creek Guest Ranch (CU-23-00003) dated October 19, 2023. (“FOFC Comments”).

² The subject property has been designated Rural Residential under the *Kittitas County Comprehensive Plan* and zoned Rural 5. The property consists of thirty-five (35) existing lots that are located in a “Rural Non-LAMIRD” area.

³ Uses allowed in the Rural 5 zoning district are set forth in KCC 17.15.060.1 – Rural Non-LAMIRD Use Table. Campgrounds, guest ranches, small scale event facilities holding more than 8 events per year, and recreational vehicle parks are allowed with a conditional use permit. “Bed and Breakfast” and “Recreation, outdoor” uses are permitted subject to Administrative Conditional Use Permits. Kittitas County has determined that the project proposal will be reviewed under the highest standard of review as a conditional use permit.

structures, construction impacts, traffic concerns, water and sewer usage, light pollution, noise impact, and number of guests.

- *Residential Habitats:* The five residential habitats planned to be constructed in open spaces and/or near wetland investigation areas (buffers) are also removed from the rural recreational facility. This will reduce concerns related to critical areas as well as fire concerns.
- *Secondary Access Point:* The southern entrance from Forest Service Road 4517 has been modified and will now be only a gated emergency access road. This will alleviate the traffic impact of those living on the south side of the development and address concerns regarding road impacts while still providing required emergency access to the property.
- *Quiet Hours:* In order to ensure alignment with KCC Chapter 9.45, the designated "quiet hours" have been adjusted to span from 10:00 p.m. to 8:00 a.m. This adjustment addresses noise-related concerns and potential additional activity during the hours from 10:00 p.m. to 12:00 a.m.
- *Fire Pits:* Personal fire pits have been removed from the plan due to safety concerns and replaced with community fire pits that will be closely managed and monitored to lessen potential fire impact on the natural environment and nearby wildlife. These community firepits will be designed with input from Kittitas County Fire District 7.
- *Critical Areas Report:* Fowler Creek Trails has provided a Critical Areas Report prepared by Sewall Wetland Consulting which delineated wetlands located within the campground boundaries. There has been further consultation with the Department of Ecology and the Department of Fish & Wildlife with the site design providing additional wetland buffers and protection based upon agency input and comment. In accordance with the Critical Areas Ordinance Kittitas County Code 17A, only passive, low-grade recreation will be allowed in the vicinity of the delineated wetlands.
- *Off-Road Vehicle Use:* Off-road vehicle use remains prohibited within the guest ranch property. Snowmobile use will be allowed during select times of the winter season. An Off-Road Vehicle Plan has been developed and included in the comment response submissions as Exhibit 14.
- *Noise and Light:* Noise and light concerns were addressed through noise control and light pollution mitigation measures

outlined in Exhibit 7 and Exhibit 8. Lighting plans will be consistent with the suggestions given by Dark Skies International.

- *Water Management Plan:* A Sewage Management Plan has been developed in collaboration with Kittitas County Public Health Department and the Kittitas County Public Works Department. This plan is outlined in Exhibit 9.
- *Sewage Management Plan:* A Sewage Management Plan has been developed in collaboration with Kittitas County Public Health Department. This plan is outlined in Exhibit 10.
- *Fire Management Plan:* A proposed Fire Management Plan has been created in collaboration with Kittitas County Fire District 7 and the Kittitas County Fire Marshal. The proposed Fire Management Plan is attached as Exhibit 11.

The purpose of this development is to host a quiet and peaceful recreational environment for visitors and families in a beautiful setting. The Fowler Creek Guest Ranch furthers Kittitas County's goals and policies of preserving "rural character" while providing opportunities for the enjoyment of recreational amenities in Upper Kittitas County.

B. FOFC Procedural Objections Are Unsupported by Either the Record or Applicable Law.

Friends of Fowler Creek (FOFC) have provided written comments and registered a number of procedural objections to the land use application, *FOFC Comments pp. 2-4*. The applicant has separately addressed each comment.

This *Comment Summary* responds to both agency and public comments on the land use application.

1. ***Fowler Creek Trails submitted a complete land use application.*** FOFC begins its comments by arguing that "...the term 'application' cannot legitimately be applied to the submission currently before the County. They lack basic facts and analyses and present instead as vague sales brochures." *FOFC Comment at 2.* Fowler Creek Trails submitted a complete land use application proposing a guest ranch with camping, wedding venues, vacationing, celebrations, bed and breakfast facilities, lodging and similar pursuits. Community Development Services deemed the application complete on September 19, 2023. KCC 15A.03.040 provides:
 3. A project application is complete for the purpose of this title when it meets the procedural submission requirements of Kittitas County and is sufficient for continued processing even though additional information may be required or project modifications may be undertaken subsequently. The determination of completeness shall not preclude Kittitas County from requesting additional information or studies either at the time of the notice of completeness or subsequently

if new information is required or substantial changes in the proposed action occur.

KCC 15A.03.040(3). See also RCW 36.70B.070(2) ("Additional information or studies may be required or project modifications may be undertaken subsequent to the procedural review of the application by the local government.").

FOFC asserts that a complete application requires a surveyed site plan. This is incorrect. The written application does not require a surveyed site plan. KCC 16A.03.030(2).⁴ The issuance of a Determination of Completeness does not preclude Kittitas County from requesting additional information or studies. In this case, Fowler Creek Trails provides significant additional information, studies and reports to specifically address comments and revise the scope of the application to remove objectionable components. The request and submission of additional information does not, and should not, require discontinuance of the application review process.⁵

2. ***Kittitas County CDS properly waived preapplication conference.*** The waiver of a pre-application conference is within the sole discretion of the CDS Director or Planning Official. KCC 15A.03.020(4). The CDS Director or Planning Official is authorized to waive the conference under the following circumstances:

4. A pre-application conference may be waived if the CDS Director or Planning Official determines that the proposal is relatively simple (has few, if any, development-related issues), is substantially similar to a prior proposal affecting the same property, or is substantially similar to other projects developed by the same applicant. In order to request a pre-application waiver, the applicant shall submit a complete pre-application waiver request form, a written narrative justifying the request for a pre-application waiver, and the required fee.

KCC 15A.03.0020(4).

In accordance with applicable ordinance requirements, Fowler Creek Trails submitted a *Preapplication Conference Waiver Request Form* (PMW-23-00002) on August 10, 2023. The request for waiver of the preapplication meeting was accompanied by the

⁴ FOFC also references other conditional use applications including Hidden Point Guest Ranch (CU-20-00005); the Outpost (CU-23-00002); and Teanaway Ridge Motor Trail Club (CU-12-00001). Each application presents different facts for review, mitigation and final determinations. For example, Teanaway Ridge Motor Trail Club application was proposing the development of an Off Highway Vehicle (OHV) track which included motorcycle racing events and traffic generated from event participants and spectators. In the present application, motorized vehicles are prohibited within the campground and park areas.

⁵ FOFC asks Kittitas County to discontinue review of the application in order to "...fill in the blanks...." *FOFC Comment at page 3*. The submission of supplemental information and reports is inherent in any land use review process with the reviewing agency continuing its review prior to issuance of its special determination and submission of Staff Report for the open record public hearing.

completed land use application. Based on the request for waiver of pre-application meeting, the Planning Manager approved the waiver because the current application is "...[s]ubstantially similar to other projects developed by the same applicant."

Friends of Fowler Creek (FOFC) assert that Kittitas County improperly approved a waiver request for the application. The CDS Director or Planning Official has authority to waive the preapplication conference where the proposal "...is substantially similar to other projects developed by the same applicant." KCC 15A.03.020(4). The developer has had decades of experience with land use development in Kittitas County including conditional use permits, subdivisions and planned developments, critical area review including shorelines and wetlands, and environmental review processes under the State Environmental Policy Act (SEPA). Contrary to FOFC's pejorative characterization, the submission was not a "half-baked application." Rather, the Kittitas County Planning Manager properly determined that the conditional use permit application was similar to other projects developed by the same applicant.

3. ***There is no basis for terminating review of the land use application.*** Friends of Fowler Creek argue that "...the County must require the applicant to fill in the blanks now, before the application proceeds any further." As with the prescribed process, Fowler Creek Trails has submitted supplemental information and included project clarifications. Thus, this is a normal part of the process.

The applicant has, in addition to comment responses, also submitted a Critical Areas Report prepared by Ed Sewall of Sewall Wetland Consulting, Inc. This Critical Areas Report verified that all of the information included in the application and SEPA was accurate. The draft Critical Area Report was reviewed by both the Washington State Department of Fish & Wildlife and the Washington State Department of Ecology and determined to be, with suggested mitigation, complete and satisfactory.

In addition, the Kittitas County Public Works Department conducted a transportation concurrency evaluation and concluded that transportation facilities are adequate for the proposed Fowler Creek Guest Ranch. The concurrency review confirmed that peak hour traffic volumes will not reduce level of service standards below acceptable levels.

Furthermore, a revised site plan and aerial site plan is included in the Fowler Creek Trails response to comments.

4. ***Kittitas County SEPA Responsible Official has not made a final threshold determination and it is premature to require preparation of an Environmental Impact Statement (EIS).*** FOFC asked Kittitas County CDS to deviate from established environmental review processes and require preparation of an environmental impact statement. *FOFC Comment at 4.* This request is both premature and contrary to environmental review processes.

Fowler Creek Trails has followed established procedures for environmental review. A *SEPA Environmental Checklist (SE-23-00018)* was filed with the land use application on August 10, 2023. The SEPA Responsible Official independently reviews the

environmental checklist "...without requiring additional information from the applicant." WAC 197-11-330(1)(a)(ii).

Agency review also includes consideration of mitigation measures and adequacy of adopted development regulations addressing specific adverse impacts of a proposed project action. "Existing plans, regulations, rules and laws that provide environmental analysis and measures that avoid or otherwise mitigate the probable significant adverse environmental impacts of proposed projects should be integrated with, and should not be duplicated by, environmental review under Chapter 43.21C RCW and Chapter 15.04 KCC. KCC 15A.04.010. See also RCW 43.21C.240(2)(a); and WAC 197-11-158.

[T]he Integration Act "seeks to avoid duplicative environmental analysis and substantive mitigation of development projects by assigning SEPA a secondary role to (1) more comprehensive environmental analysis in plans and their programmatic environmental impact statements and (2) systematic mitigation of adverse impacts through local development regulations and other local, state, and federal environmental laws."

Moss v. City of Bellingham, 109 Wn. App. 6, 15, 31 P.3d 703 (2001).

FOFC comments raise specific issues related to critical areas and septic systems. Each is subject to a separate review and permit processes. For example, final determinations with respect to potable water systems, septic site review and permitting, and transportation concurrency are subject to and governed by adopted regulatory controls. "Planners may not impose additional mitigation measures on impacts which have been adequately addressed elsewhere:" *Moss v. City of Bellingham*, 109 Wn. App. at 17.

SEPA also contemplates an iterative review process. [A]n applicant may, at any time, voluntarily submit information beyond that required under [SEPA] rules." WAC 197-11-100. An applicant is also entitled to clarify and/or change aspects of a proposal, address mitigation, and propose changes in response to comments. WAC 197-11-350. Fowler Creek Trials has provided significant additional information on environmental impacts as a supplement to its initial submissions. That information is now available to the SEPA Responsible Official and may serve as a basis for the threshold determination. A threshold determination is made at the culmination of the environmental review process. WAC 197-11-330.

Friends of Fowler Creek provide general references to SEPA regulations but no substantive comment with respect to deficiencies in the SEPA Environmental Checklist or other identified significant adverse environmental impacts. SEPA requires environmental impact statements (EIS) for "major actions having a probable significant, adverse environmental impact." RCW 43.21C.031(1). The agency must base its threshold determination on "information reasonably sufficient to evaluate the

environmental impact of a proposal.” WAC 197-11-335. The SEPA rules state that significant “means a reasonable likelihood of more than a moderate adverse impact on environmental quality”. This document provides a complete record for the threshold determination.

A primary goal of SEPA is to reduce or eliminate environmental impacts. If significant impacts that would require the preparation of an EIS are identified, those impacts can be reduced either by the applicant(s) making changes to the proposal or by requiring mitigation measures as a condition of approving the project. When changes to the proposed project or mitigation measures that will reduce the identified significant adverse impacts down to a nonsignificant level are identified, a “mitigated DNS” may be issued in lieu of a Determination of Significance and preparation of an EIS.

C. Fowler Creek Trails Land Use Proposal Application is Consistent with Review Criteria for Conditional Use Permits.

Guest ranches, campgrounds, recreational vehicle parks, and small-event facilities are *permitted* uses in the Rural-5 zone but require a conditional use permit. KCC 17.30A.020. Kittitas County has set forth seven (7) specific criteria that must be met for approval of a conditional use permit. KCC 17.60A.015 sets forth the review criteria as follows:

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:

- (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 costs 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 planned 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));
 - C. Requires only rural government services; and
 - D. Does not compromise the long-term viability of designated resource lands.

Considerations under the conditional use permit review criteria are localized based upon specific review criteria. *One Energy Development, LLC v. Kittitas County*, 9 Wn. App. 2d 1057 – (2019) (Unpublished Opinion).

FOFC also argues that the decisionmaker has the arbitrary discretion to deny a conditional use permit application even though the applicant has satisfied all review criteria.

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.

FOFC Comment at 4. This argument is, however, in direct conflict with applicable case authority and constitutional requirements. See e.g. *Cingular Wireless, LLC v. Thurston County*, 131 Wn. App. 856, 774, 129 P.3d 300 (2006) (specific controls over general); and *Anderson v. City of Issaquah*, 70 Wn. App. 64, 851 P.2d 744 (1993) (holding that a land use application must be issued, and vague or unwritten criteria are void per vagueness). “A building or use permit must

issue as a matter of right upon compliance with the ordinance.” *Mission Springs, Inc. v. City of Spokane*, 134 Wn.2d 947, 960, 954 P.2d 250 (1998).

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.*** This criteria has two components: (1) that the proposed use is essential and desirable to the public convenience; and (2) that the use is not detrimental or injurious to the public health, peace or safety or to the character of the surrounding neighborhood. Fowler Creek Guest Ranch is designed to provide rural recreational opportunities as contemplated by *2021 Comprehensive Plan*. As designed and mitigated, Fowler Creek Guest Ranch is not detrimental or injurious to the public health, peace or safety or to the character of the surrounding neighborhood.

Kittitas County Comprehensive Plan (“*2021 Comprehensive Plan*”) encourages, supports and recognizes access and enjoyment of the unique recreational opportunities present in the Upper Kittitas County. *2021 Comprehensive Plan Section 8.4.2*. The community vision recognizes this essential component in the land use planning process.

Present rural land uses in Kittitas County are a mixture of diverse development patterns stemming from trends established decades ago. The County has been characterized as having an abundance of rural uses *including the strong recreational opportunities throughout the entire area*. The existence of mountainous topography, intense forest lands, and large lakes in the Upper Kittitas County area draws large populations to skiing, camping, hunting, and hiking opportunities. Vibrant river and stream waters invite sport fishermen from around Washington State to the area.

Id. Kittitas County has recognized that “rural character” includes planning for development of recreational opportunities.

“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*. ... The County’s highways and byways provide ... access to extensive outdoor recreation activities identified by State law and by residents of Kittitas County as being ‘rural.’”

2021 Comprehensive Plan Section 8.4.1. The community vision was implemented through the adopted zoning ordinance which recognizes guest ranches,

campgrounds, recreational vehicle parks, and small-scale event facilities as permitted uses within the Rural-5 zoning district subject to conditional use permit review requirements. KCC 17.15.060.1 *Rural Non-LAMIRD Use Table*. The proposed use is both essential and desirable to the public convenience.

Kittitas County Hearing Examiner has adopted the following definition of “detrimental” for purposes of evaluating this component of the conditional use permit review criteria:

Webster’s Dictionary defines “detrimental” as “causing damage or injury; obviously harmful”.

In re *Iron Horse Solar Farm (CU-15-00006)* – *Recommended Findings of Fact, Conclusions of Law, Decision and Conditions of Approval*. The proposed land uses do not cause damage or injury to the environment and are not “...obviously harmful.”

To begin, Fowler Creek Trails proposed use is consistent with all applicable development regulations and requirements. No variances have been requested and commenting agencies support the project as conditioned and mitigated. Environmentally sensitive areas (including streams and wetlands) are protected through compliance with buffer and setback requirements. Private water and sewage systems are designed in accordance with applicable regulations and standards. The transportation systems are concurrent and operate at accepted Levels of Service (LOS) standards. The proposal is not detrimental or injurious to the public health, peace, or safety.

Kittitas County has conducted environmental review in accordance with applicable SEPA review processes and procedures. It is anticipated that a Mitigated Determination of Nonsignificance (MDNS) will be issued setting forth identified mitigation measures designed to bring potential environmental impacts below a level of significance. The site development will preserve natural environmental features, buffer and protect critical areas, and be supported by concurrent transportation systems. Use activities have been structured to comply with applicable noise regulations and adopted rules prohibit off road vehicle use within the campground boundaries.

The proposed project is not detrimental or injurious to the character of the surrounding neighborhood. All natural features, including forested areas and critical areas, will be preserved and protected as will the open space currently existing on the 84.3-acre parcel of land.

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 costs for facilities and services.*** FowlerCreek Trails proposed use is not “...unreasonably detrimental to the economic welfare of the county.” In fact, the proposed land use will support the economic welfare of the county.

To begin, the proposed use promotes economic development and access to recreational activities. "*Rural Residential* lands are characterized by activities generally associated with ... types of recreational uses and open spaces." *2021 Comprehensive Plan* includes the following policies and goals for *Rural Residential* lands:

- RR-G9: The County should continue to explore ways to provide rural economic opportunity.
- RR-G11: The County should provide for infrastructure and services necessary to rural development.
- RR-P9: Encourage development activities and establish development standards which enhance or result in the preservation of rural lands.
- RR-P10: Allow for a variety of rural densities which maintain and recognize rural character, ... rural community and development patterns, open spaces and recreational opportunities.
- RP-15: Give preference to land uses in Rural designated areas that are related to agriculture, rural residential development, *tourism, outdoor recreation, and other open space activities.*
- RR-G17: Generally, provide services supporting rural development and lower population densities.

Fowler Creek Trails provides the appropriate balance contemplated by *2021 Comprehensive Plan*. The proposed project does not create excessive public costs for facilities and services.

Second, the proposed use is adequately serviced by existing facilities such as highways, roads, police and fire protection. Kittitas County Public Works has determined that the transportation system is concurrent and the proposal does not cause an unacceptable deterioration in any level of service. As designed and mitigated, the proposed land use also is consistent with and does not adversely impact rural fire and police services. Water and septic systems will be compliant with applicable law and provided without variance or adjustments. Fowler Creek Trails will

provide necessary and appropriate facilities to support anticipated recreational activities.

3. The proposed use complies with relevant development standards and criteria.

Fowler Creek Trails proposed project complies with relevant development standards and criteria. FOFC and public comments have raised arguments regarding regulatory requirements and standards. Fowler Creek Trails has addressed those standards both in its original submissions as well as additional information provided based upon agency and public comment. We will address several of the specific comments below.

- (a) ***Fowler Creek Trails proposes a combination of permitted land uses allowed in the Rural-5 zoning district.*** FOFC begins its argument based on the incorrect assumption that the land use proposal is simply a “guest ranch”. It is argued as follows:

Although it is third in the list, KCC 17.60A.015(3) presents a dispositive threshold question: Is the proposal as described in the application permitted at all, whether as a CUP, or otherwise, under the terms of the KCC Zoning Code?

FOFC Response at 5-6. FOFC assumes incorrectly that the land use application is limited to “Guest Ranch.” Fowler Creek Trails has proposed a project that includes a campground, recreational vehicle park, small-event facility, outdoor recreational activities and “guest ranch”. Each use is permitted subject to review, under the review criteria set forth in KCC 17.60A.015.

FOFC focuses only on the ordinance definition of “guest ranch” as set forth in the zoning ordinance. KCC 17.08.270 sets forth a broad and all-encompassing definition of “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 or church camps, or other similar uses. Events such as auctions, barbeques and similar gatherings which do not provide overnight lodging or which conducted on a continuous basis shall not be considered as guest ranches or guest farms. Enhanced agricultural sales are allowed.

The proposed use is "...a business...providing overnight lodging, dining and recreational facilities in a rural setting." The proposed use relates "...primarily to vacation, recreational and similar pursuits, ..." The lodging component is provided through the campground, recreational vehicle park, bed and breakfast, and single family residence. Each of the lodging components is an accessory to the "guest ranch" but requires separate consideration as part of the integrated land use application.

FOFC argues that the inclusion of a store serving campers within the project is a prohibited land use. FOFC ignores, however, that the "campground" is a component of the land use application. The definition of "campground" specifically includes limited commercial services.

"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 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 the campers of the 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. The secondary uses shall comply with all applicable Federal, State and local regulations.

A "campground" includes both camping sites as well as recreational vehicle parking sites. The proposed commercial store is permitted subject to conditional use permit review.

FOFC next argues that the small scale event facility is not an allowed component of a "guest ranch". That is correct. It is a separate permitted land use that is authorized through a conditional use permit. The definition of "guest ranch" or "guest farm" includes the following;

Events such as auctions, barbeques and other 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.

KCC 17.08.270. This provision simply recognizes that small scale event facilities are a separate land use category as are campgrounds, recreational vehicle parks, bed and breakfast, and outdoor recreational facilities.⁶

- (b) ***Fowler Creek Trail's voluntarily submitted a critical area report.*** FOFC argues that "...[t]he lack of a critical area report from a qualified professional is doubly fatal to this CUP application." *FOFC Response* 7-8. This request is based upon the following comments submitted by the State of Washington, Department of Fish and Wildlife:

While we appreciate that the application has identified some of a larger wetlands and streams on the property and alluded that critical areas report would be conducted, WDFW requests that a critical areas report be conducted prior to approval of a site plan to ensure that all streams and wetlands are identified, and their appropriate buffers be incorporated into the final site plan. WDFW would also request the opportunity to review and provide comments to the county on the report.⁷

WDFW letter to Kittitas County CDS dated September 26, 2023. The proposal did not include any alterations or development within critical areas or associated buffers. KCC 17A.01.110.2. Despite the fact that Fowler Creek Trails did not propose any development or alterations to any critical area environment, it will be submitting with comment responses, a Critical Area Report prepared by Sewall Environmental and Consulting that delineate

⁶ A "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. KCC 17.08.490. If the use does not exceed 10,000 square feet and no more than eight (8) events shall occur within a calendar year, the proposed "small-scale event facility" is subject to review as an Administrative Conditional Use (AC). In this case, the small-scale event center is operated to provide more than eight (8) events a year and is subject to review as a Conditional Use (CU). FOFC is incorrect that the Code "...drastically limits such events to no more than eight per year." *FOFC Comment p.6, note 4.*

⁷ See, letter from Department of Fish and Wildlife to Kittitas County CDS dated September 26, 2023. WDFW also requested "...to be involved in the review of site plans of trails and structures in the critical areas and evaluation of loss of function as an agency with expertise in the FWHCA." Fowler Creek Trails has no objection to coordinate its site plan review.

referenced wetlands and associated buffer areas.⁸ The *Critical Area Report* delineates wetlands and revised site plans identify applicable buffers. The report does not require a mitigation plan because the project proposal does not include any alteration or development within an identified critical area or its buffer. KCC 17A.01.100(1). "The administrative procedures followed during the critical area review process shall conform to the standards and requirements of all development and alterations." KCC 17A.01.110(1).

- (c) **Fowler Creek Trails has provided a supplemental Mitigated Water Management Plan.** Based upon agency and public comments, Fowler Creek Trails has developed and included a Mitigated Water Management Plan.⁹ The Mitigated Water Management Plan includes the following facilities:

- a. Ranch House – existing residence with seven bedrooms and three bathrooms;
- b. Recreational Vehicle Park – 30-unit RV Park;
- c. Ranch Barn – small-scale event facility; and
- d. Bed and Breakfast – five bedrooms with en suite bathrooms.

The types of water needed include Fire Protection Water, Domestic Water, and Residential irrigation water. Kittitas County Fire District 7 has requested that Fowler Creek Trails have 21,000 gallons of water stored on site and dedicated to fire protection. Water storage in the southwest corner of the property as depicted on the Fire Management Plan. Fire water storage may be through pond storage, buried tank storage, or aboveground storage. The delivery system would be constructed at time the benefitted facility is constructed within the development.

The domestic water plan for the Ranch House, Recreational Vehicle Park, Ranch Barn, and Bed and Breakfast are all identified in the Mitigated Water Management Plan.

Acquisition of legal water relates to water from the Green Zone and or existing water banks as approved by the Washington State

⁸ A Critical Area Report is required only where a project proponent proposes development or alteration of a critical area or applicable buffers. The subject property is not located within a critical aquifer recharge area, fish and wildlife habitat conservation area, frequently flooded area, or geological hazardous area. It is in an area with identified wetlands as disclosed in the original application materials. KCC 17A.01.010. Regulated alterations and development include activities within critical areas and/or buffers as identified more specifically in KCC 17A.01.040. Fowler Creek Trails proposes no alteration or development within a critical area and/or its buffers.

⁹ The land use application was revised in the following respects: (1) the plans to construct ten short-term rental cabins has been eliminated; (2) the "residential habitats" located within wetlands and wetland investigation areas (buffers) have been eliminated; (3) all personal fire pits have been eliminated and replaced with community fire pits that will be managed and monitored by staff; and (4) a secondary emergency access from Forest Service Road 4517 has been added to provide a gated emergency route.

Department of Ecology which can be accomplished through a variety of options.

- (d) ***The land use application is compliant with requirements for domestic water plan and sewage plan.*** The permitting of a new *on-site sewage disposal system (OSDS)* is subject to regulation and permitting through Kittitas County Public Health. KCC 13.04.020. The permit requirements are set forth in KCC 13.04.030-050. The design of the system must be through a person licensed under RCW Ch. 18.43 or Ch. 18.210 RCW. The review analysis is site specific with final authority vested in Kittitas County Public Health District. The proposed sewage disposal system will be designed to treat more than 3500 gallons per day and is considered a Large On Site Sewage System (LOSS). As an option to the LOSS Fowler Creek Trails may design and construct a Membrane Bioreactor (MB) or other enhanced sewage treatment facility to treat the associated wastewater. In addition to review by Kittitas County Public Health, the Washington State Department of Health (DOH) or the Washington State Department of Ecology is vested with responsibility for approval of the engineering and construction of the chosen system and to ensure that the system will not create a health hazard. *Kittitas County Public Health Comment Letter dated October 5, 2023.* The review of the land use application and associated environmental review is to be integrated with this independent review process and may not duplicate such process. It is appropriate, however, for the land use decision to be conditioned upon compliance and approval of the LOSS or other accepted wastewater treatment facility for Fowler Creek Trails by Kittitas County Public Health and/or the State of Washington, Department of Health or Department of Ecology.

Even though the on-site sewage system is subject to regulatory authority of the Kittitas County Public Health District, Fowler Creek Trails submitted a complete Sewage Management Plan in conjunction with its response to agency and public comments. The SMP outlines various phases of the Development Phasing Plan and the incremental steps for review during the process of the phased development. This proposal is consistent with applicable regulations.

- (e) ***Road access and traffic concurrency have been approved by Kittitas County Public Works.*** FOFC provides superficial comments regarding road access and adequacy of USFS Road 4517. Kittitas County has determined that the transportation system functions at a concurrent level of service for the proposed mixed-use recreational facility.

4. ***The proposed use will mitigate material impacts of development, whether environmental or otherwise.*** Fowler Creek Trails has modified the included land uses and provided specific mitigation for each alleged adverse impact related to the

mixed-use recreational facility. Any identified significant adverse environmental impacts identified through the SEPA review process will be addressed and mitigated through the issuance of a Mitigated Determination of Nonsignificance (MDNS) as determined appropriate by the SEPA Responsible Official. All site improvements and activities are compliant with applicable development regulations including but not limited to transportation concurrency, noise, water, and septic system regulations. All delineated wetlands will be preserved and protected with no development or alterations within the critical area or applicable buffers.

FOFC references a comment letter from Shawn M. Plichta, PE, dated October 18, 2023.¹⁰ Mr. Plichta stated that "...in my opinion the proposed intersection and USFS Road *may not be adequate to provide safe egress for the Granite Creek community.*" Fowler Creek Trails removed ten (10) cabins and other activities from the project proposal to respond to unsubstantiated adverse impacts to USFS Road 4517. Access has been modified to provide a gate and utilize USFS Road 4517 only as an emergency access road. Kittitas County has determined that the primary access and transportation system is concurrent for the development.

All five residential habitats were removed from the project application. Fowler Creek Trails removed such amenities to address concerns related to critical area impacts.

- 5. The proposed use will ensure compatibility with existing neighborhood planned uses.** Fowler Creek Trails has designed the multi-use recreational facility in a manner that eliminates any and all potential or theoretical impacts on the existing neighborhood. The project site is 84.3 acres of largely undeveloped property that includes one private residence, pastures for horses, wildlife areas, meadows, wetlands and forested areas. The property is bordered on the west by four (4) undeveloped and heavily forested parcels (Assessor Parcel Nos. 217236, 485436, 956579, and 11488). The Fowler Creek Trails preserves the rural character of the property.

¹⁰ FOFC references a comment letter from Shawn M. Plichta, PE, dated October 18, 2023. Mr. Plichta indicated that he "...completed a high-level evaluation of the existing road conditions requested by residents of the Granite Creek Community." The comment did not contain any detailed engineering analysis or supporting data for comments. The conclusion of the "high-level evaluation" was as follows:

In my opinion the proposed intersection and USFS Road 4517 *may not be adequate to provide safe egress for the Granite Creek community.* Further engineering analysis should be completed for the proposed Site Plan in the permit application to ensure the combined traffic volumes for the Guest Ranch and Granite Creek community can egress the area both safely and expeditiously.

Kittitas County Public works reviewed this comment and issued a *Determination of Concurrency* approving access and road capacity. The *Determination of Concurrency* recognized project modifications which (1) removed the ten (10) proposed short-term cabin rentals; (2) changed the exit onto Forest Service Road 4517 to a gated emergency exit only; and (3) removed all five of the residential habitats. Based upon these project modifications, Kittitas County Public works concluded that it had "...determined there will not be a significant impact to the County roads serving this project...."

The site currently is comprised of approximately thirty-five (35) parcels ranging from 1.15 acres to 3.54 acres in size. The proposed density for the multi-use recreational facility is significantly less than the outright permitted development of thirty-five single family residences. Fowler Creek Trails preserves and protects the rural environment in a manner that enhances the neighborhood as prescribed by the Kittitas County Comprehensive Plan.

6. ***The proposed use is consistent with the intent and character of the zoning district in which it is located.*** The proposed use is consistent with the intent and character of the zoning district. The subject property is zoned Rural-Five (R-5) zoning district. The purpose and intent of the rural-five zone is as follows:

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

KCC 17.30A.010. The proposed land use has no impact on adjacent resource lands. Permitted uses include conditional uses set forth in KCC 17.15.060. Rural-five zone is the predominant zoning classification for properties designated Rural Residential.

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 surfaces, and the typical uses do not require urban services.

2021 *Comprehensive Plan* specifically recognizes that the land use designation and implementing zoning contemplate and authorize a range of recreational uses which are reviewed on a site specific basis through the conditional use permit process. The proposal preserves the use of open space while providing opportunity for rural recreational activities. 2021 *Comprehensive Plan* RR-G21. The site planning further protects the open space portion (including wetlands) as contemplated by the implementing zoning district. 2021 *Comprehensive Plan* RR-P30.

7. ***The proposed use is consistent with Kittitas County Comprehensive Plan "Rural Character" and requires only rural government services.*** KCC 17.60A.015(7) establishes additional review criteria related to conditional uses located outside of Urban Growth Areas (UGA). This provision of the conditional use review criteria was the subject of an unpublished decision issued by Division III of the Court of Appeals in *One Energy Development, LLC v. Kittitas County*, 9 Wn. App. 2d 1057 (2019) (unpublished). *Rural and Resource Lands* addresses and establishes

goals, policies and objectives for that portion of the County outside Urban Growth Areas (UGA). *2021 Comprehensive Plan Chapter 8.*¹¹

- (a) ***The proposed use is consistent with the intent, goals, policies, and objectives of the Kittitas County Comprehensive Plan.*** KCC 17.60A.015(7)(A) requires that the proposed land use 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. See *2021 Comprehensive Plan Chapter 8.*

Fowler Creek Trails is designed to further the goals relating to the following rural lands goals, including the following:

RR-G8: The County should strive to sustain and protect the westerly mountainous, recreational open space, and its easterly non-resource agricultural and rangeland activities.

RR-G9: The County should continue to explore ways to provide rural economic opportunity.

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

RR-G11: The County should provide infrastructure and services necessary to rural development.¹²

The *policies* outlined in *2021 Comprehensive Plan* are intended to reduce conflicting land uses within the entire County's rural area while providing a variety of rural densities, protecting open spaces, and ensuring that appropriate services and facilities are provided for rural developed environments including recreation facilities. The adopted policies include the following:

¹¹ *Rural lands* are specifically set forth in Section 7.4 of the *2021 Comprehensive Plan*. Rural lands have "...been characterized as having an abundance of rural uses including the strong recreational opportunities throughout the entire area. The existence of mountainous topography, intense forest lands, and large lakes in the Upper Kittitas County area draws large populations to skiing, camping, hunting and hiking opportunities. Vibrant river and stream waters invites sports fisherman from around the State to the area. Hunting is prevalent in all areas of the County" *2021 Comprehensive Plan 8.4.2*. 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." *2021 Comprehensive Plan 8.4.1*.

¹² The "Rural Element" is designed to provide "...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 and rural areas and other services often found in more urban environments." *2021 Comprehensive Plan 8.4.2*.

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

RR-P10: Allow for a variety of rural densities which maintain and recognize rural character, agricultural activities, rural community and development patterns, open spaces and recreational opportunities.

RR-P12: Set allowed densities is based on the available water resources and reserve adequate resources to support the Kittitas County's economic base, including agriculture.

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.

RP-15: Give preference to land uses in Rural designated areas that are related to agriculture, rural residential development, *tourism, outdoor recreation, and other open space activities*.

Kittitas County has established goals and policies to guide activities within the *Rural Residential* land use designation. *Rural Residential* lands are those which are adjacent to or near UGAs or LAMIRDs and generally meet the following description:

They generally have a lower population density than urban areas but higher than most rural areas. A limited level of government services usually exists, and they are often inside Fire Districts and are outside flood areas and most hazard areas. Rural Residential Lands are characterized by activities generally associated with small-scale farms, disbursed 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. The subject properties and surrounding areas are consistent with the land use designation. The following goals and policies have been adopted for activities on

Rural Residential lands: RR-P23 municipal, or public urban services should not be extended outside of urban growth areas in Rural Lands.

RR-P28: Public Services and Public Facilities established under RCW 36.70A.070(5)(d) are limited to just those necessary to serve the developed area boundaries and will not be allowed to expand into adjacent Rural Lands.

RR-P30: Clustering of development can only occur where it results in protection of open space and protects against conflicts with the use of farming or other resource lands ... the open space portion of the cluster development shall be located to protect fish & wildlife habitat and migration corridors.

Fowler Creek Trails clusters camping, recreational vehicle parking, and minimal lodging opportunities in a clustered location that preserves open space and protects critical areas.

- (b) ***Recreational development is consistent with Rural Character.*** 2021 *Comprehensive Plan* specifically addresses “rural character” as follows:

“Rural character” in Kittitas County is predominately 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*.

2021 Comprehensive Plan 8.4.1. Kittitas County has established broad goals based upon the definition of “Rural Character” as defined in RCW 36.70A.030(16). *2021 Comprehensive Plan 8.2.* The goals designed to preserve “Rural Character” include the following:

- RR-G1: Open space and visual and natural landscape should predominate over the built environment.
- RR-G2: Opportunity should exist for traditional rural lifestyle and rural based economies.
- RR-G3: Spaces and development should be compatible with fish & wildlife habitat.
- RR-G4: Undeveloped land should not be converted to development of sprawl and low density.

RR-G5: Activity generally should not require extension of urban governmental services.

RR-G6: Land use should be consistent with protection of surface and groundwater flows and recharge/discharge areas.

Kittitas County has recognized that “[u]ses common in rural areas of Kittitas County *enhancing the 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.” 2021 Comprehensive Plan RP-14. Recreational land uses are recognized as enhancing rural character and preference is to be given to “...tourism, outdoor recreation, and other open space activities.” 2021 Comprehensive Plan RP-15. The courts have addressed and interpreted “rural character” as contained in KCC 17.60A.015(7). *One Energy Development, LLC v. Kittitas County*, 9 Wn. App. 1057 (2019)(unpublished). Rural character recognizes that “[o]pen space and visual and natural landscape should predominate over the built environment.” 2021 Comprehensive Plan RR-G1. The court in *One Energy Development* specifically addressed the standard for review of “rural character” under KCC 17.60A.015(7) and held that “. . . 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.” That is, the analysis is not focused on the development parcel but rather the development parcel in the context of the broader area. When viewed in that vein, the proposed rural recreational facility does not result in a “built environment” that predominates over a general area. In fact, the proposed development which preserves forests, streams, wetlands, and does not include significant structural improvements is “rural character.”

- (c) **Fowler Creek Trails requires only rural governmental services and does not compromise long-term viability of designated resource lands.** The final consideration for conditional uses located outside of Urban Growth Areas is that the proposed use requires only rural government services and does not compromise the long-term viability of designated resource lands. KCC 17.60A.015(7)(C) and (D). Fowler Creek Trails does not require urban level services. And there are no designated resource-lands within the immediate area or impacted in any way by the proposed multi-use recreational facility.

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