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KITTITAS COUNTY
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**KITTITAS COUNTY
LAND USE HEARING EXAMINER**

IN THE MATTER OF)	RECOMMENDED
)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
CU-13-00007)	DECISION AND
Larson Fruit Co.)	CONDITIONS OF APPROVAL

THIS MATTER having come on for hearing in front of the Kittitas County Hearing Examiner on February 13, 2014, the Hearing Examiner having taken evidence hereby submits the following Findings of Fact, Conclusions of Law, Decision and Conditions of Approval as follows:

I. RECOMMENDED FINDINGS OF FACT

1. Keith Larson, secretary of Larson Orchards Inc., land owner and John Cornell, authorized agent, submitted a conditional use permit application for farm worker housing on approximately 2 acres of a 21 acre parcel that is zoned Forest and Range. The applicant is proposing a total of 4 units. This proposed use is consistent with KCC 17.15.060.1 (F) farm labor shelter.
2. This proposal encompasses 1 parcel, located approximately 1 mile east of SR 821 (Canyon Hwy) on Burbank Creek Road, in a portion of Section 27, T. 15 N., R. 19 E., W.M. in Kittitas County, bearing Assessor's map number 15-19-27000-0002.

3. Site Information:

Total Property Size:	21 acres
Number of Lots:	1; no new lots are being proposed
Domestic Water:	Group water system
Sewage Disposal:	Individual Septic
Power/Electricity:	Kittitas County PUD
Fire Protection:	Area outside of Fire Districts
Irrigation District:	None

4. Site Characteristics:

North: Mix of vacant land, orchards and low density residential
South: Vacant, BLM land

East: Mix of vacant land, orchards and low density residential

West: Mix of vacant land, orchards, low density residential and BLM land

5. Site Characteristics: The area is located in the Yakima River Canyon area of Kittitas County. The area is comprised predominantly of ranching, grazing, farming, orchard, and low density residential development.
6. The Comprehensive Plan designation is “Rural Working Land.”
7. The subject property is zoned “Forest and Range,” which allows for farm labor shelters as a conditional use.
8. A conditional use permit application was submitted to Kittitas County Community Development Services department on September 26, 2013. This application was deemed complete on November 6, 2013. The Notice of Application for the conditional use permit was issued on December 4, 2013 and a Corrected Notice of Application was issued on December 5, 2013 due to an incorrect legal description. This notice was published in the official county paper of record and was mailed to jurisdictional government agencies, adjacent property owners and other interested parties. The last day to submit written comments was on December 20, 2013.
9. Based upon review of the submitted application materials including an environmental checklist, correspondence received during this 15 day comment period and other information on file with Community Development Services, a Mitigated Determination of Non-Significance (MDNS) was issued on January 28, 2014. The appeal period ended on February 11, 2014 at 5:00 p.m. No appeals were filed.
10. The proposal is consistent with the goals and policies of the Kittitas County Comprehensive Plan. As referenced above in Section IV of the staff report, the following Comprehensive Plan GPOs apply to this proposal: GPO 2.2, 2.7, 8.1, 8.2, 8.4, 8.9, 8.11, 8.16, 8.46, 8.47, and 8.48.
11. Staff conducted an administrative critical area review in accordance with KCC 17A and found no critical areas on-site. There is a DNR stream type 9 – unknown north of the subject parcel on an adjacent lot. This stream is also known as Burbank Creek. The proposed activities will take place on the south side of an existing driveway and will not be adjacent to Burbank Creek.
12. This proposal is consistent with the Kittitas County Zoning Code 17.56. The proposal is compatible with KCC 17.56.020 referring to the uses table in KCC 17.15. Specifically, this is compatible as a conditional use with 17.15.060.1 (F) farm labor shelter.
13. This proposal is consistent with the Kittitas County Zoning Code for Conditional Uses. The proposed conditional use will be adequately served by rural levels of service. As conditioned, staff found that the proposal is 1) desirable to public convenience, 2) will not be detrimental to public health, safety or welfare, 3) is not economically detrimental to the public, and 4) is adequately serviced by public facilities.
14. This proposal is consistent with the Kittitas County Building Code, as conditioned.

15. As conditioned, the proposal is consistent with the provisions of KCC Title 12.
16. The following agencies provided comments during the comment period: Kittitas County Department of Public Works, Kittitas County Fire Marshal, WA Department of Transportation, and WA Department of Health. Late comments were provided by Kittitas County Environmental Health Department. These comments have been included in the index file record and were considered when preparing the recommended conditions for this proposal.
17. Public comments were submitted for this proposal at the time of staff review and were considered by the Hearing Examiner. They were included in the index file record.
18. The applicant is proposing “seasonal” farm worker housing and is required to adhere to the specified season for farm worker housing occupancy.
19. An open record public hearing after due legal notice was held on February 13, 2014.
20. The entire Planning Staff file was admitted into the record at the public hearing.

The following exhibits were admitted into the record:

- 20.1 Exhibit 1: Pre application materials – 3/13/13
- 20.2 Exhibit 2: KC application fees receipt – 9/26/13
- 20.3 Exhibit 3: CUP application submittal packet – 9/26/13
- 20.4 Exhibit 4: Staff review info
- 20.5 Exhibit 5: Deem Incomplete Complete Letter – 10/23/13
- 20.6 Exhibit 6: Additional submittal info – 11/5/13
- 20.7 Exhibit 7: Deem Complete Letter – 11/6/13
- 20.8 Exhibit 8: KC Transportation Concurrency submittal – 11/19/13
- 20.9 Exhibit 9: Affidavit of Posting – 11/25/13
- 20.10 Exhibit 10: Notice of Application – 11/25/13
- 20.11 Exhibit 11: Affidavit of Mailing & Publication – Notice of Application – 12/4/13
- 20.12 Exhibit 12: Corrected Notice of Application – 12/5/13
- 20.13 Exhibit 13: Affidavit of Mailing & Publication- Corrected Notice of Application- 12/5/13
- 20.14 Exhibit 14: WSDOT email notification of Corrected Notice of Application -12/11/13
- 20.15 Exhibit 15: Returned mail- Notice of Application and corrected notice of application- 12/9/13
- 20.16 Exhibit 16: Affidavit of published Notice of Application in Daily Record- 12/16/13
- 20.17 Exhibit 17: Comment email from DOH- 12/5/13
- 20.18 Exhibit 18: Comment letter from KC Fire Marshal – 12/9/13
- 20.19 Exhibit 19: KC public works memo – 12/12/13
- 20.20 Exhibit 20: Comment email and correspondence from WSDOT- 12/13/13
- 20.21 Exhibit 21: Comment letter from P.L’ Heures – 12/13/13
- 20.22 Exhibit 22: Comment letter from V. Essex -12/18/13
- 20.23 Exhibit 23: Comment letter from B. & D. Pool -12/19/13
- 20.24 Exhibit 24: Transmittal of comments letter -12/20/13

- 20.25 Exhibit 25: Email between CDS and applicant – 1/9/14
- 20.26 Exhibit 25 A: Email comment from KC Environmental Health- 1/24/14
- 20.27 Exhibit 26: SEPA MDNS – 1/28/14
- 20.28 Exhibit 27: Notice of Decision – SEPA MDNS and Public Hearing – 1/28/14
- 20.29 Exhibit 28: Affidavit of Mailing & Publication – SEPA Decision and Hearing – 1/28/14
- 20.30 Exhibit 29: Email correspondence between CDS and Applicant – 1/28/14
- 20.31 Exhibit 30: Change of address email – 1/29/14
- 20.32 Exhibit 31: Returned mail- Notice of SEPA Decision and Hearing – 2/3/14
- 20.33 Exhibit 32: Returned email (deleted message)-2/6/14
- 20.34 Exhibit 33: Hearing Examiner Agenda – 2/13/14
- 20.35 Exhibit 34: HE Staff Report – 2/13/14
- 20.36 Exhibit 35: Comment letter from Washington State Department of Archeology & Historic Presentation dated 2/11/14 (Submitted after comment.)
- 20.37 Exhibit 36: Staff PowerPoint presentation to Hearing Examiner

- 21. The Kittitas County Community Development Services recommended approval of this permit, subject to the recommended conditions of approval.
- 22. Appearing and testifying on behalf of the applicant was John Cornell. Mr. Cornell testified that he was an agent authorized to appear and speak on behalf of the applicant and property owner. Mr. Cornell indicated that the applicant did not object to any of the proposed Conditions of Approval. Mr. Cornell indicated that the maximum number of residents at the facility will be 48. He indicated that while families will be allowed, they will be discouraged. He indicated that there would be a grass play area over the drained field area in since case families with children became residents. Mr. Cornell further testified that there would be a manager available to respond to complaints 24 hours a day, 7 days a week. Finally, in response to public testimony regarding concerns about the location of the posted notice, Mr. Cornell indicated that the notice sign was posted where staff told the applicant to post the sign.
- 23. The following members of the public testified:
 - 23.1 Brad Pool. Mr. Pool testified consistent with his written comments. His primary concerns were that there was no demonstrated public benefit. He also had concerns with the number of residents at the facility that may create safety issues for area residents. He had concerns that the managers' home, as identified by the applicant, is not on the subject property but is located approximately one half mile away and that it does not have a direct view of the project area.
 - 23.2 Deborah Pool. Ms. Pool testified on three concerns. First the condition of the private road and her allegation that the applicant does not participate in maintenance of the road. She also had concerns regarding garbage that would be left by the residents of the property. She also had concerns about fire safety as the property is not within a fire district and that the minimum fire response time is 45 minutes.
- 24. In regards to Exhibit 35, Staff indicated that there have not been any archeological sites identified and that there were not recommending an archeological study.

25. The proposal is appropriate in design, character and appearance with the goals and policies for the land use designation in which the proposed use is located.
26. The proposed use will not cause significant adverse impacts on the human or natural environments that cannot be mitigated by conditions of approval.
27. The proposal will be served by adequate facilities including access, fire protection, water, storm water control, and sewage disposal facilities.
28. Any Conclusion of Law that is more correctly a Finding of Fact is hereby incorporated as such by this reference.

II. RECOMMENDED CONCLUSIONS OF LAW

1. The Hearing Examiner has been granted authority to render this decision.
2. As conditioned, the proposed use is consistent with the intent, purposes and regulations of the Kittitas County Code and Comprehensive Plan.
3. As conditioned, the proposal does conform to the standards specified in Kittitas County Code.
4. As conditioned, the use will comply with all required performance standards as specified in Kittitas County Code.
5. As conditioned, the proposed use will not be contrary to the intent or purposes and regulations of the Kittitas County Code or the Comprehensive Plan.
6. As conditioned, this proposal does comply with Comprehensive Plan, the zoning code and other land use regulations, and SEPA.
7. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.

III. RECOMMENDED DECISION

Based on the above Findings of Fact and Conclusions of Law, Application CU-13-00007 is hereby recommended to be **APPROVED** subject to the following Recommended Conditions of Approval.

IV. RECOMMENDED CONDITIONS OF APPROVAL

1. All conditions imposed herein shall be binding on the "Applicant," which term shall include the owner or owners of the property, heirs, assigns and successors in interest.
2. Submittal of a WUI application is required for this property as it is located outside of a fire district.

3. Fire extinguishers shall be located appropriately. The applicant shall contact the Fire Marshal for assistance prior to occupancy, and shall comply with all requirements of the Fire Marshall.
4. A fire and life safety inspection shall be conducted prior to occupancy.
5. All development, design and construction shall comply with Kittitas county Code, Kittitas County Zoning and the most current version of the International Fire & Building Codes.
6. The farm worker housing units shall only be occupied from March 1st to November 30th of each year.
7. Based on comments received during the public comment period and other information submitted with this project permit application, A SEPA Mitigation Determination of Non-Significance (MDNS) was issued by Community Development Services on January 21, 2014. This MDNS was not appealed. The following are the mitigation measures contained within the MDNS and shall be conditions of approval:

I. Water

- A. Activities such as road widening, stump pulling and clearing, grading and fill work and utility placements may require a NPDES Construction Stormwater Permit issued by the Department of Ecology prior to start of construction. This permit requires the preparation of a Stormwater Pollution Prevention Plan. It is the applicant's responsibility to contact the Department of Ecology.
- B. Withdrawals of groundwater on the subject property are subject to the rules and regulations adopted and administrated by the Washington State Department of Ecology; this includes the use of water for irrigation. Legally obtained water must be used on-site.
- C. Chapter 173-150 WAC provides for the protection of existing rights against impairment, i.e. interruption or interference in the availability of water. If water supply in an area becomes limited, use could be curtailed by those with senior water rights.
- D. Prior to receiving any type of building permit in Kittitas County, applicants shall be required to make appropriate provisions for potable water supplies per RCW 58.17.110 which includes, but is not limited to, the minimum requirements outlined in the Kittitas County Board of Commissioners Resolution 2012-027 (see attached).
- E. The Washington State Department of Health, Office of Drinking Water requires an approved water system for this project.

II. Septic

- A. As of the date of this determination, there are no permitted septic systems for this proposed project. The applicant will need to follow WAC 246-272A to comply with state and local regulations. Please contact the Kittitas County Public Health Department for assistance. Septic permits must be issued prior to issuance of any building permits.

III. Fire & Life Safety

- A. A turn-around shall be provided for fire department access.
- B. A County approved blue reflective address marker shall be posted and maintained at the driveway to the structures and on each structure. This address can be obtained through application to the Public Works Department.
- C. The buildings may be no closer than 10' from each other.

IV. Light and Aesthetics

- A. All outdoor lighting shall be shielded and directed downward to minimize the effect to nearby residential properties.

V. Noise

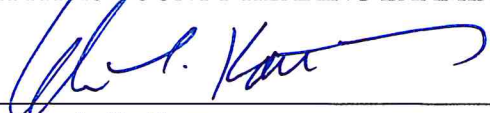
- A. Development and construction practices for this project shall only occur between the hours of 7:00 am and 7:00 pm to minimize the effect of construction noise on nearby residential properties.

VI. Historic and Cultural Preservation

- A. Should ground disturbing or other activities related to the proposed conditional use permit result in the inadvertent discovery of cultural or archaeological materials, work shall be stopped in the immediate area and contact be made with the Washington State Department of Archaeology and Historic Preservation (DAHP). Work shall remain suspended until the find is assessed and appropriate consultation is conducted. Should human remains be inadvertently discovered, as dictated by Washington State RCW 27.44.055, work shall be immediately halted in the area and contact made with the coroner and local law enforcement in the most expeditious manner possible.

Dated this 21st day of Febraury, 2014.

KITTITAS COUNTY HEARING EXAMINER



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KITTITAS COUNTY
CDS

February 21, 2014

Kittitas County Comm. Development Svc
Attn: Mandy Weed, Admin. Asst.
411 N. Ruby, Suite 2
Kittitas, WA 98926

Greetings:

Enclosed please find the CU-13-00007 Kittitas County Decision.

Should you have any questions, please feel free to contact me.

Sincerely,

KOTTKAMP & YEDINAK, P.L.L.C.

Damny Nunez

Damny Nunez