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Community Development Services/Planner I
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June 23, 2014

re: objection-public comments on NMF CUP Application (CUP-14-00002) and related SEPA checklist

Dear Ms. Hathaway:

Please be certain that this letter of public comments/objections to the above noted applications are included in the official files. I am emailing as well as hand carrying a copy to your office. Thank you.

SEPA objections

1) The notice of application is deficient in that it fails to list the conditions being considered to mitigate environmental impacts: Under WAC 197-11-355(2)(b) the lead agency must "[l]ist in the notice of application the conditions being considered to mitigate environmental impacts if a MDNS is expected." Kittitas County has failed to identify any specific mitigation measures. Kittitas County's notice simply states that it "expects to issue a Determination of Non-Significance (DNS) for this proposal." The public was provided no information regarding mitigation. A new notice needs to be published and a new period established for comment.

2) The SEPA application and project information is incomplete, insufficient, and contradictory:

It is vital that a SEPA determination be based upon information reasonably sufficient to determine the true environmental impacts of a proposal. In this case, (i) the information provided in the application fails to clearly state and specify the scope and timing of the actual project proposal as well as (ii) contains information in the Environmental Checklist with is incomplete, and insufficient to evaluate potential environmental impacts.

2(i) The application describes a single "Tier 3" marijuana producer facility, while in communications with the state licensing agency they present three "Tier 3" applications. The answers to questions number 7, 9, and 10 are incorrect or incomplete. Even though no license has been issued by the Washington State Liquor Control Board as of the date of this letter, NMF Enterprises currently still has three license applications on file. License # 412155, 412356, and 414110, filed November 19, 2013, November 21, 2013, and December 19, 2013 respectively are for "Tier 3" facilities located on the project site, 5810 Naneum Road. (412155 on a "Suite 1," 412356 on a "Suite 3," and 414110 on a "Suite 2.") Three Tier 3 producer facilities are planned by the applicant and not the single proposal discussed in the SEPA checklist. The size of the secured area, noted to be 93,600 square feet in the answer to question #9 of the Conditional Use Permit application is further evidence of the ultimate plan for this property. With this size of a secured area, three Tier 3 facilities could be operational. SEPA requires

that "proposals or parts of proposals that are related to each other closely enough to be, in effect, a single course of action shall be evaluated in the same environmental document." WAC 197-11-060(3)(b)

The SEPA, as well as the CUP, applications should be rejected with no further action being taken for the applicant's intentional making of these false statements.

In addition, the information in the SEPA checklist is inadequate because there is no way to determine what is to ultimately be built at any given time. An application which is devoid of a reasonable schedule for the planned improvements makes project evaluation impossible, and any mitigation measures proposed will be incomplete. Kittitas County should not perform "piecemeal" analysis of this project.

2(ii) The Environmental checklist is vague, incomplete and inaccurate: In addition to understating the ultimate extent of this project, the application provides in the SEPA checklist information which is inaccurate.

First, on the issue of water availability, there is the proposed use of an exempt well for an additional 1000 gallon withdrawal of water for the production of marijuana. As of June 2, 2014, any new exempt well withdrawal of water in the lower Kittitas Valley portion of the Yakima River Basin requires the purchase of mitigation certificate from the Department of Ecology (DOE). (note: a CUP application does not vest under land use principles; See Kelly v. Chelan County 157 Wn.App. 417 (2010)) All of the mitigation certificates available have as a condition, a statement that their use will be in compliance with the Department of Ecology's storage contract with the Federal Bureau of Reclamation (Bureau). The Bureau has issued clear directives that the federal water it is charged with supervising not be utilized for the production or processing of marijuana, and this includes water stored pursuant to the DOE and Bureau contract which supports the mitigation water bank. Because of this, a mitigation certificate cannot be purchased for marijuana production. **Applicant does not have water for this project**, even as it is described (as 1/3 of actual project-see 2(i) above). The list of necessary governmental approvals listed in answer to question number 10 should be rejected as incomplete as a Department of Ecology water mitigation certificate is not noted.

In addition, there is no verification or information regarding actual usage to support the statement of only 1000 gallons per day usage. It is my understanding that the requirements for a single Tier 3 facility are actually in excess of three times the amount NMF Enterprises provides in the SEPA checklist, or 3000 gallons per day. This higher figure is also more likely for an "outdoor grow" operation in our arid and windy environment.

Therefore, the actual water expected to be used on the project on Naneum Road by NMF Enterprises is more likely to be in the range of 9000 gallons per day, (three Tier 3 production facilities using 3000 gallons each per day).

It should be noted that the applicant states that as an alternative there is the possibility of trucking water from some phantom source not disclosed in the documentation. But at least this option should affect the traffic trips contemplated to be caused by this proposal, and it must be from a legal source. The SEPA checklist information is so flawed that it should be rejected in its entirety.

Because water use is understated, it follows that the need for water treatment-sewage is therefore vastly underestimated. In the SEPA checklist the applicant notes that only that a household type septic system is necessary. This is totally inconsistent with even NMF's 1000 gallon water usage figure for production. If the applicant is to be believed, 1000 gallons per day used for production will when no longer needed just vanish. In answer to question number 3 of the SEPA checklist, the applicant notes

that "fertilizer consistent with conventional farming operations would enter the ground or surface water." Therefore, no pesticides or herbicides are reported or expected to be used at all during the entire life of this project, according to NMF Enterprises. This is another obvious material misstatement. Given the somewhat vague indication of how these farm products will be applied, with no information provided other than there will be a use of "drip irrigation," (Question # 3 of SEPA checklist) they certainly is inadequate information to support the requested finding that all the chemicals likely to be used on site, will not need to be treated and that no excess water will seep into neighboring lands or nearby creeks, or the groundwater aquifer.

The statements regarding water use and the nature and need for waste water treatment are grossly understated, this entire application should be rejected for failure to provide adequate complete information about the project.

In addition, given the actual size of the ultimate proposal, that is three Tier 3 facilities, the water system proposal is incorrect and inadequate. Significantly more than a residential hookup is required for this marijuana factory. The state and/or county department of health must evaluate this proposal for the need of either a Group A or Group B water system. As there are multiple facilities and not just one proposed by the applicant in state license application documents, an overall Group A system--as well as a community septic system--for the entire property is likely to be required. This department of health scrutiny would also change if there were more employees as well. (WAC 246-294-010(8)(b)) The application notes 14 employees for one Tier 3, when if there are three facilities planned this number easily exceeds the 25 employee limit for a Group B system. The list of necessary governmental approvals listed in answer to question number 10 should be rejected as incomplete as a Department of Health, either state or county level, review is not noted.

Finally, because of the anticipated increases in air pollution caused by this facility a Department of Ecology Air Quality Permit assessment and program are necessary. The list of necessary governmental approvals listed in answer to question number 10 should be rejected as incomplete as a Department of Ecology Air Quality Permit is not noted.

Either this SEPA application should be rejected in its entirety or at least, a full Environmental Impact Report should be required, and given the less than forthright provision of information provided by this applicant, the information provided should be in the form of declarations under penalty of perjury.

CUP objections

Applying the analysis of consistency with the provisions of KCC 17.60A, Conditional Uses: This proposal is not consistent with the Kittitas County Zoning Code for Conditional Uses.

The proposed conditional use, even with significant conditions, will not be adequately served by rural levels of service. In addition, it is not desirable to public convenience, will be detrimental to public health, safety or welfare, is economically detrimental to the public, and is inadequately serviced by public facilities.

The proposal is not served adequately by rural levels of service. First, it is clear that three and not one facility are planned, see paragraph 2(i) above, but even one facility requires significant levels of services. The NMF Enterprises proposal of a Tier 3 producer facility (or three) is of a type that demands a level of public services more in line with what would be required for an "industrial" or "urban" type setting. Describing the activity as agricultural is debatable, but the value of the marijuana creates unique and

certainly anticipated increased needs for public services. It is totally inadequate for a proponent to not address the increase in security needs for both itself and the neighborhood around such as facility. State regulations, quite appropriately concerned for the safety of the actual facility and its employees, require a certain level of security be installed as part of any licensed unit. But these regulations do not create a risk/crime free environment. There will be increased police services required.

There could easily be product on site with a value well exceeding multiple millions of dollars, even if it is only one facility. Each facility is allowed to maintain a large inventory of product, as well as the items being grown; and these together are very likely to require significant additional police work to combat foreseeable criminal behavior. Rural neighbors are also likely to be affected. It is the height of ignorance to expect that a facility requiring strict security, would not invite potential attempts of burglary or robbery. Banks and convenience stores are similarly well "armed" with security systems, but the crime rate at these facilities is still significant. The solitude of the neighborhood also increases the risk for the rural neighbors. It is not uncommon in the areas like where this proposal is sited, for neighbors to know almost every car that is on the road, and many matters which would go unnoticed in an urban area are likely to be very much known by all. There is no animity in a rural setting, and this would include the potential identification of perpetrators of crimes. Neighbor-witnesses, as well as the employee-witnesses on the proposed site, face increased needs of police resources for their personal protection whenever one of these foreseeable burglary or robbery is attempted. Marijuana is expensive. Marijuana is easily disposed of illegally as there is a long established criminal black market. Marijuana stolen and fenced is not taxed. Marijuana production in a neighborhood such as that proposed by NMF Enterprises creates a significant increase in criminal activity. At very least it is likely to be a public inconvenience and detrimental to public health and safety.

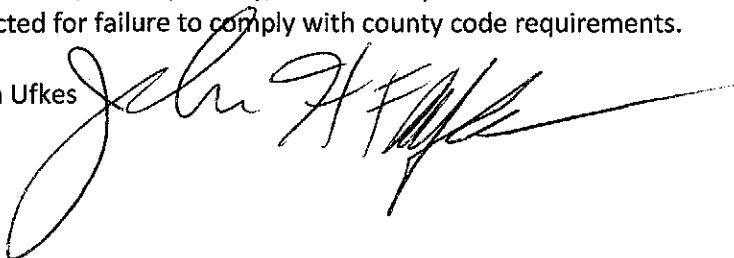
In addition, the Conditional Use Permit should be denied because there is no adequate supply for water and the proposal requires a complicated, community type, septic system to adequately clean the large amounts of water needed for the contemplated use, see paragraph 2(ii) above, which waste and water needs to be treated as fertilizers, pesticides, and herbicides will be involved. This proposal is inconsistent with rural levels of service and should simply just be located at another location.

The proposal is also economically detrimental to the public. Hay producers require that their products be of a high quality for premium export prices. Even a perception of contamination would be enough to reduce export demand. It is very likely that the proposed placement of NMF Enterprises "outdoor grow" marijuana facility in an agricultural area "up wind" of a large portion of the hay growing area, would be economically detrimental to the entire county.

For the above reasons, either the SEPA application should be rejected outright, or the proper official response should be that NMF Enterprises be required to complete a full Environmental Impact Study (EIS) which should also be required to review all three of the proposals that NMF Enterprises has filed license requests with the State Liquor Control Board. A MDNS is completely inappropriate.

In addition, and separately, but for many of the same noted reasons, the CUP application should be rejected for failure to comply with county code requirements.

John Ufkes

A handwritten signature in black ink, appearing to read "John Ufkes", written over the printed name.