

## Kaycee Hathaway

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**From:** Julie Johnson <JJohnson@lwhsd.com>  
**Sent:** Tuesday, May 05, 2015 9:54 AM  
**To:** Kittitas County Commissioners Office; Kaycee Hathaway  
**Cc:** Jeff Slothower  
**Subject:** RE: Notice of Administrative Appeal - Old McDonald Farm  
**Attachments:** Notice of Administrative Appeal - SIGNED.pdf

**Follow Up Flag:** Follow up  
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Good Morning,

Attached is a copy of a Notice of Administrative Appeal of Kittitas County Community Development Services' Approval of an Administrative Conditional Use Permit Application, the original of which was filed this morning and copies of which are also being hand-delivered to you.

Thanks and have a great day!

### **Julie Johnson**

Legal Assistant to Jeff Slothower  
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**KITTITAS COUNTY COMMISSIONERS**

Administrative Conditional Use Permit of:

CU-14-00005

Old McDonald's Farm LLC

NOTICE OF ADMINISTRATIVE  
APPEAL OF KITTITAS COUNTY  
COMMUNITY DEVELOPMENT  
SERVICES' APPROVAL OF AN  
ADMINISTRATIVE  
CONDITIONAL USE PERMIT  
APPLICATION

**a. The Decision Being Appealed**

The decision being appealed is the Issuance of an Administrative Conditional Use Permit (the "ACUP") in the McDonald Conditional Use Permit (CU-14-00005). The Findings of Fact, Decision and Conditions of Approval (the "ACUP Approval") dated April 22, 2015 are attached hereto as Exhibit 1.

**b. The Name and Address of the Appellants and Their Interest(s) in the Matter**

The names and addresses of the individuals appealing the issuance of the ACUP (hereinafter the "Appellants") are as follows:

	<b>Name of Property Owner(s)</b>	<b>Street Address of Property</b>	<b>Tax Parcel No.</b>
1.	Benjamin Corbett	4575 Thrall Rd	955562
2.	Patrick J. Corbett	1590 Emerson Rd	955561
3.	Timothy Erdman	1002 Emerson Rd	10942
4.	The Gibb Family Trust (Ronald Gibb and Douglas Gibb)	660 Sorenson Rd; Sorenson Rd; 600 Sorenson Rd; Sorenson Rd Emerson Rd 4360 Denmark Rd Denmark Rd	270133; 260133; 332336; 11250; 14764; 590133; 50936

	<b>Name of Property Owner(s)</b>	<b>Street Address of Property</b>	<b>Tax Parcel No.</b>
5	Kevin and Becky McDowell	1040 Emerson Rd	362336
6	Gregory A. & Mlynda E. Pieters	40 Dodge Road	750433
7	James Sperline	1000 Emerson Rd	10941
8	Donald Kelly	4761 Thrall Rd	350333
9	Darron A. Eddington and Melissa J. Mangels	1320 Emerson Rd	195736
10	Richard L. Burke, Jr. and Mary M. Burke	1401 Emerson Rd	19492
11	Troy R. Goodreau	111 Dodge Rd	760433
12		Dodge Rd	370433
13		Thrall Rd	570333
14		Thrall Rd	300133
15	Linda J. Morrison	1321 Emerson Rd	530333
16	Betty L. Pieters	4890 Thrall Rd	20204; 22033
17	Steve and Kristene Hymas	122 Sorenson Rd	21006
18	Brian Lenz	1441 Emerson Rd	500333
19	Steve Oversby	880 Emerson Rd	14766

The Appellants are represented by Jeff Slothower and Lathrop, Winbauer, Harrel, Slothower & Denison, LLP, 201 West Seventh Avenue, P.O. Box 1088, Ellensburg, Washington 98926.

**c. The Specific Reasons Why the Appellants Believe the Decision to be Wrong**

**1. The ACUP application is incomplete and as such should not have been processed.**

The land subject to the application is owned by the Mary Curley Robinson Irrevocable Trust. The Trustee of the Trust is Carol Eng. However, the application identifies the landowner as Mary Gonzalez. Therefore, because the application has not been signed by the landowner of record it is defective and must be rejected.

**2. The proposed conditional use is not an allowed conditional use under the Kittitas County Code.**

The proposed conditional use, the production and processing of marijuana in the Commercial Agriculture zone on a non-conforming parcel at least ten (10) acres in size, is no longer an allowed conditional use in the Commercial Agriculture zone; therefore, the County is prohibited from issuing this ACUP.

On December 2, 2014, the Kittitas County Board of County Commissioners adopted Ordinance 2014-015 that eliminated the production and processing of marijuana as a conditional

1 use in the Commercial Agriculture zone. Under Washington's vested rights doctrine, an  
2 application for a conditional use permit is not sufficient to vest to the prior code. Thus, this  
3 application must now be processed under the code adopted by the County on December 2, 2014,  
4 which no longer allows the proposed conditional use.

5 **3. The ACUP does not meet the standards for issuance of a CUP.**

6 The Application does not meet the criteria for the issuance of the ACUP and the  
7 application must be denied because the ACUP approval is an erroneous application of the law to  
8 the facts and the facts do not support the issuance of the ACUP under KCC 17.08.550 and  
9 KCC 17.60A.015.

10 An Administrative Conditional Use is defined as "a use which may be permitted in a  
11 zone classification following review under the provisions of KCC Chapter 17.60A."  
12 KCC 17.08.550 (emphasis added). The criteria an Applicant must prove are found in KCC  
13 17.60A.015 which provides that, when considering the issuance of a conditional use permit:

14 The Director or Board, upon receiving a properly filed application or petition,  
15 may permit and authorize a conditional use when the following requirements have  
16 been met:

- 17 1. The proposed use is essential or desirable to the public convenience and not  
18 detrimental or injurious to the public health, peace, or safety or to the  
19 character of the surrounding neighborhood.
- 20 2. The proposed use at the proposed location will not be unreasonably  
21 detrimental to the economic welfare of the county and that it will not create  
22 excessive public cost for facilities and services by finding that
  - 23 A. The proposed use will be adequately serviced by existing facilities such  
24 as highways, roads, police and fire protection, irrigation and drainage  
25 structures, refuse disposal, water and sewers, and schools; or
  - 26 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 land  
uses.
6. The proposed use is consistent with the intent and character of the zoning  
district in which it is located.

- 1 7. For conditional uses outside of Urban Growth Areas, the proposed use:  
2 A. Is consistent with the intent, goals, policies, and objectives of the  
3 Kittitas County Comprehensive Plan, including the policies of Chapter  
4 8, Rural and Resource Lands;  
5 B. Preserves “rural character” as defined in the Growth Management Act  
6 (RCW 36.70A.030(15));  
7 C. Requires only rural government services; and  
8 D. Does not compromise the long term viability of designated resource  
9 lands. (Ord. 2013-012, 2013; Ord. 2013-001, 2013; Ord. 2012-009,  
10 2012; Ord. 2007-22, 2007; Ord. 88-4 § 11 (part), 1988; Res. 83-10,  
11 1983)

12 KCC 17.60A.015 (emphasis added).

13 **3.1 The Appellants assert the ACUP is not supported by facts and the law  
14 applied to the facts do not support the issuance of the ACUP as follows:**

15 3.1.1 The record does not support a conclusion or finding that the proposed use,  
16 the processing and production of marijuana, is essential or desirable to the public convenience  
17 and the facts in the record support a finding that the proposed use is detrimental and injurious to  
18 the public health, peace and safety. The applicant asserts there is a benefit to “clean sun dried  
19 cannabis” although there is no evidence to support those conclusions.

20 3.1.2 The record does support a conclusion that the proposed use is detrimental  
21 and injurious to the character of the surrounding neighborhood and therefore it was improper to  
22 conclude the use was not detrimental or injurious to the character of the surrounding  
23 neighborhood.

24 3.1.3 Based on the record, the proposed use at the Applicant’s property is  
25 unreasonably detrimental to the economic welfare of the County and will create excessive public  
26 costs for facilities and services.

3.1.4 The proposed use does not create any economic benefit that will offset  
additional public cost or the economic detriment.

3.1.5 Based on the record, the proposed use is not adequately served by existing  
facilities.

1           3.1.6 The proposed use does not comply with relevant development standards  
2 and criteria under the Kittitas County Code. The proposed use is so incompatible with  
3 development standards in the zone that it is no longer allowed in the Commercial Agricultural  
4 Zone.

5           3.1.7 The proposed use does not mitigate for material impacts to the County, the  
6 citizens of the County or the neighborhood, and the Applicant is unable or unwilling to provide  
7 the mitigation necessary to eliminate the material negative impacts to the surrounding property  
8 owners, the neighborhood and the County.

9           3.1.8 The proposed use is not consistent with the intent and character of the  
10 zoning district, the Kittitas County Comprehensive Plan or other development standards and  
11 does nothing to preserve the “rural character”. The ACUP’s analysis of the proposed use and its  
12 alleged compatibility with the comprehensive plan is fatally flawed because:

- 13           • The production of marijuana is not an agricultural activity. It is the  
14           manufacture of a drug that is illegal under federal law, illegal in 48 states  
15           and has, for over a century, had negative impacts on society and human  
16           health;
- 17           • The production of marijuana will not result in the diversification of  
18           agricultural economy in Kittitas County;
- 19           • This use is not a taxable crop with local benefits;
- 20           • The use will harm existing agricultural activities;
- 21           • Nowhere does the comprehensive plan allow the County to create a  
22           “flexible balance of land uses...” which results in incompatibility of  
23           existing uses. The record is replete with examples of how this activity will  
24           harm neighboring land uses and activities;
- 25           • The proposed use is not a resource-based activity;
- 26

- Denying the ACUP will not impact the Applicant's property rights and granting the ACUP will infringe on the private property rights of adjoining landowners.

3.1.9 The proposed use is not compatible with existing neighboring land uses. The record suggests the proposed use will interfere with and harm existing neighboring land uses including, but not limited to, agricultural operations and livestock activities as well as the church school, community youth center and playground in the area.

3.1.10 The proposed use is not consistent with the intent and character of the Commercial Agricultural Zone. Under KCC 17.31.010 the purpose of the zone is to preserve fertile farm land from encroachment by nonagricultural land uses and protect the rights and traditions of those engaged in agriculture. This use, the manufacture of an illegal drug, interferes with the agricultural economy and the land owners in the area who are engaged in agriculture.

3.1.11 Even if the Applicants were able to meet the Kittitas County Code 17.60A.015 Conditional Use Permit criteria discussed above, which they cannot, the Applicants still must demonstrate they meet the seven (7) criteria set forth in KCC 17.15.050.1, FN 29. The record does not support a finding that these criteria have been met and thus the application must be denied.

3.1.12 The proposed use is inconsistent with the Kittitas County Comprehensive Plan which is designed to protect existing land uses and prohibit or reduce conflict among land uses (see above at 4.1.8). Because this activity is outside an Urban Growth Area it cannot compromise the long-term viability of designated resource lands. The evidence is that the activity is incompatible with timothy hay production and therefore this activity will damage the long term viability of the commercial agricultural activity on the adjoining properties.

3.1.13 There is no substantial evidence in the record to support the ACUP.

1           3.1.14 The Appellants appealed the issuance of the SEPA MDNS on April 22,  
2 2015 (the "SEPA Appeal"), which appeal is pending and has not yet been decided. Therefore,  
3 the SEPA mitigation conditions incorporated into the ACUP Approval are inadequate for the  
4 reasons set forth in the SEPA Appeal.

5           3.1.15 The ACUP Approval by Kittitas County violates the constitutional rights  
6 of the citizens of Kittitas County because the proposed use, the production of marijuana, occurs  
7 within 1,000 feet of a community school, playground and youth center with a religious  
8 affiliation. If the school, playground and youth center were "public facilities" the use would not  
9 be allowed.

10 **d. The Desired Outcome or Changes to the Decision**

11           The Appellants are opposed to the land use sought to be approved in the Conditional Use  
12 Permit Application and the Appellants assert:

- 13           i) The proposed conditional use is not an allowed conditional use;  
14           ii) The facts do not support the administrative decision;  
15           iii) The Administrator's application of the facts to the law was and is an  
16           erroneous application of the law to the facts; and  
17           iv) The administrative decision violates the constitutional rights of the  
18           citizens of Kittitas County.

19           The Administrator's approval should be reversed and the Administrative Conditional Use Permit  
20 application should be denied.

21 **e. The Appeals Fee.**

22           Check No. 4558 in the amount of \$500.00 made payable to Kittitas County Board of  
23 Commissioners is tendered with this appeal.

24           Respectfully submitted this 5<sup>th</sup> day of May, 2015.

25           LATHROP, WINBAUER, HARREL,  
26           SLOTHOWER & DENISON L.L.P.

\_\_\_\_\_  
JEFF SLOTHOWER, WSBA #14526  
Attorney for Appellants



CERTIFICATE OF SERVICE

I certify that I have this day caused a copy of the document to which this is attached to be served on the individual(s) listed below and in the manner noted below:

Kittitas County  
Board of Commissioners  
205 W 5th AVE STE 108  
Ellensburg WA 98926-2887

- BY U.S. MAIL
- BY HAND DELIVERY
- BY OVERNIGHT DELIVERY
- BY EMAIL: [bocc@co.kittitas.wa.us](mailto:bocc@co.kittitas.wa.us)

Kaycee Hathaway, Staff Planner  
Kittitas County Community Development Services  
411 N. Ruby Street, Suite 2  
Ellensburg, WA 98926

- BY U.S. MAIL
- BY HAND DELIVERY
- BY OVERNIGHT DELIVERY
- BY EMAIL: [kaycee.hathaway@co.kittitas.wa.us](mailto:kaycee.hathaway@co.kittitas.wa.us)

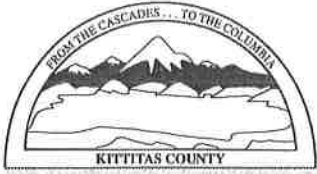
I CERTIFY, OR DECLARE, UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Ellensburg, Washington this 5<sup>th</sup> day of May 2015.



Julie Johnson  
Legal Assistant to Jeff Slothower

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**KITITAS COUNTY COMMUNITY DEVELOPMENT SERVICES**

411 N. Ruby St., Suite 2, Ellensburg, WA 98926

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"Building Partnerships – Building Communities"

**McDonald Administrative Conditional Use  
File Number CU-14-00005**

**FINDINGS OF FACT, DECISION AND CONDITIONS OF APPROVAL**

**I. GENERAL INFORMATION**

**Requested Action:** TJ McDonald, authorized agent, for Mary Gonzalez, authorized agent, for the Mary Robinson Trust, landowner has submitted an administrative conditional use application for farming operations related to KCC 17.15.050.1 A – Marijuana processing and production to operate under Washington State Liquor Control Board (WSLCB). The operation is located on a 15.03 acre parcel which is zoned Commercial Agriculture.

**Location:** This proposal encompasses 1 parcel, located to the Southeast of Ellensburg at 1006 Emerson Road in a portion of Section 27, T17N, R19E, WM, in Kittitas County, Assessor’s map number 17-19-27053-0002 (Exhibit 1).

**II. SITE INFORMATION**

Total Property Size:	15.03 acres
Number of Lots:	1 (no new lots are being proposed)
Domestic Water:	Water is available from the existing well for residential purposes, but not to be used for any other activities until such a time that a group water system has been approved by Kittitas County Public Health and/or Washington State Department of Health/Ecology. Bottled water shall be provided on site for employees until such time as a water system can be implemented
Sewage Disposal Domestic:	Domestic septic system for the existing residential purposes & portable toilets for all Marijuana purposes until such a time that other facilities are approved by Kittitas County Building & Public Health.
Sewage Disposal Non- Organics:	Trash service which is monitored by Washington State Liquor Control Board.
Sewage Disposal Organics:	Composting which is monitored by Washington State Liquor Control Board.
Power/Electricity:	Kittitas County PUD & Natural Gas
Fire Protection:	Kittitas County Fire & Rescue District 2
Irrigation District/ Irrigation Water:	Cascade Irrigation District (CID) water or transported water for irrigation of operation will be transferred on-site until such time as mitigated water can be purchased (Exhibit 2 & 3).

**Site Characteristics:**

**West:** Hay fields and single family residences. (Exhibit 4, 5 & 6)

**South:** Hay fields and single family residences. (Exhibit 7, 8, 9 & 10)

East: Hay fields. (Exhibit 11, 12, 13, 147 & 15)

North: Hay fields and single family residences. (Exhibit 16, 17, & 18)

Access: The site is accessed from Emerson Road.

Zoning and Development Standards: The subject property is located to the north of Thrall Road and to the east of I-82 and has a zoning designation of Commercial Agriculture. The general purpose and intent of the Commercial Agriculture zone is to permit agriculture operations functioning as a commercial activity which is considered a resource to the economy in Kittitas County. The Commercial Agriculture zone allowed for the proposed operation under KCC 17.06A.015 at the time of vesting for the subject application. In order for an Administrative Conditional Use Permit to be considered for approval it requires that the following be met per KC 17.60A.015.

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 cost 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 land 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(15));
  - C. Requires only rural government services; and
  - D. Does not compromise the long term viability of designated resource lands. (Ord. 2013-012, 2013; Ord. 2013-001, 2013; Ord. 2012-009, 2012; Ord. 2007-22, 2007; Ord. 88-4 § 11 (part), 1988; Res. 83-10, 1983)

**Findings to the proposal meeting these criteria are located in section IV. D of this report.**

### **III. ADMINISTRATIVE REVIEW**

Notice of Application: An Administrative conditional use permit application was submitted to Kittitas County Community Development Services department on October 29, 2014. The application was deemed incomplete and a request for additional information was sent to the applicant on November 20, 2014. After receiving additional information on November 21, 2014 this application was deemed complete on November 25, 2014. A Notice of Application and a Notice of SEPA were mailed to all state and local agencies/departments with potential interest in the project and required by SEPA, as well as to adjacent landowners located within five hundred (500) feet of any portion of the boundary of the proposal's tax parcel on Thursday December 11, 2014. Notice was published in the Daily Record, the official newspaper of record for Kittitas County, on Thursday December 11, 2014. Notice was posted to the Kittitas County website on Thursday, December 11, 2014 per Kittitas County Code (Title 15A).

#### IV. PROJECT ANALYSIS

In review of this proposal the Goals, Policies and Objectives (GPO) of the Comprehensive Plan, Kittitas County Code, public and agency comments, any identified environmental concerns and state and federal requirements were considered. Identified below is planning staff's analysis and consistency review for the subject application.

##### **Consistency with the Comprehensive Plan:**

The Kittitas County Comprehensive Plan designates the subject property as "Resource Land." Kittitas County has established goals, policies and objectives to guide activities within the Resource lands. These goals and policies were developed in response to identified needs within the County, and support the County Wide Planning Policies. The proposal is found by Planning Staff to be consistent with applicable GPOs of the Kittitas County Comprehensive Plan.

*GPO 2.3 The County should diversify economic development by providing broader employment opportunities.*

**Staff's Response:** Marijuana production provides employment during the harvest season as well as diversification of the agriculture economy of Kittitas County. The majority of agriculture production in Kittitas County is hay, and introducing a new taxable crop into the County will broaden the County's economy and increase employment opportunities.

*GPO 2.7 Kittitas County will maintain a flexible balance of land uses which will protect, preserve, and enhance the rural character, historical forest lands, agricultural industries, mineral lands, and high quality environment.*

**Staff's Response:** The proposal lies within a Resource Land, Commercial Agriculture land use and zoning. Commercial Agriculture zoning was designed to conserve agricultural lands and encourage the agricultural economy per RCW 36.70A.177. The applicant has stated that they are changing the existing crop to Marijuana which will be grown on the property with a small scale processing component. KCC 17.08.165 defines Commercial Activities Associated with Agriculture as "...services which are in support of, or supplemental to agriculture activities. Such use in areas designated as agricultural land of long term commercial significance shall comply with RCW 36.70A.177(3) as currently existing or hereafter amended, and shall be limited to lands with poor soils or those unsuitable for agriculture." Staff finds that the proposed meets this criterion.

*GPO 2.15 The development of resource based industries and processing should be encouraged in all areas of Kittitas County. When such uses are located in rural and resource lands, criteria shall be developed to ensure the protection of these lands to ensure compatibility with rural character. Consider adding a definition for "resource based industry" to the definitions in Title 17, Zoning.*

**Staff's Response:** Agriculture is a resource based industry per the Growth Management Act & RCW 36.70A. This proposal is supplying an agricultural product which will be cultivated for the purpose of sales to the public for legal consumption and therefore is considered a resource based industry. The Kittitas County Commissioners added the condition KCC 17.15.050.1 Resource Use Table footnote 29 (d) "Provide 125% bonding or assignment of funds for insuring completion of fence plan and survival of any landscaping necessary to visually screen required fences. Bond will be held for five (5) years to insure the survival of any visual screening vegetation." Such landscaping insures that all marijuana fences and activities were compatible with the rural character.

*GPO 2.25C Kittitas County will place a high priority in the Kittitas County Comprehensive Plan on the following State goal: RCW 36.70A.020(6) Property Rights. Private property shall not be taken for public use without just*

*compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions.*

**Staff's Response:** The growing and processing of Marijuana is a legal activity within the State of Washington dependent upon certain conditions and regulations. On May 6, 2014 the Kittitas County Board of County Commissioners (BOCC) signed an ordinance to allow the growing and processing of Marijuana pending conditions within Commercial Agricultural Lands. This application was deemed complete on November 25, 2014 in accordance with an approved building permit BP-14-00254. Thus, this activity is meeting the Kittitas County Comprehensive Plan due to the fact that the BOCC are the elected regulating body of the County and found that the growing and processing of Marijuana was acceptable within Commercial Agriculture Zoning.

*GPO 8.9 Protecting and preserving resource lands shall be given priority. Proposed development allowed and adjacent to resource lands shall be conditioned to protect resource lands from negative impacts from that development.*

**Staff's Response:** The proposal lies within a Commercial Agriculture Resource Land and is a farming based proposal. It therefore meets this policy because the applicant is not proposing to develop the subject parcel other than potentially with structures that would be associated to growing Marijuana. Growing of Marijuana is preserving the fertile resource lands of Kittitas County by using the natural sunlight and soils present upon the subject parcel.

**Based upon the previously stated observations, staff finds that the proposal is in compliance with the Kittitas County Comprehensive Plan. The applicant is proposing an agriculture endeavor which is maintaining and protecting the County's natural resource industry.**

**Consistency with the provisions of KCC 17A, Critical Areas:**

Staff has conducted an administrative critical area review in accordance with KCC 17A and found a Type 9-Unknown stream on the property which appears to be the Cascade Irrigation Ditch and does not have any setback requirements. Therefore, staff finds the project consistent with Kittitas County's Critical Areas Ordinance

**Consistency with the provision of KCC 17.31, Commercial Agriculture zoning:**

This proposal is consistent with the Kittitas County Zoning Code 17.31 *"The commercial agriculture zone is an area wherein farming and ranching are the priority. The intent of this zoning classification is to preserve fertile farmland from encroachment by nonagricultural land uses and protect the rights and traditions of those engaged in agriculture."* The proposal is compatible with KCC 17.31 referring to the uses table in KCC 17.15. Specifically, this proposal meets the intent as an administrative conditional use with 17.15.050.1 (A) Marijuana processing & Marijuana production since the proposed use is that of farming and production of marijuana on a 15.03 acre parcel.

**Consistency with the provisions of KCC 17.60A, Conditional Uses:**

This proposal, as conditioned, is consistent with the Kittitas County Zoning Code for Administrative Conditional Uses. The proposed administrative conditional use will be adequately served by rural levels of service. Following criteria for approving a conditional use permit per KCC 17.60A.015:

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.*

**Applicant Response:** "This proposed use is essential and desirable to the public by producing clean, sun-grown cannabis; this product is tracked taxed, and legally sold to adults in Washington State, which will help eliminate the black market and focus State police resources on dangerous

drug trafficking, and other serious crimes. Our farm is totally enclosed by an 8' solid metal fence. State law requires this, but our specific fence, was designed with public health, peace and safety in mind. We built with green barn metal to match existing buildings, solid material to block all visual distractions, and sturdy enough to safely contain our operation. We comply with all regulated signage, access control limitations, and tracking of our product; the tax dollars our farm contributes will support State determined social and educational programs that benefit our communities."

**Staff Response:** Staff agrees that the use will maintain the character of the surrounding neighborhood and will not be a detriment to the public safety, peace or health and is desirable to the public convenience. The character of the surrounding area is dominated by commercial farming activities which consist of vineyards, hay fields, single family residences and many steel sided barns. This proposal is a commercial agricultural based operation with plants grown in Greenhouses which are contained within a steel sided fence, thus maintaining the character in the neighborhood by growing a crop and using the same building materials as the surrounding property owners. GPO 8.8 & 8.9 addresses Resource Lands and states "GPO 8.8 Resource Lands are areas which provide commercial agriculture, forestry, and mineral resources... GPO 8.9 Protecting and preserving resource lands shall be given priority..." The applicant is proposing to grow cannabis to sell as a commercial crop hence using this property for commercial agriculture purposes. The applicant has an 8' sight obscuring security fence applied for on May 7, 2014 and approved May 16, 2014 (building permit number: BP-14-000254) (Exhibits 19-24). This fence will also have site obscuring landscaping to maintain the character of the surrounding area. Prior to the start of operations, professionally installed security (requirement of Washington State Liquor Control Board, WSLCB) will be installed to State standards thus improving public peace & safety. The proposed operation will grow and harvest cannabis in a controlled environment strongly regulated by the Washington State Liquor Control Board.

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 cost for facilities and services by finding that:*
  - (A) *it 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) *That 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.*

**Applicant Response:** "Highways, roads, police, fire protection, irrigation, drainage, water, sewer and schools adequately service our facility. No new facilities are required. Above all our operation will not raise the public costs in any meaningful way, but we will add significant economic benefits. First, we will not provide hundreds of jobs, but will provide specialized training to create highly efficient and high paying jobs. Second, the product we produce will be taxed higher than any other crop in our valley; our farm alone will create hundreds of thousands. Finally, the hundreds of thousands of dollars that my business spends for day-to-day operations are currently spent locally and we will continue to use local businesses. We love our valley and plan to invest significantly, now and in the future."

**Staff response:** This proposal is adequately serviced by existing facilities. The subject property must be providing adequate water and septic facilities, to the specifications of Kittitas County Public Health prior to gaining approval to grow and operate. The location is within Kittitas County Fire & Rescue District 2 and all buildings and supplementary structures associated with the marijuana productions have been inspected by the Kittitas County Fire Marshal's office and are up to International Fire Codes (IFC). The area is eight (8) miles from the Kittitas County Sheriff's office. The response time from the Sheriff's

Department is not unusually impaired because of the location. The site is located off of Emerson Road and has an existing access. Kittitas County Public Works has determined that no county road improvements are needed for this project because it will not create any adverse impacts to the existing road. The location of the proposal is within Cascade Irrigation District (CID). This use will not be a detriment to CID or CID irrigation users since CID did not comment during the comment period notifying the County of any adverse impacts this operation would have on CID. As required by Kittitas County Code and as conditioned, this proposal will not be detrimental to the economic welfare of the county when all conditions of approval have been met. GPO 2.3 states “*the County should diversify economic development by providing broader employment opportunities*”; this is a new legal use within Washington State and will provide for new jobs and diversify economic development within Kittitas County. Valuation of the subject property may increase as a result of license issuance and limited sites available within the county for marijuana production. Staff can find no factual basis that property values will decrease due to the proximity to the proposed operation.

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.*

**Applicant Response:** “Our operation is on a 15-acre lot, although only 10 acres is required; our farm is also zoned commercial agriculture when other lesser zoning is available. We will meet and follow all WAC 314.55 and RCW 69.50. We agree to an annual fire inspection and will meet the international Fire Code & building Code. We have already had our landscaping plan approved by the county and our 125% bond has been paid. All of our buildings and operation will comply with the 60’ setbacks. Any security lighting will be downward and our water use will be mitigated. We have and plan on the following all provisions of Kittitas County Code.”

**Staff Response:** The proposed use will meet all conditions set in the Mitigated Determination of Nonsignificance, Kittitas County Community Development Services Approval Document & all Kittitas County Code requirements KCC 17.15.050 prior to the start of operations.

4. *The proposed use will mitigate material impacts of the development, whether environmental or otherwise.*

**Applicant Response:** “Our vegetation screen around our fence is one example of how we are mitigating our impact, but our main plan is to build a very non-invasive operation. Growing outdoors in a very traditional farm sense, we will operate like all of our farming neighbors. If impacts do arise we will do what is necessary to mitigate in the future.”

**Staff Response:** Staff finds that the proposed use will have no material impact from the development. Should the applicant wish to withdraw groundwater for the use of marijuana production, processing, or any other new uses, prior to withdrawal the applicant or landowner of record must contact Kittitas County for necessary water mitigation. Water mitigation will have to be approved by Kittitas County before any water is drawn from site for use in producing or processing of Marijuana, or any new use.

5. *The proposed use will ensure compatibility with existing neighboring land uses.*

**Applicant Response:** “Our operation and our surrounding neighbors land use is Commercial Agriculture. Our neighbors use their land to grow a variety of crops. We will also use our land to grow our crop. Our neighbors have large hay barns; we have a large fence. Commercial agriculture is zoned to ensure this land is for agriculture; we are here to grow and process in an agricultural way.”

**Staff Response:** Staff finds that this use is compatible with the neighboring land uses and with any potential uses for agriculture production. The proposed use is an agrarian based operation and is in the Commercial Agriculture Resource Lands. Land use operations in the Commercial Agriculture Resource Land are variations of farming operations. Within the resource lands the County's GPOs are in place to allow property owners to preserve and utilize their resource lands: "GPO 8.9 Protecting and preserving resource lands shall be given priority. Proposed development allowed and adjacent to resource lands shall be conditioned to protect resource lands from negative impacts from that development. GPO 8.11 Policies will reflect a "right to farm" in agricultural lands."

6. *The proposed use is consistent with the intent and character of the zoning district in which it is located.*

**Applicant Response:** "We are zoned in commercial agriculture; the intent is to preserve fertile farmland. Our operation intends to grow a new legal crop on this fertile farmland. This is the proper zoning for our operation."

**Staff Response:** The proposed use is a farming based operation which lies within the Commercial Agriculture zone and is consistent with the Commercial Agriculture zone character. The intent of the Commercial Agriculture zoning is *an area wherein farming and ranching are the priority. The intent of this zoning classification is to preserve fertile farmland from encroachment by nonagricultural land uses and protect the rights and traditions of those engaged in agriculture Per KCC 17.31.010.* The proposed use meets this intent by proposing a use requiring the cultivation of land and raising crops for profit.

7. *For conditional uses outside of Urban Growth Areas, the proposed use must show that it:*
  - 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.*

**Applicant Response:** "We are here to row a very new and regulated crop. After the paper work, we are here to grow our crop and model traditional farming in every way we can. We agree with Chapter 8 of the Kittitas County Comprehensive Plan, outdoor crop cultivation in rural nature is what we are here to protect."

**Staff Response:** One of the intents of the Kittitas County Comprehensive Plan GPOs for Kittitas County is that land owners have the "right to farm." Reference GPO 8.8, 8.9, 8.11. The proposed use is growing and harvesting, which meets the intent of the Kittitas County Comprehensive Plan. The subject parcel lies within a Resource Land classification, Commercial Agriculture. These designations allow commercial agriculture, forestry, and mineral resources. It is Kittitas County's priority to preserve and protect resource lands and to give farmers the right to farm.

- b. *Preserves "rural character" as defined in the Growth Management Act (RCW 36.70A.030(15)).*

**Applicant Response:** "Our operation will preserve rural character; our operation is agriculture in nature. We are here to grow a new crop on our farmland. Law requires our fence, but our approved vegetation plan will grow and blend things.



Our intent is to live and grow in a rural nature and to provide employment in this rural area.”

**Staff Response:** The rural character of the subject property and surrounding area is that of a farming community. The applicant has indicated that the proposed use of their property is raising crops. At the proposed location the applicant is utilizing or maintaining the existing structures on the parcel. In this area of the County there are many metal framed barns and other accessory agricultural buildings. The applicant’s use of the same metal sheeting to create the security fence required by Washington State Law shows that the applicant is trying to conform to the character of the area by using the same materials as their neighbors use for building.

- c. *Requires only rural government services.*

**Applicant Response:** “No volatile gases or dangerous processing will be used at our location. We should only require rural government services.”

**Staff Response:** The proposed use does not require any services other than those that Kittitas County currently provides. The applicant is within a fire district, is using CID irrigation water, is meeting all public health requirements, and is within eight (8) miles of the Kittitas County Sheriff’s office.

- d. *Does not compromise the long term viability of designated resource lands. (Ord. 2013-012, 2013; Ord. 2013-001, 2013; Ord. 2012-009, 2012; Ord. 2007-22, 2007; Ord. 88-4 § 11 (part), 1988; Res. 83-10, 1983)*

**Applicant Response:** “We agree the long-term use of our county needs to be of agriculture use. Kittitas County has changed crops many times over its history. A new crop should be embraced, not be feared.”

**Staff Response:** The proposed use does not compromise the long term viability of designated resource lands and will maintain and diversify the long term viability of resource lands by remaining an active farm.

**Consistency with the provisions of the KCC Title 17.50A.020, Conditions 1, 9, and 10:**

1. *Increasing the required lot size, setback or yard dimensions.*

**Staff Response:** All buildings or planting operations requiring security by law must be setback at least 60 feet from any property boundary. All growing and planting operations on the proposed site plan are setback 60 feet from all property lines as indicated within the site plan.

9. *Requiring or limiting view-obscuring fencing, landscaping or other facilities to protect adjacent or nearby properties.*

**Staff Response:** The applicant provided a 125% bond to insure the completion of fence plan and survival of any landscaping necessary to visually screen required fences. Bond will be held for five (5) years to insure the survival of any visual screening vegetation. An estimate for such landscaping has been provided by a landscape professional and the bond for 125% of the estimate was submitted to the County on October 21, 2014. The applicant has an eight (8) foot sight

obscuring security fence applied for on May 7, 2014 and approved May 16, 2014 (building permit number: BP-14-000254.)

10. *Demonstrating that the requirements of Chapter 13.35, Kittitas County Code, Adequate Water Supply Determination, can be met. (Ord. 2014-005, 2014; Ord. 2013-012, 2013; Ord. 2012-009, 2012; Ord. 2007-22, 2007; Ord. 88-4 § 11 (part), 1988)*

**Staff Response:** Potable water will be supplied on site by the applicant in the form of bottled water and a sign upon the premises stating that there is no potable water on site. All water proposed to be used must be obtained from a water budget neutral source and prove such by providing: 1) a letter from a water purveyor stating that the purveyor has adequate water rights and will provide the necessary water for the applicant's project and receipts from all initial and ongoing water transactions to the satisfaction of Kittitas County or the Washington State Department of Ecology; and/or 2) a letter from an Irrigation District stating that the Irrigation District has adequate water rights and will provide the necessary water for the applicants project; 3) an adequate water right for the proposed project; and/or 4) a certificate of water budget neutrality from the Department of Ecology or other adequate interest in water rights from a water bank.

**Consistency with the provisions of the KCC Title 17.15.050.1, Marijuana Production or Processing Ordinance No. 2014-004:**

*Marijuana production or processing on non-conforming legal lots of record must be at least 10 (ten) acres in size, are processed as an Administrative Conditional Use, and must:*

- a. Meet all criteria and regulations found in WAC 314.55 and RCW 69.50.
- b. Meet all International Fire Code and International Building Code requirements.
- c. Agree to an annual fire protection inspection.
- d. Provide 125% bonding or assignment of funds for insuring completion of fence plan and survival of any landscaping necessary to visually screen required fences. Bond will be held for five (5) years to insure the survival of any visual screening vegetation.
- e. All buildings or planting operations requiring security by law must be setback at least 60 feet from any property boundary.
- f. Security lighting shall be downward, directed away from adjoining property, and shall be installed with motion sensors.
- g. Obtain water from a water budget neutral source and prove such by providing 1) a letter from a purveyor stating that the purveyor has adequate water rights and will provide the necessary water for the applicant's project; 2) an adequate water right for the proposed project; or 3) a certificate of water budget neutrality from the Department of Ecology or other adequate interest in water rights from a water bank.

**Staff Response:** The applicant has met, or is in the process of meeting these conditions.

**Consistency with the provisions of the KCC Title 14.04, Building Code:**

All buildings must be consistent with International Building Codes.

**Consistency with the provisions of KCC Title 12, Roads and Bridges:**

As conditioned, the proposal must be consistent with the provisions of KCC Title 12.

**Staff Conclusions:**

1. As conditioned, the development meets the goals, policies and implementation recommendations as set forth in the Kittitas County Comprehensive Plan.

2. As conditioned, this proposal is consistent with applicable federal and state laws and regulations.
3. The proposal meets the criteria outlined in KCC 17.60A, Conditional Use Permit.
4. As conditioned, the proposal is consistent with Kittitas County Code Title 17 Zoning, Title 17A Critical Areas, Title 14.04 Building Code, and Title 12 Roads and Bridges.

## V. ENVIRONMENTAL REVIEW

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 April 9, 2015. The appeal period ends on April 24, 2015 at 5:00 p.m.

## VI. AGENCY AND PUBLIC COMMENTS

### Agency Comments:

The following agencies provided comments during the comment period: Kittitas County Department of Public Works, Kittitas County Fire Marshal, Kittitas County Environmental Health Department, WA Department of Health and WA Department of Ecology. All comments are on file and available for public review.

### Public Comments:

Public comments were submitted for this proposal at the time of staff review and were considered. All comments are on file and available for public review.

Applicable agencies, adjacent property owners, and interested parties have been given the opportunity to review this proposal. All comments are on file and available for public review.

## VII. DECISION & CONDITIONS OF APPROVAL

From these conclusions and findings, the proposed Administrative Conditional use is approved with the following conditions:

### Conditions of Approval:

1. A sign must be posted upon the premises stating that there is no potable water on the site.
2. All hoop houses on the site are exempt under WAC 51-50-007.
3. If any new buildings are proposed they may be subject to a new SEPA based upon what is proposed.
4. Fence permit (BP-14-00254 or BP-14-00727) must be finalized prior to final approval.

### SEPA Conditions:

#### I. Water

- A. 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 eventually becomes available on site and the supply in the area becomes limited, use could be curtailed by those with senior water rights.
- B. All water proposed to be used must be obtained from a water budget neutral source and prove such by providing: 1) a letter from a water purveyor stating that the purveyor has adequate water rights and will provide the necessary water for the applicant's project and receipts from all initial

and ongoing water transactions to the satisfaction of Kittitas County or the Washington State Department of Ecology; and/or 2) a letter from an Irrigation District stating that the Irrigation District has adequate water rights and will provide the necessary water for the applicants project; 3) an adequate water right for the proposed project; and/or 4) a certificate of water budget neutrality from the Department of Ecology or other adequate interest in water rights from a water bank.

## **II. Septic & Storm Water**

- A. Adequate septic and waste water facility must be provided on site and approved by Kittitas County Health Department.
- B. 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 regarding the requirement of such action.
- C. 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.

## **III. Fire & Life Safety**

- A. A turn-around shall be provided for fire department access as determined by Kittitas County Fire Marshal.
- B. Any structures that are occupied by employees will require a fire and life safety inspection prior to use and are required to have an annual fire & life safety inspection.
- C. Any structures utilized for production or processing purposes must meet International Fire Code (IFC) standards and be approved by the Kittitas County Fire Marshall.

## **IV. Light and Aesthetics**

- A. All outdoor lighting shall be shielded and directed downward to minimize the effect to nearby residential properties.
- B. Security lighting shall be approved by the Washington State Liquor Control Authority.
- C. The applicant shall provide a landscaping plan with 125% bonding or assignment of funds for insuring completion of fence plan and survival of any landscaping necessary to visually screen required fences. Bond will be held for five (5) years to insure the survival of any visual screening vegetation.

## **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. Building**

- A. Any existing structures used for Marijuana production or processing will require a change of use occupancy permit prior to use.
- B. All new construction must meet the International Building Code requirements existing at the date of building permit submittal.

## **VII. Roads and Transportation**

- A. The driveway must be constructed to commercial standards, as shown in the WSDOT Design Manual Exhibit 1340-2.
- B. An Approved Access permit shall be obtained from the department of Public Works prior to alteration of the existing access. No new accesses will be allowed.

## **VIII. Land Use**

- A. The proponent and proposal must meet all criteria found in WAC 314.55 and RCW 69.50 regulations.
- B. The proponent must obtain a marijuana production license from Washington State Liquor Control Board.

- C. All buildings or planting operations requiring security by State law must be setback at least 60 feet from any property boundary.

**IX. 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.

**Kittitas County Code (Chapter 15A.07.010) stipulates that an appeal of this land use decision must be filed within 10 (ten) working days by submitting specific factual objections and a fee of \$500 to the Kittitas County Board of Commissioners at 205 West 5<sup>th</sup>, Room 108 Ellensburg, WA 98926. The appeal deadline for this project is May 6, 2015 at 5:00p.m.**

**Responsible Official**



Robert "Doc" Hansen

Planning Official

**Address:**

Kittitas County Community Development Services  
411 N. Ruby Street, Suite 2  
Ellensburg, WA. 98926  
Phone: (509) 962-7506 Fax: (509) 962-7682

**Date:**

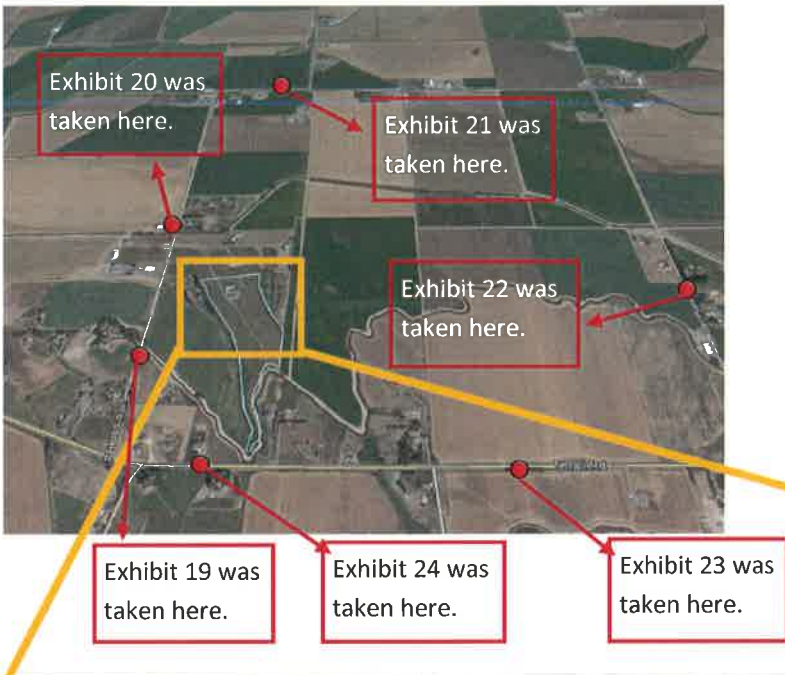
April 22, 2015

# Exhibits

1, 2, 3, 4, 5, 6, 7, 8, 9,  
10, 11, 12, 13, 14, 15,  
16, 17, 18, 19, 20, 21,  
22, 23 & 24.



# Exhibits Site Map



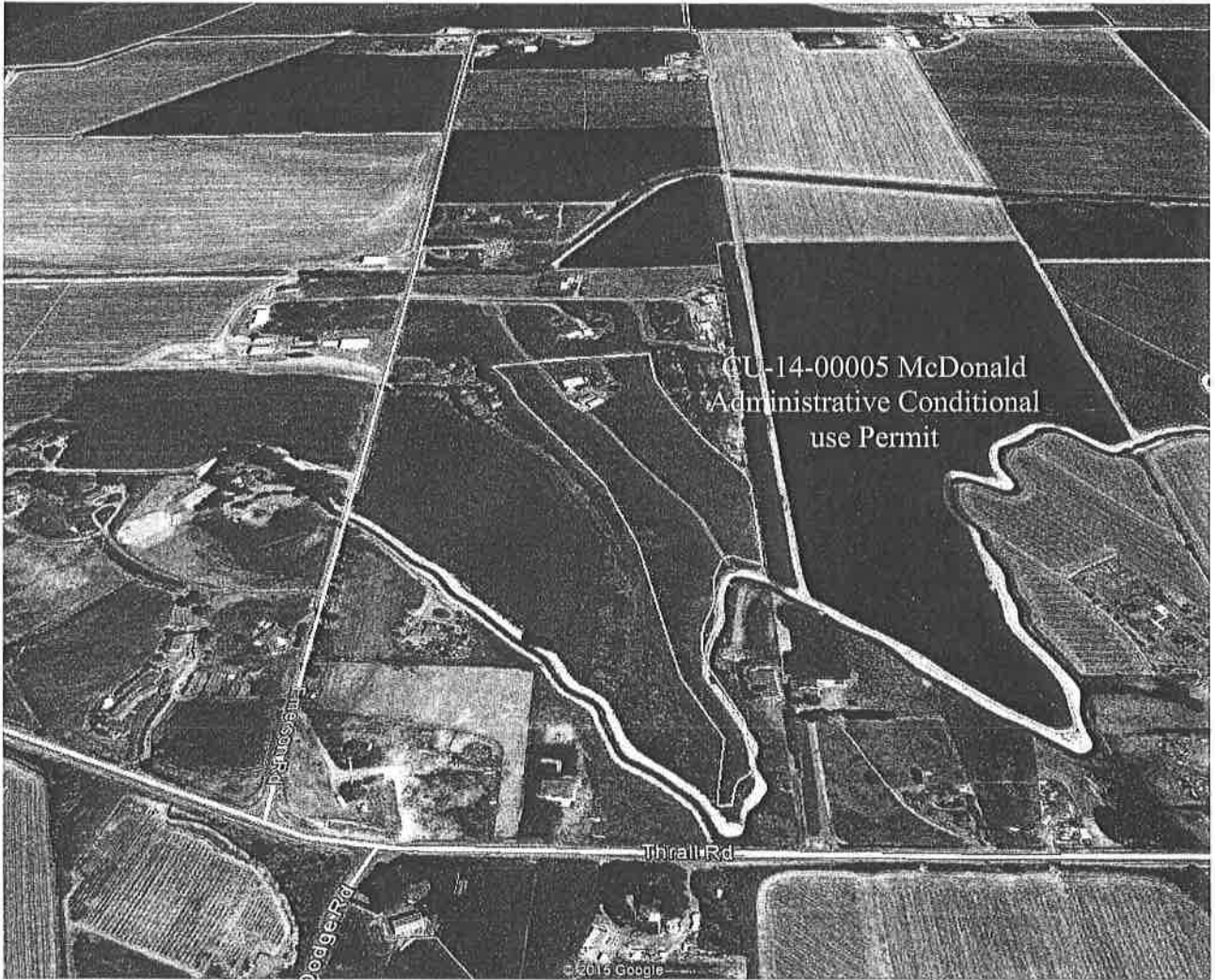
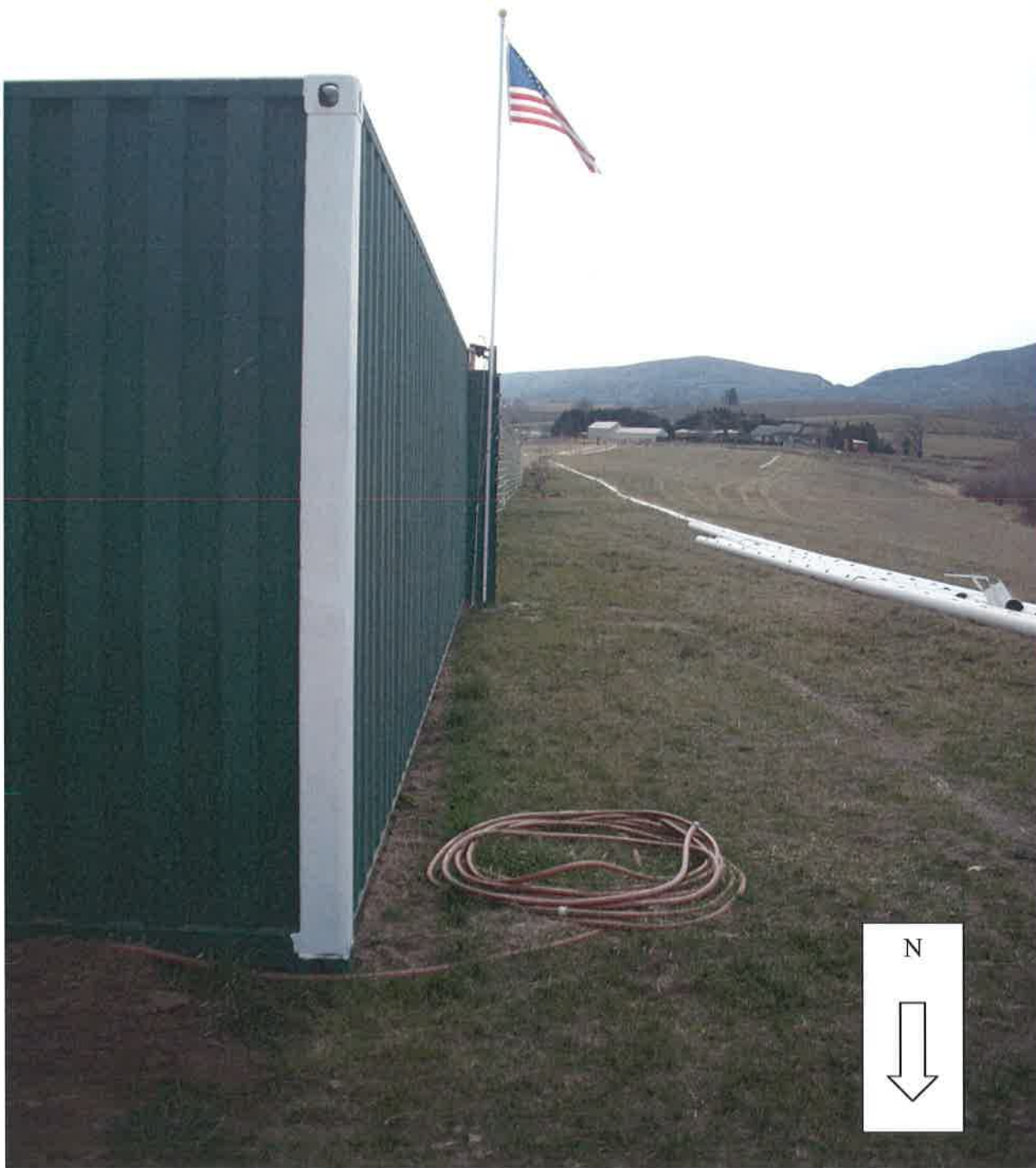






Exhibit 4



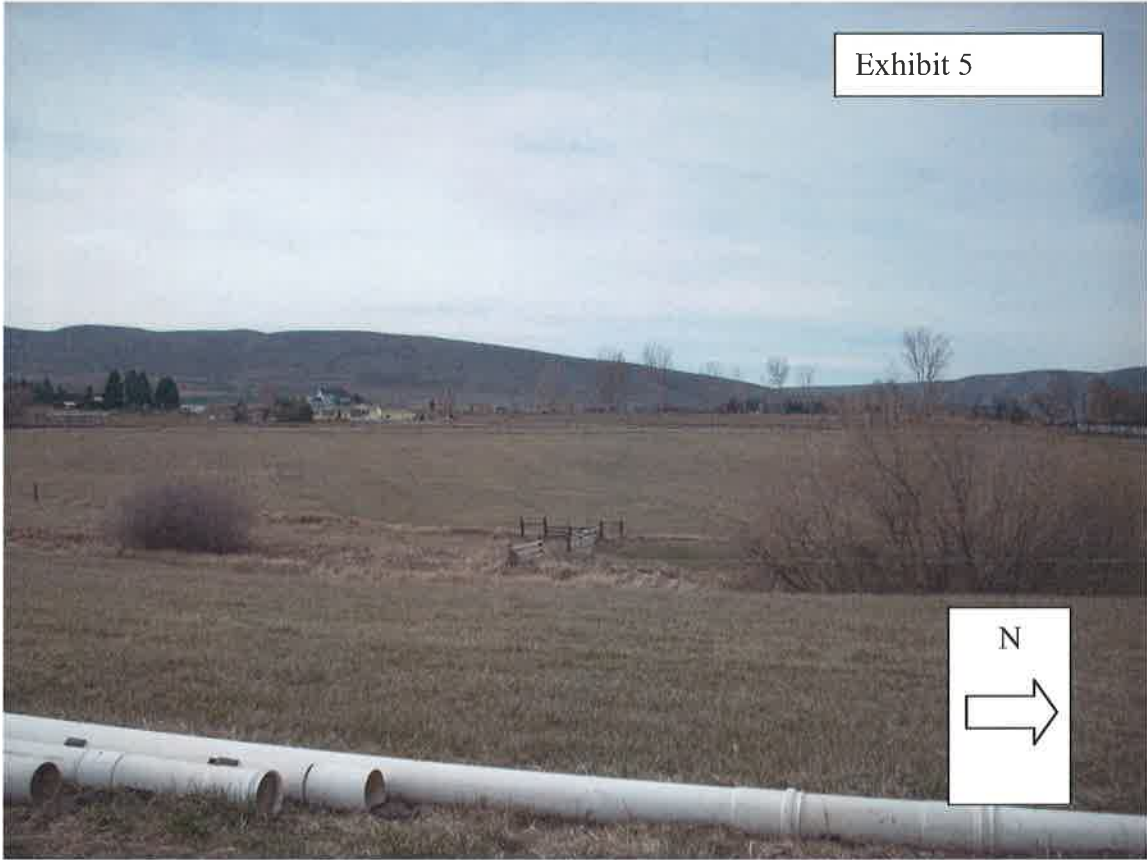




Exhibit 7

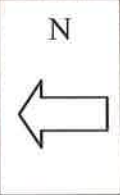








Exhibit 12

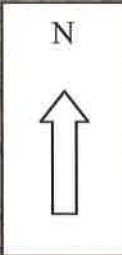
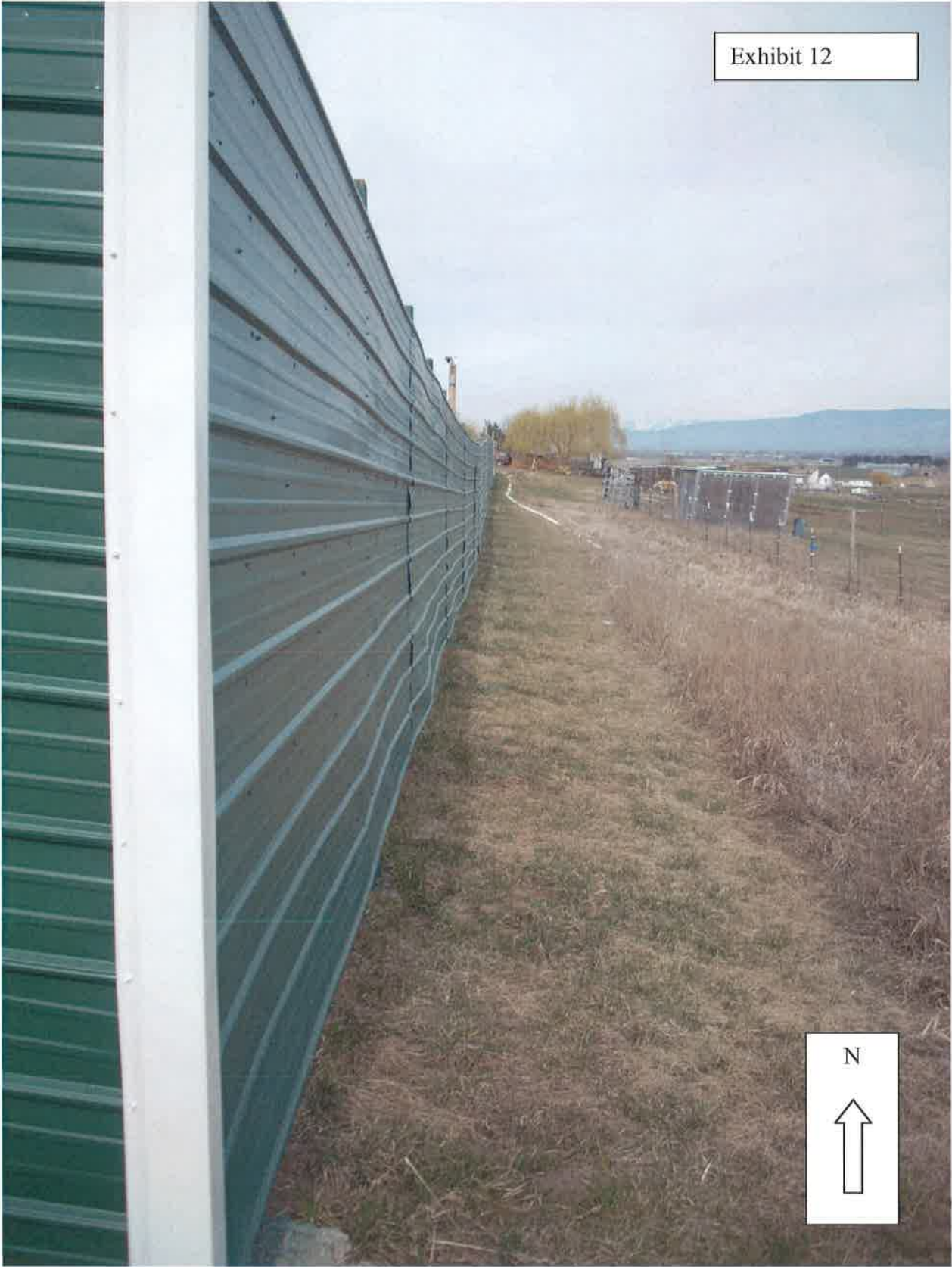






Exhibit 15



Exhibit 16



Exhibit 17



Exhibit 18





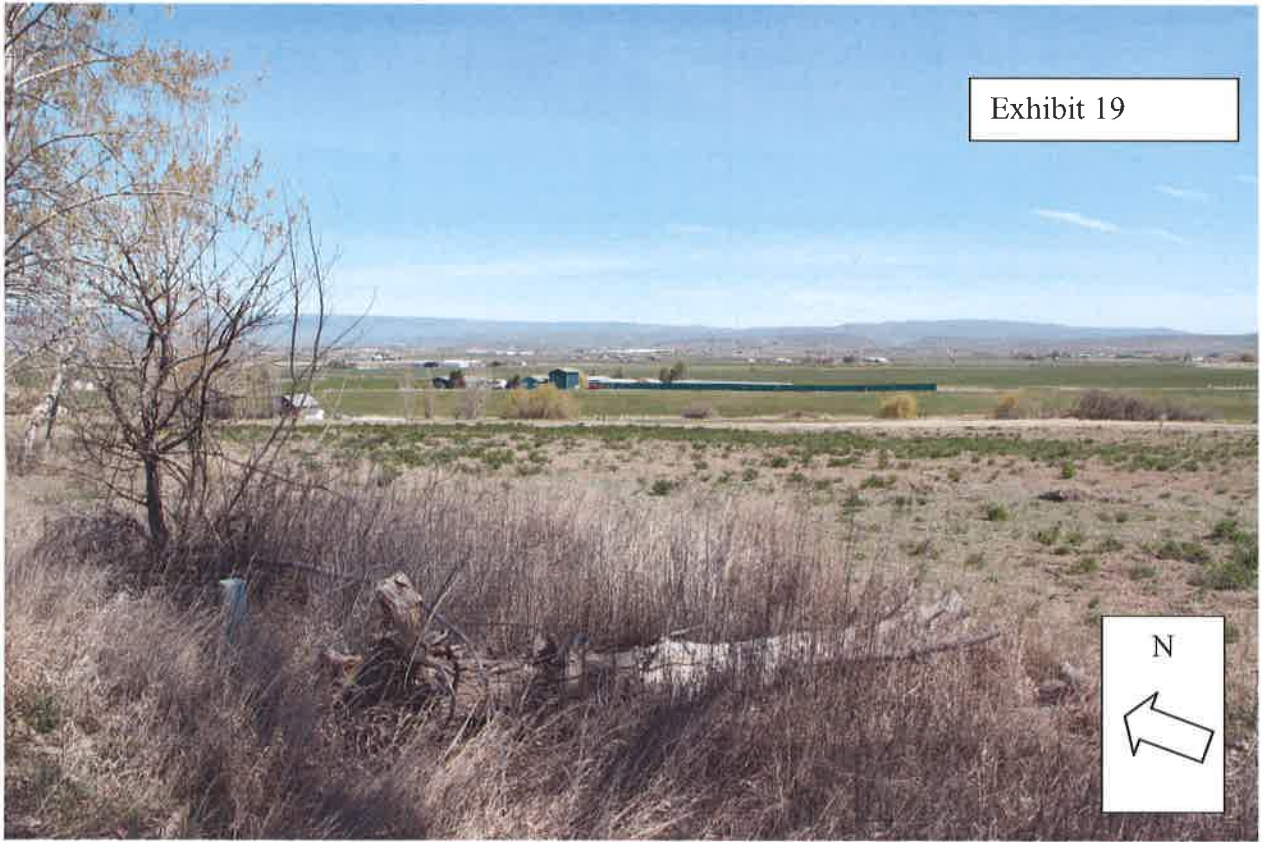


Exhibit 21



Exhibit 22





Exhibit 23



Exhibit 24

