

## Kaycee Hathaway

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**From:** Heather Hazlett <HHazlett@lwbsd.com>  
**Sent:** Wednesday, April 22, 2015 4:33 PM  
**To:** Kittitas County Commissioners Office; Kaycee Hathaway  
**Cc:** Jeff Slothower  
**Subject:** Notice of Administrative Appeal of SEPA Decision (CU-14-00005)  
**Attachments:** 20150422162952.pdf

Dear Commissioners and Ms. Hathaway:

Attached for your convenience is an electronic copy of what was delivered to your offices earlier today.

Sincerely,

**Heather L. Hazlett**

Legal Assistant to Jeff Slothower  
Lathrop, Winbauer, Harrel, Slothower & Denison L.L.P.  
P.O. Box 1088  
Ellensburg, WA 98926

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**KITTITAS COUNTY HEARINGS EXAMINER**

Administrative Conditional Use Permit of:

CU-14-00005

Old McDonald's Farm LLC

**NOTICE OF ADMINISTRATIVE  
APPEAL OF SEPA DECISION**

**a. The Decision Being Appealed**

The decision being appealed is the Issuance of a Mitigated Determination of Non-Significance ("MDNS") in the McDonald Conditional Use Permit (CU-14-00005). The Notice of SEPA Action and the MDNS is attached hereto as Exhibit 1. The underlying land use action, an administrative conditional use permit, was decided upon by the Kittitas County Community Development Services on April 22, 2015 when it issued its Findings of Fact, Decision and Conditions of Approval. That decision will be appealed separately.

**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 SEPA MDNS (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

**COPY**

	Name of Property Owner(s)	Street Address of Property	Tax Parcel No.
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 Dodge Rd Thrall Rd Thrall Rd	760433 370433 570333 300133
12.	Linda J. Morrison	1321 Emerson Rd	530333
13.	Betty L. Pieters	4890 Thrall Rd	20204; 22033
14.	Steve and Kristene Hymas	122 Sorenson Rd	21006
15.	Brian Lenz	1441 Emerson Rd	500333
16.	Steve Oversby	880 Emerson Rd	14766

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

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

**1. The Notice of SEPA Action is defective because it identifies that an appeal is pursuant to "Chapter 15A.04.020 KCC."**

KCC 15A.04.020 was repealed by Ordinance 2014-015. Instead, appeals of SEPA actions must be brought pursuant to KCC 15.04.210.

**2. The optional WAC 197-11-355 SEPA process was improperly used.**

The SEPA notice of application indicates the County expected to issue a DNS and would therefore use the optional DNS process authorized under WAC 197-11-355. This process requires Kittitas County to consider public comments generated as a result of the notice and to issue either a DNS or MDNS, but only under the conditions set forth in WAC 197-11-355. However, if the County as lead agency concludes the impacts to the environment cannot be mitigated to an insignificant level, then the County as lead agency may abandon the optional DNS process and require an Environmental Impact Statement.

Kittitas County did not list anticipated mitigation measures on the notice of application as required under WAC 197-11-355(2)(b). The optional DNS process required this so that the public

1 knows when and what mitigation measures are being anticipated and have an opportunity to  
2 comment on whether the proposed mitigation measures are sufficient to mitigate the environmental  
3 impact to an insignificant level. The mitigation measures listed must mitigate all impacts to an  
4 insignificant level (see also, DOE SEPA Handbook, subsection 8.3). The County's MDNS merely  
5 says mitigation may be required, but WAC 197-11-355(2)(b) requires anticipated mitigation to be  
6 identified with specificity. The County erroneously followed the optional DNS process.

7  
8 **3. The SEPA Checklist contains inaccurate, misleading and incomplete information.**

9 The record generated in the SEPA process must demonstrate that environmental factors were  
10 considered in a manner sufficient to amount to prima facie compliance with the procedural  
11 requirements of SEPA. In order to accomplish this, the SEPA determination must be based upon  
12 information reasonably sufficient to determine the environmental impact of a proposal. The County  
13 has an obligation to determine that the project is properly defined before it undertakes environmental  
14 review. WAC 197-11-060(3)(a). The SEPA Checklist submitted by the Applicants was incomplete,  
15 inaccurate, misleading and vague. The SEPA Checklist submitted by the Applicants made it  
16 impossible to identify, evaluate and comment on impacts and potential mitigation. Specific sections  
17 of the SEPA Checklist that are inaccurate, misleading and incomplete are discussed below with a  
18 heading for each section corresponding to the SEPA Checklist.<sup>1</sup>

19 **3.1 Checklist Section A.10**

20 This section requires Applicants to identify any governmental approvals or permits that will  
21 be needed for their proposal. The Applicants' response is "WA I502 Producer/Processor License."  
22 The Applicants do not identify if they have a producer/processor license despite admitting in  
23 response to Checklist Section A.6 that the applicant has already begun operations on the site. The  
24

25 <sup>1</sup> Many of the areas of the SEPA Checklist that are inaccurate and as discussed below are also related to specific  
26 criteria the Applicants must demonstrate in KCC 17.60A.015 and KCC 17.15.050.1, FN 29, and as a result are also relevant as to whether the underlying land use should be approved or denied.

1 Applicants should have been required to produce a copy of their producer/processor license as part of  
2 the application. The producer/processor license issued by the WSLCB contains certain requirements  
3 that Kittitas County must be apprised of and must review in order to determine the full environmental  
4 impact of the activity and to determine whether the requirements for a conditional use permit are  
5 being met. Without a copy of the producer/processor license a SEPA review is meaningless because  
6 the County cannot impose mitigation measures without understanding whether those mitigation  
7 measures are supported by or consistent with the producer/processor license.

### 8 **3.2 Checklist Section A.11**

9 The Applicants indicate “[o]ur Processing side will stay very minimal, basic packaging and  
10 such, when revenue and WA Liquor Control Board allows, all processing will be performed on other  
11 processing sites.” (Emphasis added.) Again, the Applicants invoke WSLCB permitting issues,  
12 which are not fully disclosed, and as a result Kittitas County could not engage in meaningful SEPA  
13 analysis. Without the State issued permit the activity is not allowed in the State of Washington.  
14 Even with the State issued permits the activity is a crime under federal law. Additionally, the  
15 Applicants use the words “and such.” That phrase is inappropriate in a SEPA Checklist. The  
16 Applicants need to disclose with particularity what the “and such” is so the County can assess the full  
17 environmental impact of the proposed activity and the public can fully exercise their right to  
18 comment on the activity.

### 19 **3.3 Checklist Section B.2**

20 The Applicants indicate there will be emissions to the air from the project resulting from  
21 construction and farming operations. The Applicants failed to identify the fact that dust emanating  
22 from the production and processing of marijuana will contain marijuana seeds and marijuana dust.  
23 The majority of the property in the area is used to raise and harvest Timothy Hay for export. As  
24 indicated in the SEPA comments, the buyers of hay come to this county and inspect the hay before  
25 they buy. Hay buyers have refused to buy in the past when they are aware of the possibility of  
26

1 contaminants in the hay. Timothy Hay farmers in the vicinity of the Applicants' property will have  
2 to disclose the possibility of marijuana particulate matter in their hay. As a result, these producers  
3 will no longer be able to sell their hay for export.

4 Marijuana is a noxious weed. Kittitas County and landowners in the County spend  
5 significant resources controlling noxious weeds to ensure that noxious weeds are eradicated and/or  
6 controlled. The Kittitas County Noxious Weed Control Board's mission is to "protect and preserve  
7 the agricultural lands and natural resources of the County from the degrading effects of exotic and  
8 invasive noxious weeds." The Applicants seek a permit to raise a noxious weed that will invade  
9 neighboring properties, yet propose no mitigation to protect the neighboring properties.

10 Marijuana is toxic to livestock. Virtually all of the small surrounding parcels have horses,  
11 livestock and domestic pets on them. The Applicants fail to identify this issue. The fact that dust  
12 and seeds from a product that is illegal under federal law could be deposited on adjoining properties  
13 and cause harm to those properties and interfere with the activities on those properties is not fully  
14 disclosed by the Applicants and because it is not disclosed no mitigation is proposed. In order to  
15 determine the nature and extent of the harm and interference, the proposed use should be subject to a  
16 full Environmental Impact Statement, with one of the alternatives being to not engage in the activity.

### 17 **3.4 Checklist Section B.3 (Water)**

18 The information provided in this Section of the SEPA Checklist is so vague and inaccurate it  
19 renders the entire checklist meaningless.

#### 20 **3.4.1 Checklist Section B.3.a.4 (Surface Water)**

21 The Checklist asks, "Will the proposal require surface water withdrawals or diversions?  
22 Give general description, purpose, and approximate quantities if known. The Applicants responded,  
23 "No." The Applicants, in their narrative statement of the project, specifically Section 9, says:

24 All of our water supply will be purchased from local vendors, until  
25 KRD water is cleaner and use becomes acceptable. We are currently  
26 ready to store and control at least 5,000 gallons; as more is required

1 we will add more storage capacity if needed. Sewage disposal will be  
2 very natural, we will use controlled burning and composting.

3 The Applicants' property is not entitled to water from the KRD. The Applicants provide no  
4 information as to where their water will come from, which prevents meaningful SEPA analysis.

### 5 **3.4.2 Checklist Section B.3.b (Groundwater)**

6 The Applicants' responses in the SEPA Checklist and their statements in Paragraph 9 of the  
7 application relate to domestic water are even more troubling. In the SEPA Checklist the Applicants  
8 indicate that "if allowed or able to be mitigated, drinking water and water for all cleaning needs will  
9 come from our onsite well up to 1000 gallons per day." One can only assume what the Applicants  
10 are indicating is that potable water will be required for the activity<sup>2</sup> and that potable water will come  
11 from a groundwater well. In addition, it appears that some of the water will be needed for industrial  
12 purposes because it will be used for "cleaning needs." In order to use exempt wells as a water source  
13 in the production of marijuana, the Department of Ecology has indicated that the  
14 "commercial/industrial exemption" in RCW 90.44.050 should be the basis for the legal use of the  
15 water right. There is no record of the Applicants having a well that has ever been used for  
16 commercial or industrial uses.

17 The use of groundwater by the Applicants will be a new use of water, which must comply  
18 with KCC 13.35.020. Under that statute, the Applicants' new use of water must comply with KCC  
19 13.35.025 because under KCC 13.35.020(2), an application for a conditional use that requires water  
20 triggers compliance with KCC 13.35.025.

21 The Applicants' indication that "[s]ewage disposal will be very natural, we will use  
22 controlled burning and composting." If the Applicants are going to be burning sewage and other  
23 products on its property, the Applicants answers to the SEPA Checklist regarding emissions to the air  
24 are completely erroneous and inadequate. The Applicants should also be required to demonstrate  
25 they have all of the proper permits to "burn sewage." The Applicants fail to identify the smell and

26 <sup>2</sup> The Applicants indicate that approximately 11 people will work at the facility. The Applicants may also be subject to Department of Health potable water standards.

1 air emissions that will occur as a result of the Applicants "burning sewage" and/or other organic  
2 material as a result of this use.

### 3 **3.5 Checklist Section B.7.a**

4 This section requires the Applicants to identify environmental health hazards, including  
5 exposure to toxic chemicals that would occur as a result of the proposal. In response, the Applicants  
6 answered "no," yet in the application the Applicants admit it will be burning sewage and other  
7 organic materials on the property. Burning sewage and organic materials creates environmental  
8 health hazards and expose neighboring land owners to those environmental health hazards. Those  
9 hazards should be completely identified with specificity so the County can adequately assess those  
10 activities' impact on the environment. Marijuana is toxic to livestock, particularly horses. Marijuana  
11 is also harmful to humans. This activity actually produces recognized and known environmental  
12 health hazards. Yet the Applicants propose no mitigation measures to deal with the environmental  
13 health hazards. The County should require an Environmental Impact Statement to identify these  
14 hazards and develop appropriate options for minimizing the impact on the environment, including  
15 not conducting the activity.

### 16 **3.6 Checklist Section B.8.a**

17 In response to the question about current use of the site and adjacent properties, the  
18 Applicants indicate the adjacent properties are in hay production and there will be no effect on  
19 neighboring properties. This is a false answer. The Applicants are correct that most of the adjoining  
20 property is used for the production of Timothy Hay. Other properties in the area are used for a  
21 variety of equine activities and other livestock uses. The impact on adjoining properties use for  
22 Timothy Hay production is significant. In addition, this activity will decrease the value of property  
23 in the surrounding area. Additionally, marijuana on the property is toxic to horses and other  
24 livestock and domestic pets. Again, because the Applicants seek to produce and process a known  
25



1 hazardous product, a full Environmental Impact Statement that analyzes each of these risks should be  
2 required.

### 3 **3.7 Checklist Section B.8.L and B.11**

4 The Applicants also indicate all lighting is “down lighting” and there would be “[s]ome  
5 greenhouse light in early morning hours or early evening hours, never past 9PM.” Then the  
6 Applicants indicate “Down Lighting on security.” This is another instance where the Applicants  
7 should be required to produce a copy of their WSLCB licenses to ensure the security measures  
8 imposed by the WSLCB, which will include fencing and lighting, are consistent with what the  
9 Applicants are representing in the SEPA Checklist. Without a review of security requirements  
10 imposed by the WSLCB, the County does not have all the information necessary to adequately assess  
11 the impact on the environment and proposed meaningful mitigation measures.

### 12 **3.8 Checklist Section B.10**

13 The Applicants indicate there will be no impact on the aesthetics of the area. That is not  
14 accurate. The area is predominately used for agricultural activities. The 8-foot high metal fence,  
15 which has already been built, is aesthetically inconsistent with the agrarian rural style of the area.

### 16 **3.9 Checklist Section 14**

17 The Applicants indicate access to their property is from Thrall Road and Emerson Road. The  
18 Applicants indicate they have adequate parking but they do not identify how many stalls or how  
19 many parking spaces they have. The Applicants admit they do not know what the traffic volume will  
20 be for their proposed activity but that at least some of it will be commercial traffic. Then the  
21 Applicants indicate “[b]asic counting techniques were used on estimates,” yet they do not provide  
22 any estimates. What the Applicants fail to disclose is they have to cross property they do not own in  
23 order to access the County road. The Applicants’ easement to access that property is 20 feet wide  
24 and is not designed for commercial purposes. Thus, while the property may be accessible to County  
25 roads the legal entitlements through which the property can access those County roads do not  
26

1 authorize this type of activity and if this type of activity occurs will result in an overburdening of the  
2 easement.

### 3 **3.10 Checklist Section 15**

4 The Applicants indicate the project will not result in an increased need for public services.  
5 That is not accurate. The Applicants are proposing to grow and process a drug that for at least 100  
6 years has been illegal under State law and remains illegal under federal law. Just because the voters  
7 in 3 or 4 counties in the State of Washington were able to make marijuana legal in the State of  
8 Washington does not affect the fact that the growing, processing and use of marijuana (like any  
9 drug), results in an increase in crime and criminal activity that has historically overtaxed law  
10 enforcement not only in this County, but also throughout this state and this country. For the  
11 Applicants to cavalierly say there will be no need for increase law enforcement activity associated  
12 with this marijuana growing and processing activity is simply inaccurate and ignores the effect of this  
13 drug on our society.

#### 14 **4. The MDNS fails to meet the substantive and procedural requirements of SEPA.**

15 The County's decision violates SEPA's substantive provisions by failing to adequately  
16 disclose, analyze and mitigate for likely significant adverse impacts, including, but not limited to  
17 water, environmental health, transportation, aesthetics, air pollution, light and glare. Areas where the  
18 SEPA MDNS mitigation measures are inadequate include, but are not limited to, the following:

19 **4.1** SEPA MDNS condition IA is not a mitigating condition. It is a partial  
20 restatement of the law but provides no mitigation for negative impacts on the environment.

21 **4.2** SEPA MDNS condition IB does not mitigate impacts to the environment.  
22 Without knowing where water will come from, the County has no way to assess the impact on the  
23 environment, let alone determine whether the impact can be mitigated or whether the mitigating  
24 conditions imposed by the County actually mitigate for impacts to the environment as a result of  
25 water.  
26

1           4.3    SEPA MDNS condition IIC fails to mitigation against impacts to the  
2 environment because it only requires water to be legally obtained and does not examine nor mitigate  
3 against the impact of the water use on the environment.

4           4.4    SEPA MDNS condition III is wholly inadequate because it fails to address  
5 the increase in need for law enforcement services this activity will require.

6           4.5    SEPA MDNS condition IV is also inadequate because it:

7               a.     requires light be shielded and directed downward; and

8               b.     requires lighting consistent with Liquor Control Board issued license.

9 Without knowing what those requirements are, there is no way to know if they will impact the  
10 environment let alone whether they will mitigate against adverse impacts to the environment; and

11              c.     the landscaping plan without detail should not be done after the fact.

12 There is no way now to know what the plan consists of and thus no way to know whether it will in  
13 fact mitigate for impacts on the environment. It should be done now so that its impact on the  
14 environment is known.

15           4.6    SEPA MDNS VIII conditions require compliance with the law and obtaining  
16 a permit. Without the permit being issued in advance of the SEPA decision, there is no way to know  
17 if that permit will mitigate for or against impacts to the environment.

18           4.7    The SEPA mitigating conditions wholly ignore issues created as a result of  
19 toxic marijuana dust emanating from the facility and impacting surrounding land uses, including the  
20 raising of timothy hay, livestock activities and human health concerns.

21           **5.     An MDNS can only be issued if sufficient development limitations and**  
22 **mitigations have been applied to reduce the impacts of this proposal below the**  
23 **threshold of significance. WAC 197-11-330.**

24           Here, the MDNS includes no conditions to mitigate the long-term impacts on the land, air,  
25 roads, public services and water of the proposal to reduce their significance. See also, Sections 3 and  
26 4 above.

- 1           **6. Under SEPA, if sufficient mitigation cannot be applied to reduce the probably**  
2           **impacts of a proposal below the threshold of significance, a Determination of**  
3           **Significance (“DS”) must be issued and an Environmental Impact Statement**  
4           **(“EIS”) must be prepared. WAC 197-111-330.**

5           The County’s MDNS does not reduce the impacts to a point where the impacts are fully  
6           mitigated. As a result an EIS should be required. See also, Sections 3 and 4 above.

- 7           **7. The Appellants reserve the right to identify additional issues with the County’s**  
8           **SEPA decision upon review of the full record.**

9           The Appellants have prepared this appeal without having an opportunity to review the full  
10           record the County relied on to make its SEPA decision. The Appellants reserve the right to amend or  
11           supplement and add to the basis for this appeal upon review of the entire record.

- 12           **8. The decision on the underlying land use action, an administrative conditional**  
13           **use permit, must be appealed separately.**

14           Kittitas County issued the SEPA MDNS on April 9, 2015. The County’s decision on the  
15           administrative conditional use permit, which triggered the SEPA process, was decided upon by the  
16           Kittitas County Community Development Services on April 22, 2015 when it issued its Findings of  
17           Fact, Decision and Conditions of Approval. That decision will be appealed separately. The process  
18           to be followed by County Staff will require citizens to file two appeals related to the same land use  
19           action, costing two appeal fees and resulting in duplication, unnecessary processes that Chapter  
20           36.70B RCW was intended to prevent. For a specific bases for the Appellants’ objection to the  
21           underlying administrative conditional use permit, please see the Appellants’ comment letter with  
22           attached Exhibits A-II and supplemental comment letter with attached Exhibits 1-2, both dated  
23           December 24, 2014. The comment letters are part of the record below on SEPA and on the  
24           underlying administrative conditional use permit application.

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

26           As to the SEPA, the MDNS should be reversed and the matter remanded back to Kittitas  
County for the issuance of a Determination of Significance and a full Environmental Impact  
Statement.


1 The Appellants also are opposed to the underlying land use sought to be approved in the  
2 conditional use permit application, do not believe it is allowed and that the Administrative  
3 Conditional Use Permit should be denied.

4 **e. The Appeals Fee.**

5 Check No. 4549 in the amount of \$500.00 made payable to Kittitas County Board of  
6 Commissioners.

7  
8 Respectfully submitted this 22 day of April, 2015.

9 LATHROP, WINBAUER, HARREL,  
10 SLOTHOWER & DENISON L.L.P.

11   
12 \_\_\_\_\_  
13 Jeff Slothower, WSBA #14526  
14 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 22nd day of April 2015.



Heather L. Hazlett  
Legal Assistant to Jeff Slothower



KITTITAS COUNTY COMMUNITY DEVELOPMENT SERVICES

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

CDS@CO.KITTITAS.WA.US

Office (509) 962-7506

Fax (509) 962-7682

"Building Partnerships – Building Communities"

NOTICE OF SEPA ACTION

**TO:** Interested County Departments & Agencies with Jurisdiction  
Interested Parties  
Applicant

**FROM:** Kaycee Hathaway, Staff Planner

**DATE:** April 9, 2015

**SUBJECT:** McDonald Conditional Use Permit (CU-14-00005)

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Please find the attached Mitigated Determination of Non Significance (MDNS) for the above referenced project. A Notice of Application for the submitted application was mailed on December 11, 2014.

NOTICE IS HERBY given that pursuant to 43.21C RCW, Kittitas County Community Development Services did on April 9, 2015 make a Mitigated Determination of Non-Significance (MDNS) for the McDonald Administrative Conditional Use Permit (CU-14-00005). The proposal is for an Administrative Conditional Use permit for farming operations related to KCC 17.15.060.1 A – Marijuana processing and production to operate under Washington State Liquor Control Board (WSLCB) I-502 . The operation is located on a 15.03 acre parcel which is zoned Commercial Agriculture. The subject parcel is 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. The complete application file may be viewed at Kittitas County Community Development Services, 411 N. Ruby St. Suite 2, Ellensburg, WA 98926.

Any action to set aside, enjoin, review, or otherwise challenge such administrative SEPA action on the grounds of noncompliance with the provisions of 43.21C RCW shall be commenced on or before Friday April 24, 2015 at 5:00 p.m. to the Kittitas County Board of Commissioners, Rm. 108, County Courthouse, Ellensburg, WA 98926. Appeals of SEPA threshold determinations shall be before the Hearing Examiner who will consider the agency decision and any environmental determinations made, with the exception of the appeal, if any, of a threshold determination of significance.

If you have any questions please contact Community Development Services at (509) 962-7079, Kaycee Hathaway, Staff Planner.



## KITTTITAS COUNTY COMMUNITY DEVELOPMENT SERVICES

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

CDS@CO.KITTTITAS.WA.US

Office (509) 962-7506

Fax (509) 962-7682

### State Environmental Policy Act MITIGATED DETERMINATION OF NONSIGNIFICANCE

- Description:** TJ McDonald authorized agent for Mary Gonzalez, landowner has submitted a administrative conditional use application for farming operations related to KCC 17.15.060.1 A – Marijuana processing and production to operate under Washington State Liquor Control Board (WSLCB) I-502 . The operation is located on a 15.03 acre parcel which is zoned Commercial Agriculture.
- Proponent:** TJ McDonald authorized agent for Mary Gonzalez authorized agent for the Mary Robinson Trust, landowner.
- Location:** The project is located on a 15.03 acre parcel which is zoned Commercial Agriculture, 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.
- Lead Agency:** Kittitas County Community Development Services

The lead agency for this proposal has determined that the proposal will not have a probable significant adverse impact on the environment. An Environmental Impact Statement (EIS) is not required under RCW 43.21C.030 (2) (c) and WAC 197-11. This decision was made after review of a SEPA environmental checklist and other information on file with the lead agency, after considering voluntary mitigation measures which the lead agency or the applicant will implement as part of the proposal, and after considering mitigation measures required by existing laws and regulations that will be implemented by the applicant as part of the Kittitas County permit process. The responsible official finds this information reasonably sufficient to evaluate the environmental impact of this proposal. This information is available to the public on request.

The lead agency has determined that certain mitigation measures are necessary in order to issue a Mitigated Determination of Non-Significance (MDNS) for this proposal. Failure to comply with the mitigation measures identified hereafter will result in the issuance of a Determination of Significance (DS) for this project. The mitigation measures include the following:

#### 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.

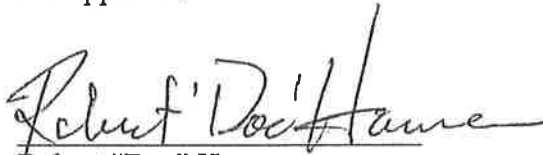
- C. All buildings or planting operations requiring security by State law must be setback at least 60 feet from any property boundary.

**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.

The above stated mitigation conditions listed above will be provided within conditions of the decision of the conditional use permit approval.

**Responsible  
Official:**

  
Robert "Doc" Hansen

**Title:**

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 9, 2015

This Mitigated DNS is issued under WAC 197-11-355 and WAC 197-11-390; the lead agency will not act on this proposal for 10 working days. Any action to set aside, enjoin, review, or otherwise challenge this administrative SEPA action's procedural compliance with the provisions of Chapter 197-11 WAC shall be commenced on or before 5:00 pm, April 24, 2015.

Pursuant to Chapter 15A.04.020 KCC, this MDNS may be appealed by submitting specific factual objections in writing with a fee of \$500.00 to the Kittitas County Board of Commissioners, Kittitas County Courthouse Room 110, Ellensburg, WA 98926. Timely appeals must be received within 10 working days, or no later than 5:00 PM, April 24, 2015. Aggrieved parties are encouraged to contact the Board at (509) 962-7508 for more information on appeal process.