

KITTITAS COUNTY LAND USE HEARING EXAMINER

IN THE MATTER OF CU-15-00007 NW Chimpanzee Sanctuary))))	RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND CONDITIONS OF APPROVAL
---	------------------	--

THIS MATTER having come on for hearing in front of the Kittitas County Hearing Examiner on September 8, 2016, the Hearing Examiner having taken evidence hereby submits the following Recommended Findings of Fact, Conclusions of Law, Decision and Conditions of Approval as follows:

I. RECOMMENDED FINDINGS OF FACT

1. John B. Mulcahy, on behalf of the Northwest Chimpanzee Sanctuary, submitted a request to operate a Central Washington University satellite facility where activities including housing and instruction of undergraduate and graduate students, housing and medical care of chimpanzees, and public education will occur. The facility is located on 26.55 acre parcel which is zoned Forest and Range and has a Land Use Designation of Rural Working.

2. The proposal is located approximately 58 feet east off State Road 10, in a portion of 11, T19N, R16E, WM in Kittitas County. Assessor's map number 19-16-11000-0006.

3. Site Information:

Total Property Size:	26.55 acres
Number of Lots:	1; no new lots are being proposed
Domestic Water:	Existing Group B system, may need reclassification to Group A
Sewage Disposal:	individual septic, new system may be required
Power/Electricity:	Puget Sound Energy
Fire Protection:	Fire District 7- Cle Elum
Irrigation District:	None

4. Site Characteristics: Chimpanzee Sanctuary and Open Spaces

North:	Existing sanctuary buildings, staff lodging, pond.
South:	Open space, but with BPA lines and easements.
East:	Existing outdoor chimpanzee recreation facility, slopes toward southeast.
West:	Wooded area, state road 10.

5. The Comprehensive Plan designation is "Rural Working."

6. The subject property is zoned "Forest and Range" which allows for the proposed Central Washington University satellite facility as a conditional use.
7. A zoning conditional use permit application and SEPA checklist were submitted to Community Development Services on December 29th, 2015. The application was deemed complete on April 25, 2015. The Affidavit of Site Posting in accordance with KCC 15A.03.110 was received by CDS on March 8th, 2016. The Notice of Application was issued on June 27th, 2016. This notice was published in the official county paper of record and was mailed to jurisdictional government agencies, adjacent property owners and other interested parties. The last day to submit written comments was on July 12th, 2016.
8. 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 (DNS) was issued on August 8th, 2016. The appeal period ended on August 23rd, 2016 at 5:00 p.m. No appeals were filed.
9. This proposal is consistent with the provisions of KCC Title 17A, Critical Areas. Staff conducted an administrative critical area review in accordance with KCC 17A. Several critical areas items were found during review:
 - A) A Bonneville Power Administration right of way crosses the southern pasture,
 - B) Class II wetlands occupy the north and south ends of the property, measuring 10,518 and 32,497 square feet in area, respectively according to Wetlands Inventory GIS maps.
 - C) Hazardous slopes in excess of 35% incline occupy the east side.
 - D) The parcel falls within the Swauk Prairie Deer Winter Range.
 - E) The proposed access construction will cross BPA buffers. However, the applicant and BPA have already entered into an agreement for monitoring of construction for a shared access, and the agreed plan between the applicant and BPA is shown in Exhibits 15 and 41.
 - F) The Washington Department of Ecology believes that wetlands may in fact extend further to the northwest than the Wetland Inventory suggests, and recommends wetland reconnaissance at a minimum to determine the actual extent of the wetland. Further, Ecology recommends a wetland delineation report and mitigation if more extensive wetlands are found.
10. This proposal is consistent with the provisions of KCC Title 20, Fire and Life Safety, as conditioned.
11. The following agencies and departments provided comments during the comment period: WA Department of Health, KC Public Works, and the Washington Department of Transportation. The Washington State Department of Ecology submitted late comments. Additionally, comments were provided during a pre-application meeting with Kittitas County staff, which was held on May 27, 2015. These comments have been considered and included as conditions

of approval to address these agency concerns.

12. No public comments were submitted for this proposal at the time of staff review.
13. The Kittitas County Community Development Services recommended approval of this preliminary plat, subject to the recommended conditions of approval.
14. An open record public hearing after due legal notice was held on September 8, 2016.
15. Admitted into the record were the following exhibits:
 - 15.1 Exhibit 1. Pre-Application Meeting Worksheet with Building, Fire, and Public Works Comments;
 - 15.2 Exhibit 2. Zoning Conditional Use Permit;
 - 15.3 Exhibit 3. SEPA Checklist;
 - 15.4 Exhibit 4. Notice of Application Publication;
 - 15.5 Exhibit 5. Notice of Application;
 - 15.6 Exhibit 6. Receipt;
 - 15.7 Exhibit 7. Project Narrative;
 - 15.8 Exhibit 8. Site Plan;
 - 15.9 Exhibit 9. CWU Satellite Facility Information;
 - 15.10 Exhibit 10. Additional Information;
 - 15.11 Exhibit 11. Affidavit of Posting, Needs Picture;
 - 15.12 Exhibit 12. Affidavit of Posting, Signed;
 - 15.13 Exhibit 13. Affidavit of Posting Picture;
 - 15.14 Exhibit 14. Applicant Email;
 - 15.15 Exhibit 15. Revised Access Plan;
 - 15.16 Exhibit 16. Deemed Complete;
 - 15.17 Exhibit 17. Request for Comment;
 - 15.18 Exhibit 18. Transmittal of Comments;
 - 15.19 Exhibit 19. Transmittal of Comments Email;
 - 15.20 Exhibit 20. Health Email;
 - 15.21 Exhibit 21. Health Comment;
 - 15.22 Exhibit 22. Washington Department of Transportation Email;
 - 15.23 Exhibit 23. Washington Department of Transportation Comment Letter;
 - 15.24 Exhibit 24. Public Works Comment Letter;
 - 15.25 Exhibit 25. BPA Lines and Right of Way;
 - 15.26 Exhibit 26. Wetlands;
 - 15.27 Exhibit 27. Streams and Shorelines;
 - 15.28 Exhibit 28. Hazardous Slopes;
 - 15.29 Exhibit 29. Priority Habitats;
 - 15.30 Exhibit 30. CWU Letter;
 - 15.31 Exhibit 31. Further Comments from DOH and PH;
 - 15.32 Exhibit 32. Ecology Comments;
 - 15.33 Exhibit 33. Environmental Health Comments;
 - 15.34 Exhibit 34. Nearby Land Use Projects;
 - 15.35 Exhibit 35. Streams and Proposed Additions;
 - 15.36 Exhibit 36. Zoning;

- 15.37 Exhibit 37. BPA Right of Way and Proposed Additions;
 - 15.38 Exhibit 38. Existing Access;
 - 15.39 Exhibit 39. Interior of Facility;
 - 15.40 Exhibit 40. Vertical Air Photo;
 - 15.41 Exhibit 41. Agreed BPA Access Plan;
 - 15.42 Exhibit 42. Originally Proposed Access and BPA Right of Way;
 - 15.43 Exhibit 43. North End of Property Wetland Buffer;
 - 15.44 Exhibit 44. SW Wetland with Buffer;
 - 15.45 Exhibit 45. Hazardous Slopes
 - 15.46 Exhibit 46. Mitigated Determination of Nonsignificance; and
 - 15.47 Exhibit 47. Staff Report.
16. Appearing and testifying on behalf of the applicant was John Mulcahy. Mr. Mulcahy testified that he was an agent authorized to appear and speak on behalf of the applicant and property owner. Mr. Mulcahy indicated that all of the proposed conditions of approval were acceptable to the applicant and property owner.
17. No member of the public testified at the hearing.
18. The proposal is consistent with the goals and policies of the Kittitas County Comprehensive Plan. As referenced above in Section IV, this proposal is located within the Rural Working Land Use designation and the following Comprehensive Plan GPOs apply to this proposal: GPO 2.3, 2.84, 8.1, 8.8A, , and 10.8. It is clear, based on these GPOs Kittitas County values its rural character, agricultural activities, private property rights, and economic growth that support the rural nature of the area. As conditioned, this project is consistent with the County's Comprehensive Plan and rural character of the area.
19. As conditioned, this project is consistent with the provisions of KCC Title 12. The Kittitas County Department of Public Works requires the applicant to submit a Transportation Concurrence application. The Applicant will also need to comply with all WSDOT requirements. WSDOT finds that the existing access does not provide the minimum required road approach sight distance of 495 feet. A new access to the south must be constructed and the existing approach must be removed. In addition, a new Access Connection Permit must be obtained. A shared access between the Sanctuary and Bonneville Power Administration proposed to fulfill this requirement (Exhibits 23, 24 and 41).
20. As conditioned, this project is consistent with the provisions of KCC Title 13. The Hart Ranch water system serves the property, and is classified as a Group B Water System. The system has three water connections, none of which currently have Washington Department of Health Approval. In addition, application may be required to reclassify the system to a Group A system. A capacity analysis by a State of Washington licensed professional engineer is required. As per the Kittitas County Public Works, a storm water plan in accordance with Eastern Washington Storm Water Management Manual by a licensed State of Washington Engineer is required. Kittitas County Public Health requires a nitrate test (Exhibits 20, 21, 31).
21. As conditioned, this project is consistent with the provisions of KCC Title 14. The CDS Building Department requires that all structures be subjected to full engineering for lateral, gravity, and fire/life safety. Restrooms, parking, and meeting facilities must be accessible under

the Americans With Disabilities Act.

22. This proposal is consistent with the Kittitas County Zoning Code 17.15 and 17.56. Public and private schools are permitted within the Forest and Range Zone, and the facility is an extension of Central Washington University explained in a letter from the university (Exhibits 30, 36). The project meets all parcel size and setback requirements for the zone.
23. This proposal, as conditioned, is consistent with the Kittitas County Zoning Code for Conditional Uses KCC Title 17.60A. The proposed conditional use will be adequately served by rural levels of service. The following are the criteria and responses supporting approval of a conditional use permit per KCC 17.60A.015 review criteria:
 - 23.1 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.
 - 23.1.1 Applicant Response:

“A modest expansion of the sanctuary, as outlined in this application, will allow us to better serve the students of Central Washington University (CWU) who work and study at the sanctuary for course credit as part of their undergraduate and graduate degrees in Primate Behavior and Ecology. The Primate Behavior program at CWU draws students from across the country and around the world to live and study in Kittitas County, and this expansion will improve the quality and reputation of the program. It will also allow us to improve our public education program, which will be open on a limited basis to the general public, including all county residents, by appointment.

The expansion will not affect public health, peace, or safety, as Chimpanzee Sanctuary Northwest (CSNW) has already demonstrated a commitment to safety and a dedication to the highest standards in our operations. Because the property is elevated above the roadway and mostly hidden behind a stand of pines, the new buildings will not significantly impact the character of the neighborhood”.
 - 23.1.2 Staff agrees with the applicant’s response. Although the use is not specifically agricultural in nature, its educational value qualifies as a school under KCC 17.15.060. Also, the new project additions will be set back from State Road 10, with vegetation blocking views from the road, and therefore not interfering overall rural character (Exhibit 40).
 - 23.2 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.

23.2.1 Applicant Response:

“The expansion will create only a very limited increase in traffic from staff, student interns, and the general public. The sanctuary is already served by the Kittitas County Sheriff’s Office and KCFD#7. No irrigation is required. Refuse disposal will continue to be handled by Waste Management. An existing well will service the new structures along with septic systems for waste. There will be no impact on schools other than the possibility of one family living on site.”

23.2.2 Staff agrees with this statement, considering that the proposed action is an addition to an already existing facility, and that Sherriff’s Office, fire, water, and waste disposal service already reaches the site. Agreement with this statement is with the understanding that all Public Works, WSDOT, County Building Department, and Fire Marshall’s conditions are followed.

23.3 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.

23.3.1 Applicant Response:

“The proposed facilities will apply with all applicable codes”.

23.3.2 As described in other sections of this staff report, this proposal complies and is compatible with the Kittitas County Comprehensive Plan and Kittitas County codes as conditioned. Relevant agencies and departments have reviewed the application and provided conditions under Titles 12, 13, 14, 17.29, and 17.60A. The applicant must also comply with any and all codes not listed in agency, county department, or CDC comments.

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

23.4.1 Applicant Response:

“As described in the accompanying SEPA form, the project will mitigate all erosion that takes place during excavation for slab construction, and a full storm water plan will be submitted along with building permit applications”.

23.4.2 Staff agrees with applicant’s response, but adds that other mitigation will be required as per conditions set by Public Works and WSDOT. Public Works also requires a Transportation Concurrence application, while WSDOT requires a new access to ensure proper visibility (Exhibits 23, 24).

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

23.5.1 Applicant Response:

“Neighboring properties will not be affected by this project, as it will create only marginally increased use of the property”.

23.5.2 According to drawings submitted with the application, the project involves the addition of 6 to 10 parking spaces, a new office and visitor center, and two student intern boarding facilities. Staff agrees with the applicant’s statement that these additions qualify as marginal increases to the intensity of use at the site (Exhibits 8, 15, 42).

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

23.6.1 Applicant Response:

“Animal husbandry is well suited to the Forest and Range Zone. However, chimpanzee husbandry is much more labor-intensive than traditional animal agriculture, and therefore it requires more staff, interns, and volunteers, and they in turn require additional work areas. Chimpanzee husbandry also provides a unique opportunity to work in tandem with CWU for our mutual benefit. The educational and office uses of the new facilities will be a relatively small part of the overall land use”.

23.6.2 Staff agrees with the applicant’s response. As discussed in other sections of this staff report, the proposed use is consistent with the Forest and Range zoning designation.

23.7 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.

23.7.1 Applicant Response:

“The proposed project will preserve open space, maintain wildlife habitat, and will not require the extension of any urban governmental services. It will be consistent with the rural character that the County seeks to maintain”.

23.7.2 Staff agrees with the applicant’s response. As discussed in other sections of this staff report, the proposed use is consistent with the goals, policies, and objectives of the Kittitas County Comprehensive Plan.

Preserves “rural character” as defined in the Growth Management Act (RCW 36.70A.030(15));

24. Preserves “rural character” as defined in the Growth Management Act (RCW 36.70A.030(15));

24.1 Applicant Response:

The proposed project will preserve open space, views of the mountains and forest, and will blend well with surrounding agricultural enterprises.

- 24.2 Staff agrees with the applicant's response. As site plans and aerial photos show, the property edges contain tress on the western and eastern edges, with pasture to the south. With the exception of the access, all proposed additions will occur well within the perimeter of the property. Therefore, changes to the overall character of the property are minimal.
25. Requires only rural government services; and
- 25.1 Applicant Response:
The proposed project will not require any services beyond those already provided.
- 25.2 Staff does not anticipate an increased need for any rural government services.
26. Does not compromise the long term viability of designated resource lands.
- 26.1 Applicant Response:
The proposed project will reduce pastureland by approximately one acre, and will maintain traditional agriculture on the remainder.
- 26.2 Staff agrees with the applicant's response. The subject property is designated as rural working lands and not as resource lands. The proposal is compatible with the existing character of the area and meets the rural element of Kittitas County's Comprehensive Plan and zoning regulations, thereby not compromising the long term viability of designated resource lands.
27. This proposal is consistent with the provisions of KCC Title 17A, Critical Areas. Staff conducted an administrative critical area review in accordance with KCC 17A. Several critical areas items were found during review.
- 1) A Bonneville Power Administration right of way crosses the southern pasture.
 - 2) Class II wetlands occupy the north and south ends of the property, measuring 10,518 and 32,497 square feet in area, respectively.
 - 3) GIS layers indicate Type 9 "unknown" stream running through the property.
 - 4) Hazardous slopes in excess of 35% incline occupy the east side.
 - 5) The parcel falls within the Swauk Prairie Deer Winter Range.
 - A) Bonneville Power Administration and the applicant have gone one through all permitting processes, and have agreed to share a new access to be built (Exhibit 25, 41, 42).
 - B) On the revised access plan, the shared BPA/NWCS access may cross 40 foot wetland buffers. Ecology recommends wetland reconnaissance and possibly wetland reporting and mitigation. Ecology also requires an NPDES

Stormwater Construction General Permit (Exhibits 26, 43, 44).

- C) According to GIS layers maintained by the Washington Department of Natural Resources, a Type 9 unknown stream runs through the property. Proposed buildings cross a 15 foot buffer around the stream. Washington Department of Natural Resources Streams GIS layers are derived from Digital Elevation Models using slope and aspect to estimate probable locations of flow accumulation. Modeled streams must be confirmed in the field. On site and air photo reconnaissance shows little evidence of a stream. If a stream is confirmed at the site, further analysis will be required to determine if the stream is regulated (Exhibits 27, 35, 38, 39).
 - D) Although a hazardous slope exists on the property, the new additions will all be at least 200 feet from those slopes (Exhibits 28, 45).
 - E) The Swauk Prairie Deer Winter Range covers the entire property.
- 28. This project is consistent with the provisions of KCC Title 20. The applicant is working with Kittitas County Fire Marshal's office regarding necessary fire safety requirements (Exhibit #1). Fire and life safety requirements will be addressed during the building permit process.
 - 29. The proposal is appropriate in design, character and appearance with the goals and policies for the land use designation in which the proposed use is located.
 - 30. The proposed use will not cause significant adverse impacts on the human or natural environments that cannot be mitigated by conditions of approval.
 - 31. The proposal will be served by adequate facilities including access, fire protection, water, storm water control, and sewage disposal facilities.
 - 32. Any Conclusion of Law that is more correctly a Finding of Fact is hereby incorporated as such by this reference.

II. RECOMMENDED CONCLUSIONS OF LAW

- 1. The Hearing Examiner has been granted authority to render this decision.
- 2. As conditioned, the proposed use is consistent with the intent, purposes and regulations of the Kittitas County Code and Comprehensive Plan.
- 3. As conditioned, the proposal does conform to the standards specified in Kittitas County Code.
- 4. As conditioned, the use will comply with all required performance standards as specified in Kittitas County Code.
- 5. As conditioned, the proposed use will not be contrary to the intent or purposes and regulations of the Kittitas County Code or the Comprehensive Plan.

6. As conditioned, this proposal does comply with Comprehensive Plan, the Shoreline Master Program, the zoning code and other land use regulations, and SEPA.
7. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.

III. RECOMMENDED DECISION

Based on the above Findings of Fact and Conclusions of Law, Application CU-15-00007 is hereby recommended to be **APPROVED** subject to the following Conditions of Approval.

IV. RECOMMENDED CONDITIONS OF APPROVAL

All Conditions of Approval shall apply to the applicant, and the applicant's heirs, successors in interest and assigns.

1. All conditions imposed herein shall be binding on the "Applicant," which terms shall include the owner or owners of the property, heirs, assigns and successors.
2. The project shall proceed in substantial conformance with the plans and application materials on file dated December 29th, 2015, and subsequent information included in the complete file index except as amended by the conditions herein.
3. The applicant is responsible for compliance with all applicable local, state and federal rules and regulations, and must obtain all appropriate permits and approvals.
4. All development, design and construction shall comply with Kittitas County Code and the most current version of the International Fire & Building Codes. The gate to the facility will comply with KCC 20.03.020.
5. All remodel and change of use for the structures will require building permit approval through CDS prior to issuance of the final conditional use permit.
6. The access must be moved south so that required sight distance of 495 feet is met. In meeting this requirement, the applicant has agreed to build a shared access with Bonneville Power Administration.
7. A new Access Connection Permit must be obtained. The property owner must contact the WSDOT South Regional Office to apply for the permit. Plans have been revised depicting the new access.
8. A Transportation Concurrency application will be required for the proposal. Applicant can contact Kittitas County Public Works for information on the Transportation Concurrency application.
9. The public water system serving this proposal shall be subjected to a Capacity Analysis performed by a Washington State licensed professional engineer prior to issuance of the final conditional use permit.

10. The water system is currently classified as a Group B water system. Addition of new users may require reclassification to a Group A system. If required, application for reclassification must be made to the Washington Department of Health.
11. Any new water uses shall be obtained from a water budget neutral source.
12. None of the three water connections currently have Washington Department of Health Approval. Application shall be made with the Washington Department of Health for approval.
13. Kittitas County Public Health requires an updated nitrate test.
14. GIS data indicate a Type 9 “unknown” stream on the parcel. Further analysis shall be required to determine if the stream is regulated.
15. The Washington Department of Ecology states that wetlands shown on wetland inventory maps may in fact extend further northwest than indicated in National Wetland Inventory GIS maps. The proposed new road approach may intersect potential wetland areas. A wetland delineation and mitigation report will be required and reviewed by the Department of Ecology. Ecology offers assistance in wetland reconnaissance to determine whether such reports are required.
16. Ecology also requires the NPDES Construction Stormwater General Permit. The permit requires that all activities be disclosed on the SEPA checklist, and review may take as long as 60 days if undisclosed activities are discovered. The permit requires a Stormwater Pollution Prevention Plan to be prepared and implemented all construction. The plan must show that measures will prevent soil runoff into surface water, and will be in place prior to any clearing, grading, or construction.
17. A Stormwater Plan prepared by a State of Washington Licensed engineer is required.
18. The project will follow the goals and policies of the Kittitas County Comprehensive Plan.
19. The project will comply with KCC Title 12, Roads and Bridges.
20. The proposal will comply with KCC Title 13, Water and Sewers.
21. The project will comply with KCC Title 14, Buildings and Construction.
22. The project will comply with KCC Title 17.29, Forest and Range zoning.
23. The project will comply with KCC Title 17.60A, Conditional Uses and meets the criteria of KCC 17.60A.015 (1-7), as conditioned.
24. The project will maintain rural character of the area by observing all setbacks depicted in the site plan.
25. Hazardous slopes in excess of 35 % exist on the property. All new additions will be at least 200 feet from these slopes, as indicated on the site plan and staff maps.

26. All buildings and structures shall require full engineering for lateral gravity and fire life-safety.
27. All restroom, meeting, and parking facilities shall be ADA accessible.
28. All structures must have adequate fire apparatus access.
29. Fire sprinklers shall be required in the new office building.
30. Exterior siding and materials shall meet with wildland-urban interface requirements.
31. Any gates must meet all standards outlined in KCC 20.03020.
32. Should ground disturbing or other activities 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 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.
33. All outdoor lighting shall be shielded and directed downward to minimize the effect to nearby residential properties and SR 10.
34. Any signage for the proposed use will require a sign permit as per KCC 17.70 and may not be located in State or County right of way.
35. The project will continue to be served by existing fire, school district, and Waste Management services.

Dated this 14th day of September, 2016

KITTITAS COUNTY HEARING EXAMINER



Andrew L. Kottkamp