

**KITTITAS COUNTY  
LAND USE HEARING EXAMINER**

<b>IN THE MATTER OF</b>	)	<b>FINDINGS OF FACT,</b>
	)	<b>CONCLUSIONS OF LAW,</b>
<b>CU-20-00001</b>	)	<b>CONDITIONS OF APPROVAL</b>
<b>Westdale Farm Labor Shelter</b>	)	<b>AND DECISION</b>

THIS MATTER having come on for hearing in front of the Kittitas County Hearing Examiner on January 14, 2021, the Hearing Examiner having taken evidence hereby submits the following Recommended Findings of Fact, Conclusions of Law and Decision:

**I. FINDINGS OF FACT**

1. The proposed project would add four manufactured homes for the purposes of seasonal/temporary farm labor shelter. The proposed farm labor shelters will be utilized primarily between the months of January and August. The farm labor shelters are an allowed use in the Agriculture 20 zone with a conditional use permit.
2. Location: Parcel 12701 located at 4900 Manastash Rd, Ellensburg, WA. In the NW1/4 of Section 18, Township 17N, Range 18E.
3. Site Information:

Total Property Size:	31.73 Acres
Number of Lots:	1
Domestic Water:	Well
Sewage Disposal:	Onsite septic
Fire Protection:	Fire District 2 (KVFR)
Irrigation District:	KRD
4. Site Characteristics:

North:	Primarily privately-owned single family residential and agriculture uses
South:	Private and State lands, undeveloped and residential uses
East:	Primarily privately-owned single family residential and agriculture uses
West:	Primarily privately-owned single family residential and agriculture uses.
5. Access: The site is accessed from Manastash Rd, approximately 3.65 miles west of the city of Ellensburg.
6. The parcels involved in this proposal are in a land use designation of Rural Working and zoning designation of Agriculture-20. The proposed project is classified as a "Farm Labor Shelter." Farm Labor Shelters are an allowed use within Agriculture-20 Zone under KCC 17.15.060-1 with a conditional use permit when consistent with footnote #4 of this section. The footnote

outlines five (5) criteria for Farm Labor Shelter uses within the Agriculture-20 Zone. These criteria are examined below.

7. A conditional use permit application for Farm Labor Shelter (CU-20-00001) was submitted to Kittitas County Community Development Services department on June 4, 2020. The application was deemed complete on July 1, 2020. The site was posted in accordance with KCC 15A.03.110 on July 16, 2020.
8. A notice of application for the Westdale LLC Farm Labor Shelter Conditional Use Permit (CU-20-00001) was mailed and/or emailed to adjacent landowners located within 500 feet of any portion of the boundary of the proposal's tax parcels & applicable agencies. Notice was given to and published in the official newspaper of record for Kittitas County, and notice was posted to the Kittitas County Website on July 16, 2020, all in conformance with the Kittitas County Project Permit Application Process (Title 15A). The comment period concluded on July 30, 2020.
9. The Kittitas County Comprehensive Plan has established specific goals and policies associated with Rural Resource lands. The Rural Working land use designation "encourage farming, ranching and storage of agriculture products, and some commercial and industrial uses compatible with the rural environment and supporting agriculture and/or forest activities." The following goals and policies guide activities on Rural Resource lands throughout the County. These goals and policies were developed in response to identified needs within the county, and support the County Wide Planning Policies:
  - 9.1 RR-G2: Opportunities should exist for traditional rural lifestyle and rural based economies.
    - 9.1.1 The proposed project would add seasonal farm worker shelter to support the established use. The applicant has operated an Arabian Horse farm since the 1980's on the property. Horses have historically been associated with agriculture and a rural lifestyle.
  - 9.2 RR-G5: Activities generally should not require extension of urban governmental services.
    - 9.2.1 The proposal notes the use of an established well on the parcel to service the new farm shelters. On-site septic systems are proposed for each dwelling. No extension of urban government services will be required for this proposal.
  - 9.3 RR-G9: The County should continue to explore ways to provide rural economic opportunity.
    - 9.3.1 The proposed project will allow the applicant to provide seasonal housing to its farm laborers. This provides economic opportunities for the workers as well as the applicant to meet their labor needs without stressing local temporary housing stocks.
  - 9.4 RP-15: Give preference to land uses in Rural designated areas that are related to agriculture, rural residential development, tourism, outdoor recreation, and other open space activities.
    - 9.4.1 The proposed project is consistent with the rural designation as a livestock use.
  - 9.5 This application is consistent with the goals, policies, and objectives of the Kittitas County Comprehensive Plan as outlined above.

10. A SEPA Checklist was submitted with the conditional use application and processed concurrently using the Optional DNS process under WAC 197-11-355. During the combined comment period environmental concerns were raised by public agencies with no comments submitted from private citizens and neighbors. CDS considered these comments and found no significant environmental risks with the proposed project. Following the concurrent comment period, CDS issued a Determination of Non-Significance on December 16, 2020. The appeal period for the SEPA DNS concluded on January 4, 2021. No appeals were filed. In addition, CDS performed a critical area review of the property. A type 9 stream was found along the southern border of the parcel. The proposed project location is well outside of the buffer for the type 9 stream
  
11. 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. The following parties provided substantive comments during the comment period.
  - 11.1 Washington State Department of Ecology (DOE). DOE provided comments noting the requirement of an NPDES Construction Stormwater General Permit if the project anticipates disturbing ground with the potential for stormwater discharge off-site. DOE also noted authorization requirements for any diverting of surface water and withdraw of ground water.
  - 11.2 Washington State Department of Health (DOH). DOH provided comment stating that the project applicant will need to confirm water availability and if a new water system is used the applicant will be required to submit a water system application.
  - 11.3 Kittitas County Public Health: KC Public Health noted the requirement of a Group A or B water system depending on anticipated use levels. Public Health also noted that the well site will need to be approved as a potable water source.
  - 11.4 Kittitas County Fire Marshal: The Kittitas County Fire Marshal stated that the access will need to be IFC and KC Title 12 compliant. Additionally, the Fire Marshal noted the need for visible streetside addressing, annual fire safety inspections and the need for a knox box should a gate be utilized. The Fire Marshal reserved the right to require fire suppression systems upon review of building permit submittals.
  - 11.5 Kittitas County Public Works: Kittitas County Public Works described access permit, grading permit, addressing requirements and stormwater requirements and thresholds.
  - 11.6 Kittitas Valley Fire and Rescue: Rich Elliott of KVFR echoed many of the requirements noted by the Kittitas County Fire Marshal. Mr. Elliott strongly recommended that the new farm labor shelters include 13R sprinkler systems.
  - 11.7 Department of Archeology and Historic Preservation (DAHP): DAHP identified the project area as having a high probability of Cultural Resources. DAHP recommended an Inadvertent Discovery Plan be prepared prior to ground disturbing activities
  
12. Three public comments were received for this project. One of the commenters provided comment after the conclusion of the comment period.
  - 12.1 Tom Chini: Mr. Chini raised concerns about whether the need for farm labor shelter has been “clearly” established as described in the footnote associated with the use. Mr. Chini raised several questions he felt should be clarified and considered prior to a determination. These questions related to the definition of a shelter, the length of the

season in which the shelters will be used, what happens to shelters if the use is discontinued, and the actual need for the labor.

- 12.2 Gretchen Simpson (submitted after comment period): Mrs. Simpson raised concerns regarding what “temporary” means in the context of this application and raised concerns about a strain on the County tax system for projects of this kind.
  - 12.3 Mr. Chini submitted a second written comment prior to the hearing.
13. In review of this proposal it is important to consider the goals and policies of the comprehensive plan, applicable county code, public and agency comments, any identified environmental concerns and state and federal requirements.
  14. The proposal is consistent with the goals and policies of the Kittitas County Comprehensive Plan. As referenced above, the following Comprehensive Plan goals and policies apply to this proposal: RR-G2, RR-G5, RR-G9, and RP-15.
  15. Provided the applicant follows and maintains the goals and policies, they shall be in compliance with the Kittitas County Comprehensive Plan. Therefore, the County and applicant are in compliance with the Comprehensive Plan.
  16. KCC 17.60A.015 provides the following review criteria to be considered in a conditional use analysis:
    - 16.1 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.
      - 16.1.1 Applicant Response: “Seasonal farm labor is essential to agriculture business and providing housing for the laborers is a long-standing practice. These homes seek to be humane, community-centered, code compliant, clean, well kept, and safe for these visiting workers. It is desirable as it eases the burden of temporary housing on the community (especially this community which has a low-income housing shortage.) It is economically desirable as it will allow the locally owned business of Orrion Farms to be more efficient, more profitable and more successful and thereby serve the community in greater ways.”
      - 16.1.2 Hearing Examiner Finding: The project will establish four manufactured homes for seasonal labor. The temporary housing needs in Kittitas County associated with farm labor and educational institutions are significant. As a result, these housing options can be limited and subject to demand fluctuations. The addition of farm labor shelter specific to the Orrion operation will create less burden on the temporary housing stock within Kittitas County. The proposed dwellings will be subject to all water, septic, building and occupancy standards established in Kittitas County Code and will be established on the applicant’s property. CDS agrees that the applicant has demonstrated consistency with KCC 17.60A(1).
    - 16.2 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.
- 16.2.1 Applicant Response: "Four homes in this area, used on a seasonal basis will not overtax the existing community resources such as fire, schools, and police. Additionally, they will not overtax the local traffic as all four homes will be accessed through the same driveway and the driveway will be located off Victory Lane (existing) rather than Manastash Road. Furthermore, the project eliminates the daily commute of these workers during the labor season. The owners plan to install sufficient power, water and septic systems to serve the four homes."
- 16.2.2 Hearing Examiner Finding: As proposed, the project will be adequately serviced by existing facilities and will not require additional public costs. The applicant is proposing private water and septic systems subject to Kittitas County Health standards. This decision includes conditions to ensure the driveway will meet Kittitas County access standards. The addition of four manufactured homes is not anticipated to have any notable impact on fire and police services. The addition of these labor shelters will not be economically detrimental to the public. CDS finds that the applicant's proposal, as conditioned, consistent with KCC 17.60A(2).
- 16.3 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.
  - 16.3.1 Please see consistency with footnote #4 below
  - 16.3.2 Hearing Examiner Finding: The use is consistent, as conditioned, with the relevant development standards and criteria including KCC 17.15.060. 1 footnote #4 as described below. The Farm Labor Shelter use is permitted in the Agriculture 20 zone through a Conditional Use Permit. CDS finds that the applicant's proposal, as conditioned, consistent with KCC 17.60A(3).
- 16.4 The proposed use will mitigate material impacts of the development, whether environmental or otherwise.
  - 16.4.1 Applicant Response: "Minimize haul distances, reduce vehicle idling time, use manufactured homes to lessen the construction timeline, use best practices to minimize soil erosion".
  - 16.4.2 Hearing Examiner Finding: The proposal, as conditioned, will mitigate material impacts of the development. No significant environmental impacts are anticipated from this project. The recommended approval conditions include a requirement for consistency with all local, State and Federal standards and regulations. CDS finds that the applicant's proposal, as conditioned, consistent with KCC 17.60A(4).
- 16.5 The proposed use will ensure compatibility with existing neighboring land uses.
  - 16.5.1 Applicant Response: "Consistent with other housing and farm buildings to the North and South on Victory Lane as well as to the North of Manstash Rd."
  - 16.5.2 Hearing Examiner Finding: Neighboring land uses include other agricultural and residential uses. The character and scale of the proposed use will be compatible with adjacent uses. CDS finds that the applicant's proposal, as conditioned, consistent with KCC 17.60A(5).
- 16.6 The proposed use is consistent with the intent and character of the zoning district in which it is located.

- 16.6.1 Applicant Response: “to preserve farming and rural lifestyles (providing farm workers housing is a long tradition in the ranching community and can be critical to a well-functioning agriculture business) and to preserve the farmland. (By locating the homes together, cottage housing style, the majority of the acreage is left alone.)”
- 16.6.2 Hearing Examiner Finding: The proposed use is an accessory to an existing horse ranch which has been in operation since the 1980’s. Agriculture uses are consistent with the Agriculture 20 zone. CDS finds that the applicant’s proposal, as conditioned, consistent with KCC 17.60A(6).
- 16.7 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
  - c. Requires only rural government services; and
  - d. Does not compromise the long term viability of designated resource lands.
- 16.7.1 Applicant Response: “in that the open spaces and natural visual landscape remains the predominate characteristic; it extends opportunities for rural lifestyle and rural economies; compatible with fish/wildlife habitat by being located over 200 ft. from the stream as req’d; by clustering the homes it prevents sprawl; allows workers to live and work in a rural area, closer to their daily jobs thus eliminating daily vehicle commuting.”
- 16.7.2 The proposal is consistent with the Kittitas County Comprehensive Plan as described above in section “V.” The proposed use is an accessory to an agriculture use which is consistent with rural character. The proposal will only require rural government services and does not endanger the long-term viability of designated resource lands. CDS finds that the applicant’s proposal, as conditioned, consistent with KCC 17.60A(7).
- 16.7.3 The Kittitas County Hearing Examiner finds the application, as conditioned, to be consistent with the Conditional Use Review criteria established in KCC17.60A as described above.
17. Consistency with KCC 17.15.060.1, Allowed Uses in Rural Non-LAMIRD Lands, Footnote #4:
- 17.1 The following criteria are established in KCC 17.15.060.2 as required for Farm Labor Shelter uses within the Agriculture-20 Zone..
- 17.1.1 “The shelters are used to house farm laborers on a temporary or seasonal basis only, regardless of change of ownership, if it remains in farm labor-needed status;”
  - 17.1.2 The proposal includes the addition of four manufactured homes for the purposes of housing seasonal farm workers. This decision has been conditioned to ensure the use will not be extended beyond this stated intention;”
  - 17.1.3 “The shelters must conform with all applicable building and health regulations;”
  - 17.1.4 The proposal will be subject to all local, State and Federal regulations. The structures proposed will be subject to review for consistency with all building and health regulations.

- 17.1.5 “The number of shelters shall not exceed four (4) per twenty (20) contiguous acres of land area;”
  - 17.1.6 The proposal includes four shelters. The associated parcel exceeds the minimum 20-acre threshold;
  - 17.1.7 “The shelters are owned and maintained by the owner or operator of an agricultural operation which clearly demonstrates the need for farm laborers;”
  - 17.1.8 Orrion Farms operates a horse breeding operation. The raising of animals to be sold is classified as an agricultural product use under Kittitas County definitions (KCC 17.08.033). The applicant has expressed a need for these farm labor shelters to meet the labor demands of their agricultural operation.
  - 17.1.9 “Should the parent agricultural operation cease or convert to non-agriculture use, then the farm labor shelters shall conform with all applicable buildings and health regulations.”
  - 17.1.10 This decision has been conditioned to ensure the conformance with all applicable building and health regulations, should the agricultural operation cease.”
  - 17.1.11 The Hearing Examiner finds the application, as conditioned, is consistent with KCC 17.15.060.2 footnote #4.
- 18. Consistency with the provisions of the KCC Title 17A, Critical Areas:
    - 18.1 CDS conducted an administrative critical area review in accordance with KCC 17A and found no critical areas on the project site.
  - 19. Consistency with the provisions of the KCC Title 14.04, Building Code:
    - 19.1 Any future buildings must be consistent with International Building Codes.
  - 20. Consistency with the provisions of KCC Title 12, Roads and Bridges:
    - 20.1 As conditioned, the proposal is consistent with the provisions of KCC Title 12.
  - 20. Consistency with the provisions of KCC Title 20, Fire and Life Safety:
    - 20.1 As conditioned, the proposal is consistent with the provisions of KCC Title 20
  - 21. The following agencies provided comments during the comment period:
    - 21.1 Kittitas County Public Works
    - 21.2 Washington State Department of Ecology
    - 21.3 Washington State Department of Transportation,
    - 21.4 Kittitas County Fire Marshal.
    - 21.5 Kittitas County Public Health
    - 21.6 Washington State Department of Health
    - 21.7 Kittitas Valley Fire and Rescue.
  - 22. All comments are available for public review through Kittitas County Community Development Services.
  - 24. An open record public hearing after due legal notice was held on January 14, 2021 via video conferencing due to the ongoing Covid-19 pandemic.

25. At the open record public hearing the following exhibits were entered into the record:

- 25.1 Ex. 1 Application
- 25.2 Ex. 2 Project Narrative
- 25.3 Ex. 3 Site Plans
- 25.4 Ex. 4 SEPA Checklist
- 25.5 Ex. 5 Receipt
- 25.6 Ex. 6 Deemed Complete
- 25.7 Ex. 7 Affidavit of Posting
- 25.8 Ex. 8 Notice of Application
- 25.9 Ex. 9 CDS Staff Maps
- 25.10 Ex. 10 Affidavit of Mailing and Publication
- 25.11 Ex. 11 KC Public Works Comments
- 25.12 Ex. 12 KC Public Health
- 25.13 Ex. 13 KVFR Comments
- 25.14 Ex. 14 KC Fire Marshal Comments
- 25.15 Ex. 15 Washington State DOH Comments
- 25.16 Ex. 16 Washington State DOE Comments
- 25.17 Ex. 17 Tom Chini Comments
- 25.18 Ex. 18 DAHP Comments
- 25.19 Ex. 19 CDS Building Comments
- 25.20 Ex. 20 Transmittal of Comments
- 25.21 Ex. 21 SEPA DNS
- 25.22 Ex. 22 Notice of SEPA Action and Public Hearing
- 25.23 Ex. 23 Affidavit of Mailing and Publication Notice for Virtual Hearing and SEPA
- 25.24 Ex. 24 Gretchen Simpson (Comments submitted after comment period)
- 25.25 Ex. 25 Kittitas County CDS Staff Report
- 25.26 Ex. 26 Applicant Communication Record
- 25.27 Ex. 27 Staff Report
- 25.28 Ex. 28 PowerPoint Presentation
- 25.29 Ex. 29 January 12, 2021 Letter from Tom Chini.

26. Appearing and testifying on behalf of the applicant was Jeff Smith. Mr. Smith testified that he is the Director of Facilities for the applicant and property owner and was authorized to appear and speak on their behalf at this hearing. He indicated that all of the proposed Conditions of Approval were acceptable. He indicated that this housing is primarily used in the foaling season between January and May of each year. He indicated that uses may go into August for field work. He indicated that a time frame of January through September for use of the housing would be acceptable to the applicant. He indicated that the housing would not be full during this entire time.

27. Also testifying on behalf of the applicant was Jen Andrews. Ms. Andrews was hired to assist the applicant in processing the conditional use permit. She indicated that it was her understanding that there may be one set of workers living in the facility in the spring and then a different set of workers living in the housing in the summer and early fall. Basically, different workers doing different tasks.



28. After Ms. Andrews spoke, Mr. Smith confirmed that the housing would not be used full time.
29. No member of the public testified at the hearing.
30. The Kittitas County Hearing Examiner considered all evidence within the record in rendering this decision.
31. Any Conclusion of Law that is more correctly a Finding of Fact is hereby incorporated as such by this reference.

## **II. CONCLUSIONS OF LAW**

1. The Hearing Examiner has been granted authority to render this decision.
2. As conditioned, the development meets the goals, policies and implementation recommendations as set forth in the Kittitas County Comprehensive Plan.
3. As conditioned, this proposal is consistent with applicable federal and state laws and regulations.
4. Public use and interest will be served by approval of this proposal.
5. As conditioned, the proposal is consistent with Kittitas County Code Title 17 Zoning, Title 17A Critical Areas, Title 14.04 Building Code, Title 12 Roads and Bridges, and Title 20 Fire and Life Safety.
6. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.

## **III. DECISION**

Based on the above Findings of Fact and Conclusions of Law, CU-20-00001 is hereby **APPROVED** subject to the following Conditions of Approval.

## **IV. CONDITIONS OF APPROVAL**

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

1. The project shall proceed in substantial conformance with the plans and application materials on file with CDS dated June 4, 2020 and subsequent information included in the complete file index except as amended by the conditions herein.
2. The applicant shall comply with all local, State and Federal environmental standards and regulations in place at the time of building application submittal.
3. The proposed manufactured homes will require permitting through the Washington State Department of Health for building permits and inspections. Any separate communal accessory buildings will require permitting through Kittitas County CDS Building.

4. Should the parent agriculture operation cease or convert to non-agriculture use, then the farm labor shelters shall conform with all applicable building, zoning, and platting requirements or be removed. The structures shall not be utilized for purposes inconsistent with that defined as Farm Labor Shelter in Kittitas County Code Title 17.
5. An access permit is required for the shared driveway. The access off Victory Lane will be constructed to current Kittitas County joint-use driveway standards.
6. The access must be constructed and inspected prior to the occupancy of any home.
7. A separate address will be required for each home.
8. A grading permit will be required for any grading or fill over 100 cubic yards.
9. The applicant shall work with Kittitas County Public Works to assure all Kittitas County stormwater requirements are met. Evidence of Public Works approval shall be required for final approval.
10. The applicant shall comply with all water and septic standards as outlined in Kittitas County Code Title 13 to the satisfaction of Kittitas County Public Health.
11. The applicant shall comply with Kittitas County Title 20 Fire Life Safety requirements. The Kittitas County Fire Marshal reserves the right to require fire suppression systems.
12. StreetSide addressing shall be visible from the road on each structure.
13. All structures will be subject to annual fire and life safety inspections.
14. Knox access will be required for gate access.
15. A grading permit through Kittitas County Public Works will be required for any dirt work exceeding 100 cubic yards of material.
16. Should ground disturbing or other activities related to the proposed subdivision 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.
17. It is a proponent's responsibility to demonstrate compliance with the approval conditions of a conditional use permit. Compliance with all conditions must be demonstrated in writing to Kittitas County CDS prior to Final Conditional Use Permit issuance. Final approval of a Conditional Use Permit is required within 5 years of the approval date pursuant to KCC 17.60A.090.

Dated this 19th day of January, 2021.

KITTITAS COUNTY HEARING EXAMINER



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Andrew L. Kottkamp

This Decision is subject to appeal pursuant to the Kittitas County Code and the Revised Code of Washington.