

**KITTITAS COUNTY
LAND USE HEARING EXAMINER**

IN THE MATTER OF)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
CU-22-00003)	CONDITIONS OF APPROVAL
BRETHREN FRONTIER SCHOOL)	AND DECISION

THIS MATTER having come on for hearing in front of the Kittitas County Hearing Examiner on November 22, 2022, the Hearing Examiner having taken evidence hereby submits the following Findings of Fact, Conclusions of Law and Decision:

I. FINDINGS OF FACT

1. The proposed project is a CUP application proposing the use of the existing school building as well as the addition of a multipurpose building for the use by the Brethren Frontier co-op school. The facilities would be mainly used on Thursday afternoons during the spring and fall for homeschool co-op classes. The proposed multipurpose structure would be used infrequently for school events.
2. Location: Parcel # 13147 located at 1061 Emerson Road approximately .76 miles south of the intersection of Emerson Road and Alkali Road, in Section 28, Township 17, Range 19, bearing Assessor's Map # 17-19-28053-0001 in Kittitas County.
3. Site Information:

Total Property Size:	5.47 Acres
Number of Lots:	1
Domestic Water:	Group B well
Sewage Disposal:	On-site Septic
4. Site Characteristics:

North:	Agricultural and Residential
South:	Agricultural and Residential
East:	Agricultural and Residential
West:	Agricultural and Residential
5. Access: The site is accessed from an existing driveway off Emerson Road, approximately .76 miles east from the intersection of Emerson Road and Alkali Road.
6. Deem Complete: A conditional use permit application for Brethren Frontier School (CU-22-00003) was submitted to Kittitas County Community Development Services department on July 21, 2022. The application was deemed complete on August 17, 2022. The site was posted in accordance with KCC 15A.03.110 on September 5, 2022.

7. Notice of Application: A notice of application for the Brethren Frontier School Conditional Use Permit (CU-22-00003) 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 September 15, 2022, all in conformance with the Kittitas County Project Permit Application Process (Title 15A). The comment period concluded on September 30, 2022

8. Comprehensive Plan: The parcels involved in this proposal are in a land use designation of Commercial Agriculture and zoning designation of Commercial Agriculture. The proposed project is classified as a "School, public or private." New Schools, public or private are allowed with a conditional use permit under KCC 17.15.050.1. The conditional use permit criteria are examined in "Project Analysis" of this Decision:
 - 8.1 RR-G1: Open space and visual and natural landscape should predominate over the built environment.
 - 8.1.1 The co-op School facilities are located on 5.47 acres of Commercial Agricultural zoned land. The existing structures as well as the proposed multipurpose structure utilize a small portion of the southwest corner of the property, leaving the remaining acreage undeveloped land.
 - 8.2 RR-G2: Opportunities should exist for traditional rural lifestyle and rural based economies.
 - 8.2.1 The proposed addition/expansion of a co-op school in the Commercial Agricultural Zone minimizes the cost as public roads and services already support the existing structure and no new public infrastructure is required. The school use provides schooling to those part of the co-op school in rural Kittitas County.
 - 8.3 RR-G3: Spaces and development should be compatible with fish & wildlife habitat.
 - 8.3.1 The property has an identified Type 2 Fish Bearing stream (identified as Badger Creek or sometimes referred to as Whipple Wasteway) located along the north property line. The property is located within the Columbia Plateau Ecoregion and Kittitas County Code Title 17A.04.030 (4) Standard Riparian Management Zones for Waters of the State gives Type F streams a 100 buffer and a 15 foot building setback from the stream buffer. The existing and proposed structures are located approximately 216+ feet from the stream, therefore being compatible with fish & wildlife habitat.
 - 8.4 RR-G5: Activities generally should not require extension of urban governmental services.
 - 8.4.1 The proposal is currently served by county right of way, onsite septic and well and will not require extension of urban governmental services.
 - 8.5 RR-P1: The County shall promote the retention of its overall character by establishing zoning classifications that preserve rural character identified to Kittitas County.
 - 8.5.1 The property is currently zoned Commercial Agriculture and is bordered on all sides with the same. The applicants are not proposing to rezone the 5.47 acres and the school use is an allowed use within the Commercial Agriculture Zone with an approved Conditional Use Permit.
 - 8.6 The Hearing Examiner reviewed the project for consistency with the Kittitas County Comprehensive Plan as described above. The Hearing Examiner finds the proposed

development consistent with the Goals and Policies of the Kittitas County Comprehensive Plan.

9. A SEPA Checklist was submitted with the conditional use application and processed concurrently using the Optional DNS process under WAC 197-11-355. Staff's initial review identified one Type 2 Fish Bearing stream located along the northern property line. The project falls within the Columbia Plateau Ecoregion and Type F streams have a 100-foot buffer and an addition 15 foot building setback from the buffers edge. The proposed new multipurpose facility is proposed approximately 230 feet from the stream, therefore no critical areas report was required. Washington State Department of Fish and Wildlife submitted comments stating the stream is known as Badger Creek and would be happy to work with the proponents if they are interested in enhancing their existing riparian habitat or if they would like to learn more in regards to the creek. CDS issued a Determination of Non-Significance (DNS) on November 3, 2022. The appeal period for the SEPA DNS will conclude on November 18, 2022. As of the time of writing this document, no appeals have been filed

10. Applicable agencies, adjacent property owners, and interested parties have been given the opportunity to review this proposal and have been notified of the Public Hearing. Kittitas Valley Fire and Rescue (KVFR), The Snoqualmie Tribe, Washington State Department of Health – Office of Drinking Water, Kittitas County Public Health, Kittitas County Public Works, Washington State Department of Fish and Wildlife commented. Below is a summary of their comments:
 - 10.1 Kittitas Valley Fire and Rescue: KVFR submitted comments in regards to the Fire apparatus access roads needing to meet the requirements of the 2018 IFC Appendix D, access roads not exceeding 10% grade, sufficient parking needing to be provided to not interfere with fire lands and access, the building needing to meet IBC and IFC requirements for occupancy, noted the standard turning radius for response vehicles, and the need for water supply meeting Kittitas County requirements.
 - 10.2 Snoqualmie Tribe: Snoqualmie Tribe commented that they have cultural resource concerns regarding the project but defer to more proximate tribes. They said if the scope of the project change, they reserve the right to modify their current position.
 - 10.3 Washington State Department of Health – Office of Drinking Water. DOH-ODW provided comments stating that Kittitas County Public Health confirmed that the water provided for the application is an approved Group B water system and Kittitas County Public Health has sole authority over these systems, therefore DOH-ODW had no comment.
 - 10.4 Kittitas County Public Health. Kittitas County Public Health commented that the applicant must provide current, satisfactory bacteriological and nitrate test results on the water system to Kittitas County Public Health and that the proposed site plan appears to have the driveway and possibly parking going over the current drainfield and asked that the applicants address the issue prior to moving forward with the project.
 - 10.5 Kittitas County Public Works. Kittitas County Public Works commented that a traffic concurrency evaluation will be required for this project and a Transportation Impact Analysis (TIA) may be required for all development that will generate more than nine (9) peak hour vehicle trips unless requirements have been waived by the Public Works director. They also commented on access permits, road, grading, stormwater requirements and the 100-year floodplain located on the property.

- 10.6 Washington Department of Fish & Wildlife (WDFW): WDFW commented on the project having Badger Creek located adjacent to the property and that the stream is home to salmon, steelhead and other native fish species and beavers and if the proponent is interested in enhancing the riparian habitat or learning more about Badger Creek, WDFW would be happy to work with them.
11. Public Comments: No public comments were received.
12. The Hearing Examiner has reviewed all the comments submitted and has conditioned this decision to address the concerns noted.
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. Identified below is the Hearing Examiner's findings regarding consistency review for the subject application.
14. Comprehensive Plan Consistency: The Hearing Examiner finds that 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-G1, RR-G2, RR-G3, RR-G5, and RR-P1. 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.
15. Consistency with KCC 17.60A, Conditional Uses: KCC 17.60A.015 provides the following review criteria to be considered in a conditional use analysis:
- 15.1 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;
- 15.1.1 Applicant Response: It will enhance the property and be a functional, useful building.
- 15.1.2 Hearing Examiner Finding: The project expands a previous existing use. While the Co-op School intends to use the existing school and expand with a multiuse facility, staff does not find the proposed use to be detrimental or injurious to the public health, peace and safety. The proposed new structure does not appear to be larger in size than existing structures within the vicinity, therefore allowing the new structure to not interfere with the character of the surrounding neighborhood.
- 15.2 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:
- 15.2.1 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
- 15.2.2 The applicant shall provide such facilities; or
- 15.2.3 The proposed use will be of sufficient economic benefit to offset additional public costs or economic detriment.

- 15.2.4 Applicant Response: The proposed structure will not require additional roads or create excessive public cost.
- 15.2.5 Hearing Examiner Finding: The proposed co-op school in the existing school structure and proposed multipurpose structure have an existing access to county right of way, septic system, and approved Group B water system. Public Health has requested testing of the well, which if approved has been conditioned to ensure the testing is completed. The applicants have adjusted their site plan to ensure no driving or parking will take place over the existing drain field. The project will not have a detrimental economic impact.
- 15.3 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:
 - 15.3.1 Applicant Response: The building will meet existing building codes.
 - 15.3.2 Hearing Examiner Finding: The use is consistent with the relevant development standards and criteria in Kittitas County Code. The new school is permitted in the Commercial Agriculture zone through a Conditional Use Permit under KCC 17.15.050.
- 15.4 The proposed use will mitigate material impacts of the development, whether environmental or otherwise.
 - 15.4.1 Applicant Response: The impact will be minimal.
 - 15.4.2 Hearing Examiner Finding: The proposal, as conditioned, will mitigate material impacts of the development. The proposed addition of the multiuse structure is proposed well outside the buffers for the Type 2 stream located along the northern property line.
- 15.5 The proposed use will ensure compatibility with existing neighboring land uses.
 - 15.5.1 Applicant Response: It will ensure compatibility w/ existing land uses.
 - 15.5.2 Hearing Examiner Finding: The proposed use of a school is not completely compatible with the neighboring commercial agriculture and single-family residences, however schools are typically located in residential areas and this property has been used as a school in the past and present and is currently co-existing among these uses.
- 15.6 The proposed use is consistent with the intent and character of the zoning district in which it is located.
 - 15.6.1 It is consistent, preserves rural character, requires only rural gov't services and does not compromise resource lands.
 - 15.6.2 Hearing Examiner Finding: The proposed project is located in Commercial Agricultural zoning. The commercial agriculture zone purpose and intent (KCC 17.31.010) states: "is an area wherein farming and ranching are the priority. The intent of this zoning classification is to preserve fertile farmland from encroachment by nonagricultural land uses and protect the rights and traditions of those engaged in agriculture." The proposed school is expanding on a previous and existing use and is an allowed use within the Commercial Agriculture Zone (KCC 17.15.050) with an approved Conditional Use Permit.
 - 15.6.3 The Hearing Examiner finds the application, as conditioned, consistent with KCC 17.60A Conditional Uses. The use will only require rural government

services and does not compromise the long-term viability of any resource lands.

16. Consistency with the provisions of KCC 17A Critical Areas: CDS conducted an administrative critical area review in accordance with KCC 17A and found a Type 2 Fish Bearing stream located along the northern property line. The project falls within the Columbia Plateau Ecoregion and Type F streams have a 100-foot buffer and an additional 15-foot building setback from the buffer's edge. The proposed new multipurpose building is proposed approximately 230 feet from the stream, therefore no critical areas report was required.
17. Consistency with the provisions of KCC Title 20, Fire and Life Safety: As conditioned, the proposal is consistent with the provisions of KCC Title 20
18. Consistency with the provisions of the KCC Title 14.04, Building Code: Any future buildings must be consistent with International Building Codes.
19. Consistency with the provisions of KCC Title 12: Roads and Bridges: As conditioned, the proposal is consistent with the provisions of KCC Title 12.
20. An open record public hearing after due legal notice was held on November 22, 2022.
21. At the open record public hearing the following exhibits were entered into the record:
 - 21.1 Ex. 1 Application
 - 21.2 Ex. 2 Project Narrative
 - 21.3 Ex. 3 School Site Plan
 - 21.4 Ex. 4 School Site Plan 8.5X11
 - 21.5 Ex. 5 SEPA Checklist
 - 21.6 Ex. 6 Receipt
 - 21.7 Ex. 7 Deemed Complete 8-17-22
 - 21.8 Ex. 8 Narrative – Further Clarification
 - 21.9 Ex. 9 Affidavit of Posting 9-5-22
 - 21.10 Ex. 10 Notice of Application 9-15-22
 - 21.11 Ex. 11 Affidavit of Mailing and Publication NOA 9-15-22
 - 21.12 Ex. 12 Comments – KVFR 9-15-22
 - 21.13 Ex. 13 Comments – Snoqualmie Tribe 9-15-22
 - 21.14 Ex. 14 Comments – Washington State Department of Health – Office of Drinking Water 9-19-22
 - 21.15 Ex. 15 Comments – Kittitas County Public Health 9-22-22
 - 21.16 Ex. 16 Comments - Kittitas County Public Works 9-27-22
 - 21.17 Ex. 17 Comments – Washington State Department of Fish and Wildlife 9-30-22
 - 21.18 Ex. 18 Transmittal of Comments 10-3-22
 - 21.19 Ex. 19 Applicants response to comments – Amended Site Plan
 - 21.20 Ex. 20 SEPA DNS 11-3-22
 - 21.21 Ex. 21 Notice of SEPA Action and Special Public Hearing 11-3-22
 - 21.22 Ex. 22 Affidavit of Mailing & Publication NOSA & PH 11-3-22
 - 21.23 Ex. 23 Correspondence

- 21.24 Ex. 24 Public Health's Confirmation on Amended Site Plan addressing drainfield concerns 11-4-22
 - 21.25 Ex. 254 Staff Report
 - 21.26 Ex. 26 Public Hearing Presentation
22. Appearing on behalf of the Applicant was Eric Leensvaart. Mr. Leensvaart testified that he was an agent authorized to appear and speak on behalf of the Applicant and property owner. Mr. Leensvaart indicated that he had reviewed the staff report and had no objection to any of the representations set forth therein. Mr. Leensvaart stated he had reviewed the proposed Conditions of Approval and that there was no objection to any of those.
 23. No members of the public testified at the hearing.
 24. The Kittitas County Hearing Examiner considered all evidence within the record in rendering this decision.
 25. 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 Buildings and Construction, 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, CUP 22-00003 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.

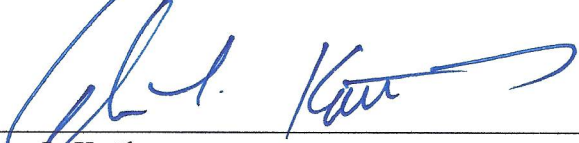
1. The project shall proceed in substantial conformance with the plans and application materials on file with CDS dated July 21, 2022 and subsequent information included in the complete file index except as amended by the conditions herein.

2. The applicant shall comply with all Local, State and Federal environmental standards and regulations.
3. The applicant must provide current, satisfactory bacteriological and nitrate test results on the water system to the Kittitas County Public Health Department prior to use of either structure for school purposes.
4. The applicant shall install fencing or a rock barrier in conformance with the Amended Site Plan to ensure the current drainfield for the school is not being driven over or parked on.
5. An approved access permit shall be required from the Kittitas County Department of Public Works prior to creating any new driveway access or altering an existing access. Refer to Chapter 12 of the Kittitas County Code for access requirements.
6. Maintenance of driveway approaches shall be the responsibility of the owner whose property they serve. The County will not maintain accesses.
7. The applicant should be aware that except as exempted in Section KCC 14.05.060, any grading over 100 cubic yards of material will require a grading permit. An application for grading in excess of five hundred (500) cubic yards shall be accompanied by an engineered grading plan (KCC 14.05.080) Any grading shall not occur until the SEPA process is complete and the grading permit is issued.
8. Driveways over 150' in length shall require a fire apparatus turn-around that meets the standards of the International Fire Code Appendix D.
9. All applicable Kittitas County Road Standards apply to this proposal. Access is not guaranteed to any existing or created parcel on this application.
10. A transportation impact analysis (TIA) shall be required for all development that will generate more than nine (9) peak hour vehicle trips. Please provide estimated traffic generation for peak hours to determine if a TIA will be required prior to a building permit issuance. (KCC 12.10.040(c))
11. The applicant has an obligation to meet the requirements of the most recent edition of the Eastern Washington Stormwater Manual.
12. All development, design and construction shall comply with International Fire Code requirements and KCC Title 20 Fire and Life Safety. Please contact the Kittitas County Fire Marshal for specific requirements.
13. Should ground disturbing or other activities related to the proposed project 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) and Yakama Nation. 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.

14. 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 28th day of November, 2022.

KITTITAS COUNTY HEARING EXAMINER



Andrew L. Kottkamp

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