

**KITTITAS COUNTY  
LAND USE HEARING EXAMINER**

<b>IN THE MATTER OF</b>	)	<b>FINDINGS OF FACT,</b>
	)	<b>CONCLUSIONS OF LAW,</b>
<b>CU-22-00004</b>	)	<b>CONDITIONS OF APPROVAL</b>
<b>BRICKHOUSE NURSERY</b>	)	<b>AND DECISION</b>

THIS MATTER having come on for hearing in front of the Kittitas County Hearing Examiner on March 23, 2023, 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 for a small-scale event facility for 50 people or less at an existing nursery. The existing cottages would be used in conjunction with the event facility. The event facility would include construction of a new pergola and a new ADA restroom building and would utilize existing gardens and an existing greenhouse.
2. Location: 7243 Manastash Road, Parcel 956554 located approximately 1 mile west of the intersection of Cove Road and Manastash Road, In Section 14, Township 17, Range 17, W.M; Kittitas County assessor's map number 17-17-14010-0019.
3. Site Information:

Total Property Size:	3.97 Acres (Approximately 2 acres for event use)
Number of Lots:	1
Domestic Water:	Group B Well (Already Existing)
Sewage Disposal:	Septic
4. Site Characteristics:

<u>North:</u>	Nursery Building/Sparse Residential
<u>South:</u>	Mostly Vacant Land
<u>East:</u>	Rural Residential Development
<u>West:</u>	Sparse Residential Development
5. Access: The site is accessed off Manastash Road, approximately 1 mile west of the intersection of Cove Road and Manastash Road.
6. Zoning and Development Standards. The parcel involved in this proposal is in a land use designation of *Rural Working* and zoning designation of *Agriculture 20*. The proposed project is classified as a "Small-Scale Event Facility." Small-Scale Event Facilities are allowed with a conditional use permit under KCC 17.15.060.1. The conditional use permit criteria are examined in the "Project Analysis" of this decision.

7. Deem Complete: A conditional use permit application for Events at Brickhouse Nursery (CU-22-00004) was submitted to Kittitas County Community Development Services department on October 13, 2022. The application was deemed incomplete on October 26, 2022 and the required information was submitted on October 28, 2022 and then updated on October 31, 2022. The application was deemed complete on November 7, 2022. The site was posted in accordance with KCC 15A.03.110 on November 13, 2022.
8. Notice of Application: A notice of application for the Events at Brickhouse Nursery Conditional Use Permit (CU-22-00004) 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 December 6, 2022, all in conformance with the Kittitas County Project Permit Application Process (Title 15A). The comment period concluded on December 21, 2022.
9. Comprehensive Plan:
  - 9.1 RR-G9: The County should continue to explore ways to provide rural economic opportunity.
    - 9.1.1 The proposed project is intended to provide an event facility for hosting gatherings such as weddings and other events in mostly existing structures. The applicants continue to use the land around this parcel for agricultural purposes. The proposed event facility will provide economic opportunities by creating possible jobs to local businesses that cater to events such as weddings, while keeping the rural character.
  - 9.2 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.
    - 9.2.1 The proposed event facility land use is related to outdoor tourism and open space activities with a place for wedding and other events in a rural setting that highlights Kittitas County's rural character.
  - 9.3 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.
10. A review by CDS staff only indicated an existing man-made pond on the property. The closest regulated stream from the proposal is approximately 300 feet away from the proposal, well beyond any required setbacks under KCC 17A.04.030. As the land is not covered by water and the proposal is mostly already existing buildings less than 12,000 square feet with approximately 40 parking spaces, SEPA is not required under WAC 197-11-800(1)(d) and KCC 15.04.090(1)(c).
11. 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. All comments are on file and available for public review.
12. Agency Comments: Bonneville Power Administration, Washington State Department of Health – Office of Drinking Water, Washington Department of Ecology, Kittitas County

Public Works, Kittitas County Building Department and Kittitas Valley Fire & Rescue (KVFR). Below is a summary of their comments:

- 12.1 Bonneville Power Administration (BPA): BPA commented that this proposal will not affect their facilities as the closest facility is approximately 1,241 feet west of the property. They stated they have no objections to the proposal.
  - 12.1.1 Hearing Examiner Finding: BPA lines and facilities will not be affected by this use.
- 12.2 Department of Health – Office of Drinking Water: Department of Health – Office of Drinking Water provided comment saying that this use requires a Group A Water System.
  - 12.3.1 Hearing Examiner Finding: The Applicant and the Department of Health went back and forth whether the well should be classified as a Group B or Group A-TNC. After updating forms and reviewing, Department of Health was okay with the numbers provided making it a group B well.
- 12.4 Department of Ecology: The Department of Ecology commented on groundwater exemptions and that withdrawal of over 5,000 gallons of water per day required permitting from Ecology.
  - 12.4.1 Hearing Examiner Finding: This proposal has been conditioned to have groundwater exemption limits.
- 12.5 Kittitas County Community Development Services (CDS) – Building Department: CDS commented on required building codes, occupancies, accessible parking and some fire requirements.
  - 12.5.1 Hearing Examiner Finding: The Hearing Examiner sets as a condition that this proposal shall meet the current building code and accessibility requirements at time of building permit submittal and require annual fire, life and safety inspections through the Fire Marshal’s Office.
- 12.6 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) shall be required for all development that will generate more than nine (9) peak hour vehicle trips. They also commented grading stormwater requirements.
  - 12.6.1 Hearing Examiner Finding: Public Works concerns are addressed through conditions from a traffic concurrency that occurred. Grading permit requirements have also been conditioned.
- 12.7 Kittitas Valley Fire & Rescue (KVFR): KVFR commented on Fire access roads and International Fire Code requirements.
  - 12.7.1 Hearing Examiner Finding: Fire comments have been conditioned to meet Title 20 Fire Life Safety and International Fire Code (IFC) including having all fire lanes clearly marked.
13. Public Comments: No public comments were received.
14. The Hearing Examiner has reviewed all the comments submitted and has conditioned this decision to address the concerns noted.
15. 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.

16. 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-G9, RP-15, and E-G1. 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.
17. Consistency with KCC 17.60A, Conditional Uses: KCC 17.60A.015 provides the following review criteria to be considered in a conditional use analysis:
  - 17.1 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;
    - 17.1.1 Applicant Response: "There is an unfulfilled desire for small weddings and gatherings within the community at a facility with an atmosphere consistent with the the Brick House Nursery. As the facility is existing, all surrounding property is owned by the applicant and the integrity of the site will remain the same this proposal does not interfere with the neighborhood peace or the integrity of the natural habitat. The property will allow for a unique rural experience in the county with minimal impact."
    - 17.1.2 Hearing Examiner Finding: Small-scale event facilities are allowed by conditional use permit within the Agricultural 20 zone. The proposal is located on approximately 2 acres and the facility will consist of mostly existing structures. The property is located near a few residences and agricultural lands. CDS does not anticipate the proposed use as conditioned will be detrimental or injurious to the public health, peace or safety or to the character of the surrounding neighborhood.
  - 17.2 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:
    - 17.2.1 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
    - 17.2.2 The applicant shall provide such facilities; or
    - 17.2.3 The proposed use will be of sufficient economic benefit to offset additional public costs or economic detriment.
    - 17.2.4 Applicant Response: "The small size of the proposed events allows for minimal impact on roadways and public services such as police and fire. The existing facilities are adequate to serve events of this size and no additional services would be needed. The group b well, septic system, and current site layout will all remain the same".
    - 17.2.5 Hearing Examiner Finding: CDS staff has confirmed with Public Health and the State Department of Health that the existing Group B well can handle this event facility, the road network can handle events with some conditions to

handle extra traffic and safety during events. The site is within the Kittitas Valley Fire & Rescue (KVFR) Fire District. The existing cottages would be used as short-term rentals as part of the events. Short term rentals must be registered with the State under RCW 64.37 and any admission charged for events would need to meet KCC 3.22. The Hearing Examiner sets conditions requiring compliance with these state and local requirements.

- 17.3 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:
- 17.3.1 Applicant Response: "The proposed use of an event facility falls under the criteria for approval as a conditional use of a space that has adequate facilities and minimal impact to the surrounding areas and public services
- 17.3.2 Hearing Examiner Finding: The Small-scale event facility use is consistent with the relevant development standards and criteria including KCC 17.15.060. The Small-scale event facility is permitted in the Agriculture 20 zone through a Conditional Use Permit.
- 17.4 The proposed use will mitigate material impacts of the development, whether environmental or otherwise.
- 17.4.1 Applicant Response: "No development necessary."
- 17.4.2 Hearing Examiner Finding: The site has very little new development proposed and is outside all critical area buffers. Impacts from events such as additional traffic is mitigated through conditions.
- 17.5 The proposed use will ensure compatibility with existing neighboring land uses.
- 17.5.1 Applicant Response: No impact on neighboring lands."
- 17.5.2 Hearing Examiner Finding: There are few residences in the area and any impacts should be minimal to the neighboring land uses. The Hearing Examiner sets as a condition that the proposal shall meet all noise ordinances in County Code or get a variance from them.
- 17.6 The proposed use is consistent with the intent and character of the zoning district in which it is located.
- 17.6.1 "No change to existing infrastructure"
- 17.6.2 Hearing Examiner Finding: The proposed project is located in Agricultural 20 zoning. The agriculture (A-20) zone is an area wherein farming, ranching and rural lifestyles are dominant characteristics. 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. Kittitas County Comprehensive Plan and Zoning Code have allowed small-scale event facilities in Agriculture 20 in KCC 17.15.080(1) with a conditional use permit. Kittitas County believes that small-scale event facilities are part of the rural lifestyle and for people to enjoy the rural character of the county.
- 17.7 For conditional uses outside of Urban Growth Areas, the proposed use:
- 17.7.1 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;

17.7.2 Preserves “rural character” as defined in the Growth Management Act

17.7.3 Requires only rural government services; and

17.7.4 Does not compromise the long-term viability of designated resource lands.

17.7.5 Applicant Response: “a. The proposed use is consistent with the goals of the Rural and Resource lands as it retains the integrity of the opens space and natrual landscapes, allows for an experience that appreciates the rural lifestyle, has minimal to no impact on the surrounding habitats, requires no new development, does not require extension of urban services, and there is no impact to ground water flows. This proposed use is also consistent with the allowance for a level of mixed uses in rural areas. b. No change to rural character c. No changes in required services d. No change to the viability of the lands.”

17.7.6 Hearing Examiner Finding: The proposal is consistent with the Kittitas County Comprehensive Plan as described above in section “V.” The use will not conflict with rural character, requires only rural government services and will not compromise resource lands. The Hearing Examiner finds the application, as conditioned, consistent with KCC 17.60A Conditional Uses, as described above.

18. Consistency with the provisions of KCC 17A Critical Areas: A review by CDS staff only indicated an existing man-made pond on the property. The closest regulated stream from the proposal is approximately 300 feet away from the proposal, well beyond any required setbacks under KCC 17A.04.030. As such, the proposal is consistent with KCC Title 17A, Critical Areas.
19. 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.
20. Consistency with the provisions of the KCC Title 14.04, Building Code: Any future buildings must be consistent with International Building Codes.
21. Consistency with the provisions of KCC Title 12: Roads and Bridges: As conditioned, the proposal is consistent with the provisions of KCC Title 12.
22. A SEPA Checklist was not required under WAC -197-11-800(1)(d) and KCC 15.04.090(1)(c) due to the land not being covered by water and the proposal having all buildings less than 12,000 square feet with approximately 40 parking spaces.
23. An open record public hearing after due legal notice was held on March 23, 2023.
24. At the open record public hearing the following exhibits were entered into the record:
  - 24.1 Ex. 1 Application
  - 24.2 Ex. 2 CUP Receipt
  - 24.3 Ex. 3 Project Narrative
  - 24.4 Ex. 4 Deemed Incomplete 10-26-22
  - 24.5 Ex. 5 Original Site Plan 10-28-22

- 24.6 Ex. 6 Updated Site Pan 10-31-22
  - 24.7 Ex. 7 Deemed Complete 11-7-22
  - 24.8 Ex. 8 CDS Staff Maps
  - 24.9 Ex. 9 Sign Posting Affidavit & Picture
  - 24.10 Ex. 10 Notice of Application
  - 24.11 Ex. 11 Notice of Application E-mail
  - 24.12 Ex. 12 Affidavit of Mailing & Publication – Notice of Application
  - 24.13 Ex. 13 KVFR Comments 12-6-22
  - 24.14 Ex. 14 Bonneville Power Administration (BPA) Comments
  - 24.15 Ex. 15 Community Development Services Building Dept. Comments
  - 24.16 Ex. 16 State Dept. Of Health Office of Drinking Water Comments
  - 24.17 Ex. 17 Dept. of Ecology Comments
  - 24.18 Ex. 18 Kittitas County Public Works Comments
  - 24.19 Ex. 19 Transmittal of Comments 12-22-22
  - 24.20 Ex. 20 E-mails between Applicant & State Dept. of Health
  - 24.21 Ex. 21 Request for Additional Information 1-26-23
  - 24.22 Ex. 22 Traffic Estimations Provided by Applicant
  - 24.23 Ex. 23 Public Works Traffic Concurrency Review 2-27-23
  - 24.24 Ex. 24 Notice of Public Hearing
  - 24.25 Ex. 25 E-mail Notice of Public Hearing
  - 24.26 Ex. 26 Affidavit of Mailing & Publication – Notice Public Hearing
  - 24.27 Ex. 27 Staff Report
  - 24.28 Ex. 28 Hearing PowerPoint Presentation
25. Appearing and testifying on behalf of the Applicant were Mitch Williams and Emma Williams. Mr. Williams testified that the property is owned by a Limited Liability Company, of which he, his wife, and daughter, Emma, are the only members. They agreed with all the proposed Conditions of Approval, but questioned the need to close one of their access points. However, they said they would comply with this requirement. They confirmed that the nursery operations would be closed during the time of events. They confirmed that the guests would be limited to 50 persons and that all parking will occur onsite. They confirmed that there is no restaurant or onsite food preparation being proposed. Finally, they agreed that all noise would comply with the Kittitas County Code as well as WAC 173-60.
26. No members of the public testified at the hearing.
27. The Kittitas County Hearing Examiner considered all evidence within the record in rendering this decision.
28. 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 22-00004 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 that were revised and received on October 31, 2022 attached as Exhibit A, and subsequent information included in the complete file index except as amended by the conditions herein.
2. Events shall be limited to the event use area identified on the site plan and the retail nursery shall be closed during events unless this conditional use permit is amended.
3. Cottages on the parcel and the property shall have an annual Fire, Life, Safety inspection by the Fire Marshal.
4. Cottages used for short-term rentals shall be registered with the State Department of Revenue (RCW 64.37).
5. Any events where admission is charged shall comply with Kittitas County Code 3.22 Admissions Tax.
6. The owner shall provide a Water Facility Inventory form (WFI) yearly to the Kittitas County Community Development Services, Kittitas County Public Health and the State Department of Health Office of Drinking Water to verify a Group A TNC well is not required. If required by the State Department of Health, the existing Group B Well shall be converted into a Group A- TNC well.
7. Events shall be limited to a maximum of 50 guests on site.
8. An approved access permit shall be required from Kittitas County Public Works prior to creating any new driveway access or altering an existing access.



9. Maintenance of driveway approaches shall be the responsibility of the owner whose property they serve. The County will not maintain accesses.
10. Any grading over 100 cubic yards of material requires a grading permit through Kittitas County Public Works. Any grading over 500 cubic yards shall be accompanied by an engineered grading plan. All conditions must be met in any approved grading permit. Grading over 500 cubic yards also requires a SEPA checklist to be submitted and approved by Kittitas County Community Development Services.
11. There shall be no parking on any Right-Of-Way or Manastash Road at any time.
12. There are three access points to the parcel. The owner/proponent must close the middle access during events due to the proximity of entrance locations and sight distance.
13. Signs indicating events ahead are to be placed the morning and removed at the end of the event. Signs are to meet Manual on Uniform Traffic Control standard. These signs should be placed both east and west of the event.
14. All attempts shall be made to protect the survey monument marking the NW Corner of Section 13 located near the proposed parking area. In the event this monument is disturbed or destroyed, it shall be replaced by a land surveyor licensed in the State of Washington.
15. All activities shall comply with the County's Noise Ordinance in KCC 9.45 as stated now or as amended. Any noise that would violate the noise ordinance shall require a noise variance as seen in KCC 9.45.070 as stated now or as amended.
16. 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. This includes all temporary tents for events including but not limited to membrane structures. These shall be approved (including placement) by the Fire Marshal prior to any events.
17. Fire Lanes, WUIC and fire flow requirements shall be met prior to any events be undertaken. Fire Marshal shall verify these are met prior to any event.
18. Accessible parking and route to Accessible space(s) provided with hard surface such as asphalt or concrete shall be required. The parking symbol and signage of Accessibility is required. Accessible parking spaces shall be located on the shortest accessible route of travel from adjacent parking to an accessible building/ pedestrian entrance per WAC 51-50-1106. Wherever practical, the accessible route shall not cross lanes of vehicular traffic. Where crossing traffic lanes as necessary, the route shall be designated and marked as a crosswalk.

Verify there is no more than 1:20 slope for the Accessible path from Accessible Parking to the building(s) and all facilities entrances and amenities. Please show path and state the maximum allowed slope on the drawings.

All buildings or facilities shall be made Accessible per ANSI A-117; the latest adopted edition. Please show all Accessible features for rooms, counter areas and seating areas where Accessibility is required. Please show precise details such as counter heights, maximum reach distances, door swings, etc. Restrooms shall meet Accessibility with the same level of detail.

Please show this accessibility on an updated site plan and building permits for approval. Accessibility requirements must be approved by Kittitas County Community Development Services prior to any events taking place.

19. The applicant shall comply with all local, state and federal regulations at the time of building permit submittal.
20. Owner/applicant must obtain authorization from the Department of Ecology if withdrawing over 5,000 gallons of water per day.
21. 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 & 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.
22. 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.
23. No events shall be held until a final conditional use permit is obtained.
24. Failure to comply with conditions of approval may result in limitation or revocation of the conditional use permit in accordance with KCC 17.60A.100.

Dated this 28<sup>th</sup> day of March, 2023.

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.