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Kaycee K. Hathaway
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Community Development Services/Planner I
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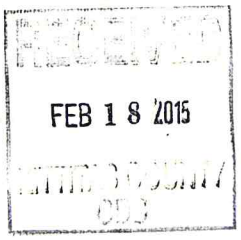


February 18, 2015

re: objection-public comments on Grow Bros Permit applications (BP-14-00772, BP-14-00800 through BP-14-00806) and related SEPA checklist

Dear Ms. Hathaway:

Please be certain that this letter of public comments/objections to the above noted applications are included in the official files. I am hand carrying this letter with attachments to your office. Thanks.

## I.
## All the Building Permits are invalid--a Conditional Use Permit was required under prior ordinance

The above noted building permits should be denied and dismissed. At the time QLL, LLC ("QLL") presented these applications a conditional use permit (CUP) was required for any I-502 activities. The parcels were less than 20 acres in size because the parcel combination was not effective until December 4, 2014 at the earliest. As there is no evidence that a CUP was filed during times when one would have been required, these permits are invalid, did not vest, and should be denied. A summary of the relevant applications is as follows:

| | |
|---|---|
| November 6, 2014 | QLL records **Statutory Warranty Deed** after purchasing parcel numbers 18-19-15000-0019(14901), 18-19-15000-0020(17954), 18-19-15000-0021(17955), and 18-19-15000-0004(784334). (a copy is attached as Exhibit A) |
| November 12, 2014 (day BOCC voted in new I-502 regs.) | QLL submits CB-14-00011, a **Parcel Combination Application** to create a 21.12 acre parcel out of 18-19-15000-0020(17954), a 10.92 acre parcel, and 18-19-15000-0004(784334) a 10.20 acre parcel. |
| November 14, 2014 | **Building permit** (fence), #BP-14-00772, submitted. |
| December 1, 2014 | **Building permit** (2400 sf greenhouse), #BP-14-008000,<br>**Building permit** (2400 sf greenhouse), #BP-14-008001,<br>**Building permit** (2400 sf greenhouse), #BP-14-008002,<br>**Building permit** (2400 sf greenhouse), #BP-14-008003,<br>**Building permit** (2400 sf greenhouse), #BP-14-008004,<br>**Building permit** (2400 sf greenhouse), #BP-14-008005,<br>**Building permit** (2400 sf greenhouse), #BP-14-008006, submitted. |
| December 1, 2014 | **Critical Areas Checklist** for parcel combination provided by QLL. |
| December 4, 2014 | **Final approval notice** to landowner indicating parcel combination "packet will be submitted by Community Development Services to the Kittitas County Assessor's office to finalize the Boundary Line Adjustment." |

The parcel combination-boundary line adjustment application filed by the applicant was not effective at the time the building permits were submitted. CB-14-00011 was not approved by the Community Development Services Department of Kittitas County until December 4, 2014.

The Kittitas County Code is very clear on the issue of when boundary line adjustments/parcel combination applications (see section 3.46.070) are completely effective:

**"Boundary line adjustments do not become effective until recorded with the Kittitas County Auditor." Kittitas County Code section 16.10.050**

Therefore all the parcels involved with these applications were still less than 20 acres in size until at least December 4, 2014, and even this date assumes the Auditor received and completed the processing of the parcel combination the same day as it was forwarded to their attention.

A CUP was required at the time the permit and SEPA applications were submitted for these two separate 10.92 and 10.20 acre parcels. None is apparent from my review of the Kittitas County Community Development Services website. The marijuana zoning ordinance in effect until December 2, 2014 "outright permitted" marijuana production and processing in rural and agricultural zoned properties in Kittitas County only if the parcels were larger than 20 acres in size.

The invalidity of these applications under the previous Ordinance 2014-0004, on the dates submitted, also precludes any claim that they are vested under RCW 19.27.095 because only a "**valid** and fully complete building permit application for a structure, **that is permitted under the zoning or other land use control ordinances in effect on the date of the application** shall be considered under the building permit ordinance in effect at the time of application, and the zoning or other land use control ordinances in effect on the date of application." (RCW 19.27.095)

Finally, a conditional use permit filed any time after December 2, 2014 would not be allowable, as current land use ordinances limit the activities noted in these applications to industrial zoned properties in Kittitas County.

For all the above reasons, these permits and the related SEPA application should be denied and dismissed.

## II.
## These permits are incomplete and references to future plans noted in SEPA documents and site plans, all do not vest.

In addition to being invalid, these permits are not complete because the water availability evidence presented is entirely insufficient. The county should find that the water availability certificate, a prerequisite to any permit, is unsubstantiated RCW 19.27.097. The applicant is requesting Kittitas County to accept fulfillment of this requirement for every permit with the barest of evidence, simply proof of an option to obtain a ground water mitigation certificate. Until there is clear federal authorization, the applicant does not have water even with a mitigation certificate. The option agreement for purchase of mitigation certificates is from Crushe LLC and like all other mitigation water sellers; this water provider has agreed to be in compliance with the Department of Ecology's (DOE's) storage contract with the Federal Bureau of Reclamation (Bureau). The Bureau has issued clear directives that the federal water it is charged with supervising not be utilized for the production or processing of marijuana and this includes water stored pursuant to the DOE and Bureau contract which supports the mitigation water bank. Because of this, a mitigation certificate cannot be utilized for marijuana production.

Also, a mitigation certificate does not in and of itself guarantee water is available on a particular site. The actual well must not impair and infringe on the rights of prior water users. That is a necessary prerequisite finding to a valid water availability certificate and is lacking in this application.

In addition, given the size and number of the greenhouse facilities sought, this clearly shows this is an industrial type site, for which a similar type of water right should be required. As a result a properly certified waste water treatment system should also be necessary.

And because the applicant appears to be attempting to vest further expansions with the references to these in submitted paperwork, I will also address the fact that the inclusion of references to additional phases and future plans in the submitted paperwork is essentially irrelevant for anything other than SEPA analysis and for some indication of what is required for adequate water and sewer facilities.

There is no vesting for any future plans not specifically requested in valid and complete permits. Washington law on vesting could not be clearer on this issue. Site plans and SEPA applications are inadequate to claim vesting under prior land use ordinances. (Abbey Road v. Bonney Lake, 167 Wn. 2d 242, 252-261 (2009) and Valley View v. Redmond, 107 Wn.2d 621 (1987). This is true even if county authorities provided assurances that proposed developments vest even without the filing of complete permit applications, although this would be unlikely. *Deer Creek Development v. Spokane County, 157 Wn. App. 1, 12-13 (2010)*

Vesting of applicant's referenced expansions is especially inappropriate in this instance. What is apparent from a review of the above noted time line of applications, is that this is nothing more than an applicant desperately trying to become vested within the last few effective days of an ordinance. An ordinance that was known by the applicant to only need enabling documents prepared and signatures; since at least **November 12, 2014**, the date the Kittitas County Commissioners voted to replace Ordinance 2014-0004 with the new rules. The applicant was the party seeking to rush this to conclusion. There is no evidence that the county has hindered their efforts to complete these applications. Valley View v. Redmond, 107 Wn.2d 621 (1987). Quite the contrary, the applicant here, for example, did none of the typical types of pre-submissions for building permits. There is no evidence of the holding of even a single pre-application meeting.

Future plans, whether mentioned in documents submitted by this applicant or not, will be subject to the more restrictive current land use ordinances in effect when or if a valid and complete permit is ever authorized for this location in the future. In this respect, it should also be noted that this applicant has not challenged the new more restrictive zoning code within the twenty one day period required under the Land Use Petition Act (LUPA, RCW 36.70)

No approvals would be allowable under the current land use laws. There can be no Phase II or other future expansions, or further build outs on any of these QLL parcels for I-502 production or processing unless the property is rezoned to industrial, and a new conditional use permit is applied for and approved.

And the applicant should be reminded that even temporary structures will require additional permits, which now under the land use codes are not allowable. For instance, many in the marijuana industry are under the impression that hoop house greenhouse structures do not require permits. This is essentially incorrect. If for example an electrical outlet is needed for these types of temporary structures, the land owner is still required to comply with the International Fire Code and procure a permit. And if any of these hoop houses are in place for more than one hundred and eighty (180) days, they are no longer considered temporary, and a building permit is required for them to remain in place. (See Kittitas County Code section 14.04.010(1) adopting International Building Code, RWC 19.27.015(4), WAC 51-50-007, and WAC 51-50-3103.1)

Because the building permits are not complete and valid, they do not vest under the prior land use ordinances, and because of the change in marijuana rules, they are not allowable under current codes. Also, under the circumstances presented, any references to future expansions on site plans and SEPA documents do not provide any authority for any vesting for any requested future authorizations.

All of the applicant's applications should be dismissed and denied.

## III.
## SEPA objections

1) The notice of application is deficient in that it fails to list the conditions being considered to mitigate environmental impacts: Under WAC 197-11-355(2)(b) the lead agency must "[l]ist in the notice of application the conditions being considered to mitigate environmental impacts if a MDNS is expected." Kittitas County has failed to identify any specific mitigation measures. Kittitas County's notice simply states that it "expects to issue a Determination of Non-Significance (DNS) for this proposal." The public was provided no information regarding mitigation. A new notice needs to be published and a new period established for comment.

2) The SEPA application and project information is incomplete, insufficient, and contradictory:

The Environmental checklist is vague, incomplete and inaccurate.

First, on the issue of water availability, there is the proposed use of an exempt well for a new withdrawal of water of an unknown quantity, for the production of marijuana. As of June 2, 2014, any new exempt well withdrawal of water in the lower Kittitas Valley portion of the Yakima River Basin requires the purchase of mitigation certificate from the Department of Ecology (DOE). All of the mitigation certificates available have as a condition, a statement that their use will be in compliance with the Department of Ecology's storage contract with the Federal Bureau of Reclamation (Bureau). For the same reasons the water availability certificate is insufficiently proven, see above discussion, and the applicant does not have water for this project.

Because the quantity of water use is either not quantified or is understated, it follows that the need for water treatment-sewage is therefore vastly underestimated.

In addition, given the actual size of the ultimate proposal described in the discussions of the various future phases, the water system proposal is incorrect and inadequate. Significantly more than an irrigation system is required for this marijuana factory. The state and/or county department of health must evaluate this proposal for the need of either a Group A or Group B water system.

As the ultimate plans for the growing canopy are so very large, the applicant should be required to get approval before being granted a permit, and have to install, a Group A system-as well as a community septic system--for the entire property. This level of department of health scrutiny would be required by the fact that the proposal seems to involve a large number of employees, despite the applicant's contentions to the contrary. It is likely that over 25 or more nonresidential people would ultimately be serviced by this applicant's planned facilities, and therefore a Group A system is required. (WAC 246-294-010(8)(b)) All this must be resolved and completed before any building permit is considered complete, and as it relates to the SEPA application, at least the list of necessary governmental approvals provided in answer to question number 10 should be rejected as incomplete as a Department of Health, either state or county level, review is not noted.

The need for an adequate water and waste water system is further highlighted by the various chemicals mentioned in the SEPA merely as "see attached MSDS sheets." These material safety data sheets clarify that exposures to employees can result in the need for immediate attention. Water outside of the allegedly

adequate "porta potties" will be needed to adequately protect the persons on this property from severe injuries.

Safety shower and/or eye shower stations are required for many of the chemicals for which MSDS sheets have been provided, including (1) A-Coco Nutrient, (2) B-Coco Nutrient, (3) BudXL, (4) Dripclen, (5) Great White, (6) Mighty Wash Foliage Cleaner, (7) MAD FARMER M.O.A.B., (8) Multi-Zyme, (9) PH DOWN Liquid, (10) PH UP Liquid, (11) Roots Excelerator, (12) Top Booster, (13) VITAMINO.

In addition, PH DOWN Liquid is a material that is considered hazardous by OSHA and Plant Revolutions Great White requires immediate medical attention if there is inhalation or eye or skin exposure. Many of these chemicals require safety clothing use, and special waste disposal, such as PH UP Liquid which has special waste disposal instructions.

The applicant only mentions water delivery for irrigation and none of these health dangers to employees are considered important enough to address.

The applicant's flippant responses to the serious nature of the production chemical planned to be used, is matched only by its complete disregard for chemicals which are clearly planned to be used in future phases which include the processing of marijuana.

SEPA requires that "proposals or parts of proposals that are related to each other closely enough to be, in effect, a single course of action shall be evaluated in the same environmental document." WAC 197-11-060(3)(b). An application such as this one which is devoid of a reasonable schedule for the planned improvements, and which mentions future plans and phases without answering the relevant questions with the ultimate planned improvements in mind, all this makes project evaluation impossible, and any mitigation measures proposed will be incomplete. Kittitas County should not perform "piecemeal" analysis of this project.

Finally, because of the anticipated increases in air pollution caused by this facility a Department of Ecology Air Quality Permit assessment and program are necessary. The wastes created this type of production facility, both to the ground and into the air, which are known to be excessive are not adequately mentioned as being an issue by the applicant. The list of necessary governmental approvals listed in answer to question number 10 should be rejected as incomplete as a Department of Ecology Air Quality Permit is not noted.

Overall, this SEPA application is incredibly insufficient. The typical types of environmental concerns that can be expected to arise in marijuana production are not included in this SEPA checklist. The application addresses only small passing references to environmental affects and either this SEPA application should be rejected in its entirety or at least, a full Environmental Impact Report should be required, and given the less than forthright provision of information provided by this applicant, the information provided should be in the form of declarations under penalty of perjury.

## IV.
## Other CUP objections, submitted for consideration if one has been filed

Assuming the county CDS website is incomplete and this applicant has filed a CUP application prior to December 2, 2014, it still should be rejected when one applies the analysis of consistency with the provisions of KCC 17.60A, Conditional Uses: This proposal is not consistent with the Kittitas County Zoning Code for Conditional Uses.

The proposed conditional use, even with significant conditions, will not be adequately served by rural levels of service. In addition, it is not desirable to public convenience, will be detrimental to public health, safety or welfare, is economically detrimental to the public, and is inadequately serviced by public facilities.

The proposal is not served adequately by rural levels of service. First, it is clear that even one facility requires significant levels of services. The proposal of seven large greenhouses is of a type that demands a level of public services more in line with what would be required for an "industrial" or "urban" type setting. Describing the activity as agricultural is debatable, but the value of the marijuana creates unique and certainly anticipated increased needs for public services. It is totally inadequate for a proponent to not address the increase in security needs for both itself and the neighborhood around such as facility. State regulations, quite appropriately concerned for the safety of the actual facility and its employees, require a certain level of security be installed as part of any licensed unit. But these regulations do not create a risk/crime free environment. There will be increased police services required.

There could easily be product on site with a value well exceeding multiple millions of dollars, even if it is only one facility. Each facility is allowed to maintain a large inventory of product, as well as the items being grown; and these together are very likely to require significant additional police work to combat foreseeable criminal behavior. Rural neighbors are also likely to be affected. It is the height of ignorance to expect that a facility requiring strict security, would not invite potential attempts of burglary or robbery. Banks and convenience stores are similarly well "armed" with security systems, but the crime rate at these facilities is still significant. The solitude of the neighborhood also increases the risk for the rural neighbors. It is not uncommon in the areas like where this proposal is sited, for neighbors to know almost every car that is on the road, and many matters which would go unnoticed in an urban area are likely to be very much known by all. There is no animinity in a rural setting, and this would include the potential identification of perpetrators of crimes. Neighbor-witnesses, as well as the employee-witnesses on the proposed site, face increased needs of police resources for their personal protection whenever one of these foreseeable burglary or robbery is attempted. Marijuana is expensive. Marijuana is easily disposed of illegally as there is a long established criminal black market. Marijuana stolen and fenced is not taxed. Marijuana production in a neighborhood such as that proposed by Grow Bros creates a significant increase in criminal activity. At very least it is likely to be a public inconvenience and detrimental to public health and safety.

In addition, any filed Conditional Use Permit should be denied because there is no adequate supply for water and the proposal requires a complicated, community type, septic system to adequately clean the large amounts of water needed for the contemplated use, see discussions above, which waste and water needs to be treated as fertilizers, pesticides, and herbicides will be involved. This proposal is inconsistent with rural levels of service and should simply just be located at another location.

## V.
## Conclusions

For the above reasons, either the SEPA application should be rejected outright, or the proper official response should be that Grow Bros be required to complete a full Environmental Impact Study (EIS) which should also be required to review all proposals more carefully defined and at full build out. A MDNS is completely inappropriate.

In addition, and separately, but for many of the same noted reasons, all the permit applications and any timely submitted CUP application(if it has been filed) should be rejected for failure to comply with county code requirements, including its failure to vest or be a complete applications even today.

John Ufkes

11/06/2014 04:47:53 PM 201411060034
$72.00 Page: 1 of 1
Warranty Deed AMERITITLE
Kittitas County Auditor

When recorded return to:
QLL Holdings LLC, a Washington limited liability company
12990 Phelps Road NE
Bainbridge Island, WA 98110

Order No.: 17587AM

RE EXCISE TAX PAID
Amount $5,207.00
Date 11/6/2014
Affidavit No. 2014-1999
KITTITAS COUNTY TREASURER
By Anna Tadden

# STATUTORY WARRANTY DEED

AMT $72-

THE GRANTOR(S) **Robert L. Corey and Judith E. Corey, husband and wife**

for and in consideration of Ten and no/100 Dollars ($10.00) and other valuable consideration

in hand paid, conveys, and warrants to **QLL Holdings LLC, a Washington limited liability company**

the following described real estate, situated in the County of Kittitas, State of Washington:

**Parcels 1, 2, 3 and 4 of that certain Survey as recorded March 1, 2002, in Book 27 of Surveys, pages 92 and 93, under the Auditor's File No.: 200203010020, records of Kittitas County, Washington, being a portion of the Northeast Quarter of Section 16 and the Northwest Quarter of Section 15, all in Township 18 North, Range 19 East, W.M., in the County of Kittitas, State of Washington.**

Subject to: Current Year Taxes, conditions, covenants, restrictions, reservations, easements, rights and rights of way, apparent or of record.

Tax Parcel Number(s): 18-19-15000-0019 (14901), 18-19-15000-0020 (17954), 18-19-15000-0021 (17955), 18-19-15000-0004 (784334)

Dated: 11/6/14

Robert L. Corey

Judith E. Corey

State of Washington } ss
County of Kittitas}

On this 6th day of November, 2014, before me, Schiree Minor, a Notary Public in and for said state, personally appeared Robert L. Corey and Judith E. Corey, husband and wife, known or identified to me to be the person(s) whose name(s) is/are subscribed to the within Instrument and acknowledged to me that he/she/they executed same.
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Schiree Minor
Notary Public for the State of Washington
Residing at: Ellensburg
Commission Expires: 9-9-17

SCHIREE MINOR NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES SEPTEMBER 09, 2017

Exhibit A