

**KITTITAS COUNTY
LAND USE HEARING EXAMINER**

IN THE MATTER OF CU-13-00002 John and Mary Steigleder))))	RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND CONDITIONS OF APPROVAL
--	------------------	--

THIS MATTER having come on for hearing in front of the Kittitas County Hearing Examiner on May 2, 2013, the Hearing Examiner having taken evidence hereby submits the following Recommended Findings of Fact, Conclusions of Law, Decision and Conditions of Approval as follows:

I. RECOMMENDED FINDINGS OF FACT

1. Kathy and Terry Christman, applicant and authorized agent for John and Mary Steigleder, property owners, submitted a conditional use permit application for the operation of a produce stand at their residence in the Commercial Agriculture zone. (Staff report)
2. The project is located approximately 1 mile southeast of Thorp at 8341 S. Thorp Hwy, in a portion of Section 13, T18N, R17E, W.M. in Kittitas County. Assessor's map number: 18-17-13020-0014. (Staff report)
3. Site Information:

Total Property Size:	2.95 acres
Number of Lots:	1; no new lots are being proposed
Domestic Water:	None planned at this time
Sewage Disposal:	sani-can(s)
Power/Electricity:	Puget Sound Energy
Fire Protection:	Fire District 1
Irrigation District:	Westside Irrigation District

(Staff report)
4. Site Characteristics:

<u>North:</u>	Interstate, Highway Commercial, Agricultural, Vacant, State Trail
<u>South:</u>	Agricultural
<u>East:</u>	Agricultural and Interstate
<u>West:</u>	Vacant, Agricultural, Highway and Limited Commercial

(Staff report)

5. Site Characteristics: The area is primarily covered by a residential structure and associated buildings along with yard and gravel area. There is one PUBHx wetland located in the northern area of the property behind the residence and away from the proposed produce stand operation. (Staff report)
6. The Comprehensive Plan designation is “Commercial Agriculture.” (Staff report)
7. The subject property is zoned “Commercial Agriculture,” which allows for commercial activity associated with agriculture as a conditional use. (Staff report)
8. A conditional use permit application was submitted to Community Development Services on February 11, 2013 and deemed complete on March 11, 2013. The Notice of Application for the conditional use permit was issued on March 25, 2013. This notice was published in the official county paper of record and was mailed to jurisdictional government agencies, adjacent property owners and other interested parties. The last day to submit written comments was on April 9, 2013. (Staff report)
9. Based upon review of the submitted application materials including an environmental checklist, correspondence received during this 15 day comment period and other information on file with Community Development Services, a Mitigated Determination of Non-Significance (MDNS) was issued on April 17, 2013. The appeal period ended on May 1, 2013 at 5:00 p.m. An appeal was timely filed on April 29th, 2013.
10. The proposal is consistent with the goals and policies of the Kittitas County Comprehensive Plan. (Staff report)
11. Staff conducted an administrative critical area review in accordance with KCC 17A and found a wetland type PUBHx in the northern area of the property behind the residence and away from the proposed produce stand operation. (Staff report)
12. This proposal is consistent with the Kittitas County Zoning Code 17.31. Specifically this proposal is compatible with KCC 17.31.030(3) commercial activities associated with agriculture. (Staff report)
13. This proposal is consistent with the Kittitas County Zoning Code for Conditional Uses. The proposed conditional use will be adequately served by rural levels of service. As conditioned, the proposal is 1) desirable to public convenience, 2) will not be detrimental to public health, safety or welfare, 3) is not economically detrimental to the public, and 4) is adequately serviced by public facilities. (Staff report)
14. No road improvements are necessary for this use. Access improvements are required to meet the requirements of Kittitas County Road Standards. As conditioned, the proposal is consistent with the provisions of KCC Title 12. (Staff report)
15. The following agencies provided comments during the comment period: Kittitas County Fire Marshal. Additionally, a pre-application meeting was conducted on January 16, 2013 where the following Kittitas County departments provided comments: Community Development

Services, Public Works, Environmental Health, and Building. These comments have been included as conditions of approval to address these agency concerns. (Staff report)

16. Numerous public comments were submitted for this proposal at the time of staff review and were considered. They are attached to the staff report as part of the Steigleder Conditional Use Permit Index File. (Staff report)
17. Public and agency comments that were received were considered by the Hearing Examiner in rendering this Decision and forming Conditions of Approval. (Hearing Examiner finding based on the record)
18. The entire Planning Staff file was admitted into the record at the public hearing. (Public hearing record)
19. The Kittitas County Community Development Services recommended approval of this permit(s), subject to the recommended conditions of approval. (Public hearing record)
20. An open record public hearing after due legal notice was held on May 2, 2013. (Open record public hearing)
21. The following exhibits were admitted into the record:
 - 21.1 Exhibit 1: Pre-application meeting summary and information dated January 16, 2013.
 - 21.2 Exhibit 2: Application Submittal packet dated February 11, 2013.
 - 21.3 Exhibit 3: Staff review info.
 - 21.4 Exhibit 4: Fire Marshal permit fee paid dated March 29, 2013
 - 21.5 Exhibit 5: Notice of Complete Application dated March 11, 2013.
 - 21.6 Exhibit 6: Affidavit of Posting dated March 13, 2013.
 - 21.7 Exhibit 7: Notice of Application dated March 25, 2013.
 - 21.8 Exhibit 8: Affidavit of Mailing & Publication – Notice of Application dated March 25, 2013.
 - 21.9 Exhibit 9: Email between CDS and K. Christman dated March 26, 2013.
 - 21.10 Exhibit 10: Petition to Save Gibson Produce dated March 13, 2013.
 - 21.11 Exhibit 11: Comment letter from M & C Dyk dated March 13, 2013.
 - 21.12 Exhibit 12: Comment email from N. Edwards dated March 18, 2013.
 - 21.13 Exhibit 13: Comment email from L. Rubio dated March 18, 2013.
 - 21.14 Exhibit 14: Comment email from J. Stanley dated March 18, 2013.
 - 21.15 Exhibit 15: Comment letter from N. Gibson dated March 22, 2013.
 - 21.16 Exhibit 16: Comment email from M. Hawk dated March 27, 2013.
 - 21.17 Exhibit 17: Comment email from Kittitas County Fire Marshal – B. Larsen dated March 28, 2013.
 - 21.18 Exhibit 18: Comment email from W. Mahoney dated April 1, 2013.
 - 21.19 Exhibit 19: Comment email from K. Lym dated April 1, 2013.
 - 21.20 Exhibit 20: Comment email from M. Weeks dated April 2, 2013.
 - 21.21 Exhibit 21: Comment email from Thorp Fruit & Antique Mall – B. Rowley dated April 2, 2013, and same Comment letter dated April 4, 2013.
 - 21.22 Exhibit 22: 26 form comment letters from various individuals dated April 3, 2013.

CU-13-00002

John and Mary Steigleder

Page 3 of 8

- 21.23 Exhibit 23: Comment letter from M. Rowley dated April 3, 2013.
- 21.24 Exhibit 24: 2 form comment letter from J. & R. Bornhurst dated April 5, 2013.
- 21.25 Exhibit 25: 4 form letters from various individuals dated April 8, 2013.
- 21.26 Exhibit 26: Comment letter from J. Jones dated April 9, 2013.
- 21.27 Exhibit 27: Transmittal of comments letter dated April 10, 2013.
- 21.28 Exhibit 28: Email between CDS and T. Shallbetter dated April 10, 2013.
- 21.29 Exhibit 29: Email between KC Code Enforcement and T. Shallbetter re: BOCC decision of CUP required dated April 11, 2013.
- 21.30 Exhibit 30: Email between CDS and T. Shallbetter dated April 12, 2013.
- 21.31 Exhibit 31: Email between CDS and T. Shallbetter – re: response to comments dated April 12, 2013.
- 21.32 Exhibit 32: Email between CDS and T. Shallbetter dated April 16, 2013.
- 21.33 Exhibit 33: SEPA MDNS dated April 17, 2013.
- 21.34 Exhibit 34: Notice of Decision SEPA Action and Public Hearing dated April 17, 2013.
- 21.35 Exhibit 35: Affidavit of Mailing & Publication dated April 17, 2013.
- 21.36 Exhibit 36: Hearing Examiner Hearing Agenda for May 2, 2013.
- 21.37 Exhibit 37: Hearing Examiner Staff Report dated May 2, 2013 (hearing date).
- 21.38 Exhibit 38: Notice of Application legal posting invoice from Daily Record – 4/17/13.
- 21.39 Exhibit 39: Public Disclosure request – Bill Rowley – 4/26/13.
- 21.40 Exhibit 40: April 29th, 2013 letter from Attorney Jeff Slothower to the Kittitas County Board of Commissioners.
- 21.41 Exhibit 41: Comment letter – K & N Kukes – 4/30/13.
- 21.42 Exhibit 42: SEPA Appeal confirmation of receipt letter from BOCC – 4/30/13.
- 21.43 Exhibit 43: Email from J. Slothower to CDS – 5/6/13.
- 21.44 Exhibit 44: Email from T. Shallbetter to CDS – 5/9/13.
- 21.45 Exhibit 45: Appellant’s memorandum of authorities re SEPA appeal and in opposition to Conditional Use Permit Application.
- 21.46 Exhibit 46: Applicant’s response to SEPA appeal.
- 21.47 Exhibit 47: Power point presentation submitted at open record public hearing.
- 21.48 Exhibit 48: Applicant’s hearing brief in support of CUP for produce stand.
- 21.49 Exhibit 49: Affidavit of mailing and publication.
- 21.50 Exhibit 50: June 30th, 2013 letter from C.P. Wolfsehr.
- 21.51 Exhibit 51: July 11th, 2013 letter from William Rowley to the Hearing Examiner.

22. Appearing and testifying on behalf of the applicant was Tracy Schallbetter. Ms. Schallbetter testified that she was an agent and the attorney for the applicant and authorized to appear and speak on behalf of the applicant and property owners. Ms. Schallbetter referred the Hearing Examiner to her memorandum for the applicant’s position regarding the evidence previously submitted regarding this application. Ms. Schallbetter confirmed that all of the parking will occur on site.

23. The following individuals testified in favor of the project:

- 23.1 Nancy Jantzer;
- 23.2 Shirley Wainwright

- 23.3 Robert Hambrick;
- 23.4 Rob Lang;
- 23.5 Jaime Gibson;
- 23.6 Holly Conti;
- 23.7 Eilene Mallonee;
- 23.8 Lois Stugard;
- 23.9 Clifford Wolfsehr;
- 23.10 Sandra Rivera; and
- 23.11 Diane Storms.

24. Testifying in opposition of the project were the following individuals;

- 24.1 William Rowley. Mr. Rowley testified consistent with Exhibit 51.
- 24.2 Jeff Slothower. Mr. Slothower testified that he was the attorney for Mr. Rowley. Mr. Slothower questioned whether or not this was a highway commercial use as opposed to a fruit stand. He encouraged the Hearing Examiner to impose conditions of approval limiting the sale of the items at the fruit stand to local fruits and produce only.

25. In rebuttal, Ms. Schalletter testified that the facility would operate only from May through December and that there were some products that were sold that were not available during that time frame. She testified that the majority of the products sold would be seasonal fruits and produce grown in Washington State.

26. The proposal is appropriate in design, character and appearance with the goals and policies for the land use designation in which the proposed use is located. (Hearing Examiner finding based on the record)

27. The proposed use will not cause significant adverse impacts on the human or natural environments that cannot be mitigated by conditions of approval. (Hearing Examiner finding based on the record)

28. The proposal will be served by adequate facilities including access, fire protection, water, storm water control, and sewage disposal facilities. (Hearing Examiner finding based on the record).

29. Any Conclusion of Law that is more correctly a Finding of Fact is hereby incorporated as such by this reference. (Hearing Examiner finding based on the record)

II. RECOMMENDED CONCLUSIONS OF LAW

- 1. The Hearing Examiner has been granted authority to render this recommended decision.
- 2. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.

III. RECOMMENDED DECISION

Based on the above Recommended Findings of Fact and Recommended Conclusions of Law, the Hearing Examiner hereby recommends that Application CU-13-00002, John and Mary Steigleder, be **APPROVED** subject to the following Recommended Conditions of Approval.

IV. RECOMMENDED CONDITIONS OF APPROVAL

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

1. All conditions imposed herein shall be binding on the "Applicant," which terms shall include the owner or owners of the property, heirs, assigns and successors.
2. The project shall proceed in substantial conformance with the plans and application materials on file dated February 11, 2013 except as amended by the conditions herein.
3. The applicant is responsible for compliance with all applicable local, state and federal rules and regulations, and must obtain all appropriate permits and approvals.
4. All current and future landowners must comply with the International Fire Code.
5. All development, design and construction shall comply with all Kittitas County Codes and the International Fire and Building Codes.
6. The subject property is within or near designated agricultural lands, forest lands, or mineral resource lands on which a variety of commercial activities and mineral operations may occur that are not compatible with residential development for certain periods of limited duration. Commercial natural resource activities and/or mineral operations performed in accordance with county, state and federal laws are not subject or legal action as public nuisances. (RCW 7.48.305)
7. Based on comments received during the public comment period and other information submitted with this project permit application, A SEPA Mitigation Determination of Non-Significance (MDNS) was issued by Community Development Services on April 17, 2013. The following are the mitigation contained within the MDNS and shall be conditions of approval:

Transportation

- 7.1 An access permit must be obtained and filed with Kittitas County Public Works Department for access to the site prior to operation of the produce stand.
- 7.2 The approach must be constructed to commercial standards and the apron must be paved prior to operation of the produce stand.

- 7.3 The parking area shall provide for at least six (6) vehicles at any given time. Parking along South Thorp Hwy will not be allowed.

Water & Sewer

- 7.4 An ADA accessible sani-can shall be provided on-site. A copy of the signed contract with the sani-can provider shall be submitted to Kittitas County Public Health prior to operation of the produce stand. Public Health shall be provided with a new copy of the signed contract as it is renewed and/or revised.
- 7.5 The existing well on the property for the residence shall not be utilized for business purposes.

Fire & Life Safety

- 7.6 A turn-around shall be provided for fire department access.
- 7.7 Any man-doors shall have lever type handles or panic hardware installed.
- 7.8 Fire extinguishers shall be located appropriately; coordination with the Kittitas County Fire Marshal shall occur prior to operation of the produce stand.
- 7.9 A Tenant Improvement application shall be submitted and approved prior to operation of the produce stand.
- 7.10 A fire and life safety inspection shall be conducted prior to beginning operation, and an annual fire and life safety inspection will be required as well.
- 7.11 All development, design and construction shall comply with Kittitas County Code and the most current version of the International Fire & Building Codes.
- 7.12 One (1) ADA accessible parking space shall be required with proper signage. This space must be hard-surfaced and provide for hard-surface access to the produce stand and ADA accessible sani-can. This must be completed prior to operation of the produce stand.
- 7.13 Full-time year-round operation for three (3) consecutive years will require additional requirements such as a permanent restroom facility etc. It is the responsibility of the business owner to contact Kittitas County Community Development Services and Building Department for further review/requirements if extended full-time year-round operation beyond two (2) years is desired.

Aesthetics

- 7.14 A sign permit will be required from Kittitas County Community Development Services and Building Department pursuant to KCC 17.72 if the produce stand's continuous operation exceeds six (6) months in any one calendar year. Specific requirements for

signage of a produce stand are cited in KCC 17.72.170. Signs are not allowed within the rights-of-way of any County roads pursuant to KCC 12.50.

- 7.15 All outdoor lighting shall be shielded and directed downward to minimize the effect to nearby residential properties.

Dated this 24th day of July, 2013.

KITTITAS COUNTY HEARING EXAMINER

Andrew L. Kottkamp