

## Summary Report (ASR)

### Franklin County Board of Commissioners

<b>DATE SUBMITTED:</b> April 6, 2021	<b>PREPARED BY:</b> Derrick Braaten
<b>Meeting Date Requested:</b> April 13, 2021	<b>PRESENTED BY:</b> Derrick Braaten
<b>ITEM:</b> (Select One) <input type="checkbox"/> Consent Agenda <input checked="" type="checkbox"/> Brought Before the Board Time needed: 10 minutes	
<b>SUBJECT:</b> Item Remanded Back to Staff for Clarification of Record - A Conditional Use Permit to allow the expansion of an existing dairy replacement growing facility, processed as a feedlot, to 10,000 head (cattle – milking cows). (File # CUP 2020-04 and SEPA 2020-11)	
<b>FISCAL IMPACT:</b> None	
<b>BACKGROUND:</b> This item was presented to the BoCC on March 16, 2021 as an open record public hearing. At the hearing, statements presented to the Board from the public and the applicant indicated there may be discrepancies in the record presented to the Board for its consideration of the matter. The final decision regarding CUP 2020-04 was tabled, and the item remanded back to staff for clarification of the record, primarily regarding whether the public was properly notified and whether the process used was appropriate. In addition, during the March 16 <sup>th</sup> hearing, it was discovered that there were duplicate or redundant conditions proposed, reducing the total number of conditions from the 21 conditions recommended by the Planning Commission to 20 conditions.  If approved, CUP 2020-04 will bring the total permitted head count at the feedlot, comprising two (2) properties and approx. 634 acres, from its current allowed 3,500 head to 10,000 head, on parcel numbers 109-270-022 and 109-220-022 (3,500 head originally permitted through CUP 2012-03, plus the 6,500 head proposed to be permitted through CUP 2020-04). Though owned by the same party, this feedlot is considered under SEPA requirements to be a separate and distinct operation from the Coulee Flats Dairy facility, permitted through CUP 2007-02.	
<b>RECOMMENDATION:</b> The Planning Department staff still recommends approval of the application, with 6 findings of fact and 20 conditions of approval.  <u>Suggested Motion:</u> Pass Resolution #____, approving CUP 2020-04 and adopting the six (6) written findings of fact and twenty (20) conditions of approval.	
<b>COORDINATION:</b> The County Building and Planning Department processed the application, coordinated for agency comments, and reviewed the application in accordance with Chapter 17.82 Franklin County Code. The CUP application was advertised to the public via adopted public notice procedures, and agencies were contacted for review and comment; a SEPA DNS (revised) was issued on Feb 25, 2021. An open record hearing was held before the BoCC on March 16, 2021.	
<b>ATTACHMENTS:</b> (Documents you are submitting to the Board) (1) Draft Resolution (2) Staff Clarification Document (3) Staff Report to the Planning Commission including attachments (4) Draft Planning Commission Minutes	
<b>HANDLING / ROUTING:</b> To the Clerk of the Board: 1 Original Resolution To Planning: 1 Copy Res.	

*I certify the above information is accurate and complete.*

 Derrick Braaten

**FRANKLIN COUNTY RESOLUTION \_\_\_\_\_**  
**BEFORE THE BOARD OF COUNTY COMMISSIONERS OF**  
**FRANKLIN COUNTY, WASHINGTON**

***Conditional Use Permit (CUP) 2020-04 to allow a feedlot expansion.***

**WHEREAS**, on March 16, 2021, the Board of Franklin County Commissioners considered the positive recommendation of the Franklin County Planning Commission, regarding a request to expand the allowed animal head count at an existing feedlot, processed under file number CUP 2020-04; and

**WHEREAS**, at the March 16, 2021 meeting, the Board held a duly noticed open record hearing on the conditional use permit for the proposed use proposed under file CUP 2020-04, following a recommendation from Planning Staff and with the applicant's agreement; and

**WHEREAS**, at the March 16, 2021 open record hearing, comments from the applicant and public indicated there may be discrepancies in the record as provided to the Board, as well as procedural concerns, and a final decision was tabled, with the item being remanded back to Staff for clarification; and

**WHEREAS**, the Washington State Department of Ecology has confirmed that the SEPA Lead Official correctly considered CUP 2020-04 as a separate facility from the commercial dairy approved through CUP 2007-02; and

**WHEREAS**, the public and surrounding property owners within 1-mile of the site were properly notified, as provided for in FCC 14.50.030, of the proposal, all hearings, and amendments to the record; and

**WHEREAS**, on April 13, 2021, via a public meeting before the Board, Staff updated the record and confirmed that the SEPA review and notification process followed was appropriate; and

**WHEREAS**, at the public meeting the Board has found that the County Planning Commission, after an open record public hearing and consideration on **CUP 2020-04** did recommend approval of the Conditional Use Permit several suggested findings of fact and conditions of approval; and

**WHEREAS**, there was no appeal filed; and

**WHEREAS**, there was one comment expressing concerns of how the proposal would impact water use by surrounding landowners; and

**WHEREAS**, it appears to be in the public use and interest to **approve** the conditional use permit; and

**NOW, THEREFORE, BE IT RESOLVED** that CUP 2020-04 is hereby **approved** in accordance with the provisions of the Franklin County Development Regulations and as recommended by the Planning Commission.

**APPROVED THIS 13<sup>th</sup> DAY OF APRIL, 2021.**

**BOARD OF COUNTY COMMISSIONERS  
FRANKLIN COUNTY, WASHINGTON**

\_\_\_\_\_  
**Chair**

\_\_\_\_\_  
**Chair Pro-Tem**

**Attest:** \_\_\_\_\_  
**Clerk of the Board**

\_\_\_\_\_  
**Member**

**FRANKLIN COUNTY BOARD OF COMMISSIONERS**

**CONDITIONAL USE PERMIT # 2020-04**

**RESOLUTION NUMBER \_\_\_\_\_**

The following Conditional Use Permit **is granted**, in accordance with the provisions of the Development Regulations of Franklin County, and according to the motion passed by the Franklin County Board of Commissioners on April 13, 2021.

**APPLICANT:** Case VanderMeulen P.O. Box 228 Mesa, WA 99343

**LEGAL**

**DESCRIPTION:** Southwest 1/2 of Township 13, Range 32, Section 22 and Northwest 1/2 of Township 13, Range 31, Section 27, W.M. of Franklin County, WA.

**NON-LEGAL**

**DESCRIPTION:** Parcel #109-270-022 has no address, while parcel #109-220-022 has an address of 2270 Joyce Rd.

**SEPA REVIEW:** A SEPA Checklist was submitted with the CUP application. Planning Staff [*Lead Agency Responsible Official*] reviewed the checklist and issued a Determination of Non-Significance (DNS) on December 10, 2020 under WAC 197-11-340(2) which was published December 10, 2020. Comments on the Threshold Determination were due by December 24, 2020 and comment letters were received. There were no SEPA appeals. Due to new information and public comments received at the January 5, 2021 public hearing, the SEPA Determination was revised to an MDNS on February 25, 2021 with mitigation measures, and additional comment period. Notice was posted on February 25, 2021, and all property owners within 1-mile of the site were sent notice of the change in SEPA Determination, and notice that the item would be heard in an open public hearing before the Franklin County Board of County Commissioners on March 16, 2021.

**CONDITIONAL USE DESCRIPTION:** The conditional use permit application is to allow the expansion of a “dairy replacement growing facility”, originally approved through CUP 2012-03 as a “feedlot”, from 3,500 head to 10,000 head on parcel numbers 109-270-022 and 109-220-022. The subject parcels for CUP 2020-04 are zoned Agricultural Production 20 (AP-20), and located approximately 2.18 miles NE of the dairy facility located at 1170 Pepiot Road, approved through CUP 2007-02. The zoning regulations allow up to 500 milking cows in the AP-20 zone as an outright permitted use, or 1,000 head for a feedlot, but the head count may be exceeded upon the approval of a conditional use permit. The application includes features such as fencing, feed bunks and concrete slabs.

This decision is supported by the following adopted findings of fact and conditions of approval:

**FINDINGS OF FACT:**

1. The proposed use in the AP-20 Zoning District **IS** in accordance with goals and policies of the County Development Regulations (Zoning) and the applicable Comprehensive Plan.

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- a. The land is zoned Agricultural Production 20 (AP-20) and the Comprehensive Plan designation is Agricultural.
  - b. Pursuant to the Comprehensive Plan, the approval of a Conditional Use Permit is required for large scale confined animal feeding operations.
  - c. A dairy operation greater in size than 500 head count requires approval of a conditional use permit.
  - d. A feedlot operation greater in size than 1,000 requires the approval of a conditional use permit.
  - e. The comprehensive plan states that the county will encourage agricultural industries in agricultural areas (*Comprehensive Plan, Pg. 94-98*).
  - f. While there are critical areas mapped on the parcel and in the vicinity of the dairy operation, no critical areas or buffers will be impacted by this proposal due to the distances from the operation to the features.
2. The proposal **WILL NOT** adversely affect public infrastructure.
- a. The dairy's access is from Pepiot Road and Joyce Road.
  - b. Public Works has determined that it is not anticipated that the use will have a significant impact on the County Road System.
  - c. The project is located in Farm Unit 8 of Irrigation Block 11, Columbia Basin Project and the Bureau of Reclamation currently has irrigation facilities on and/or near the proposed project site.
  - d. Surface water runoff resulting from construction activities can potentially enter Project facilities and adversely affect water quality. Storm water containment practices shall be followed to minimize or eliminate this risk.
3. The proposal **WILL BE** constructed, maintained, and operated to be in harmony with the existing or intended character of the general vicinity.
- a. The site location for the animal operation expansion is in an area zoned Agricultural Production 20 (AP-20);
  - b. The general area consists of farms, animal operations, and scattered single family homes;
  - c. The animal operation expansion is in harmony with and is compatible with the surrounding lands, including the existing and intended character of the

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agricultural area:

- i. The animal operation and its expansion at this site is a compatible use with the Agricultural Production 20 (AP-20) Zoning District and the surrounding areas.
  - ii. The farm site is in an area zoned Agricultural Production 20 (AP-20).
  - iii. The farm site is not located near a Rural Settlement Area or a designated Urban Growth Boundary.
  - iv. Active farms and another animal operation is located near the proposed farm site.
  - v. The main dairy site is located over 3 miles from the nearest urban growth area.
    - i. This area has a minimum lot size of 20 acres and allows agricultural uses as a permitted use in this zoning classification.
    - ii. The residential area is designated in the County Comprehensive plan as Agricultural.
4. The location and height of the structure and site design **WILL NOT** discourage the development of permitted uses on property in the general vicinity or impair the value thereof.
- a. The farm site is located in an agricultural area that is not densely populated and the farm site is not located near a Rural Settlement Area or a designated Urban Growth Boundary.
  - b. Agricultural industry and animal operations are consistent with the uses allowed in agricultural areas.
  - c. The area is zoned Agricultural Production 20 (AP-20).
  - d. The height of future proposed structures and site design (as submitted) is in compliance with the AP-20 development standards. The dairy expansion will not discourage the development of permitted uses in the area.
  - e. The implementation of a dairy Nutrient Management Plan will help address the potential for buildup of nitrates and nutrients in the soil.
  - f. The use of proper erosion and sediment control practices on the construction site and adjacent areas will prevent upland sediments from entering surface water.



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5. The operation in connection with the proposal **WILL NOT** be more objectionable to nearby properties by reason of noise, fumes, vibrations, dust, traffic, or flashing lights than would be the operation of any permitted uses within the district.
  - a. The area is zoned Agricultural Production 20 (AP-20) which allows for a wide range of agricultural activities and animal agricultural operations to occur.
  - b. The proposed animal agricultural activity and operation is not more objectionable than other permitted uses allowed in the area. A dairy facility does not create more noise, fumes, vibrations, dust, traffic, or flashing lights than other agricultural uses permitted in the AP-20 zoning district.
  - c. The dairy expansion is in harmony with and is compatible with the surrounding lands, including the existing and intended character of the agricultural area.
  - d. To further ensure its compatibility with the surrounding agricultural area and reduce potential impacts to neighbors, the dairy operation can implement mitigation measures and comply with a State of Washington Dairy Nutrient Management Plan as enforced by the State of Washington, comply with an Odor and Fly Control Plan, and shield all lights on the property.
6. The proposal **WILL NOT** endanger the public health, safety, or general welfare if located where proposed.
  - a. The public was notified of this proposal in accordance with all guidelines and requirements, and the Planning Department received **NO COMMENTS** in favor of the proposal, and one comment was received expressing concerns regarding the impact the proposal will have on the availability of water for surrounding properties.
  - b. To protect water quality and health related issues, the applicant is required to comply with a State of Washington Dairy Nutrient Management Plan. The Nutrient Management Plan, as enforced by the Washington State Department of Agriculture has the following water quality objectives: "Preventing discharge of contaminated waste water to streams, drainage ditches, or other surface waters from the facility; Preventing migration of contaminants from the facility to the underlying aquifer; Using facility nutrients to supply crop nutrient needs at rates and times tailored to reach realistic yield goals; Meeting the requirements of the Dairy Nutrient Management Act of 1998, the Clean Water Act".

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- c. The applicant currently has a Nutrient Management Plan for the existing dairy operation and dairy replacement growing facility. With the expansion, an updated Plan is required and shall be completed.
- d. Completion of an Odor and Fly Control Plan for the operation. This Plan will discuss numerous items including potential sources of odors and flies on the farm including methods to control and reduce odors and flies at the dairy site.
- e. A Mitigated Determination of Non-Significance (MDNS) has been issued as part of the SEPA review and determination. An approved Conditional Use Permit, compliance with the required Dairy Nutrient Management Plan, and compliance with the State Department of Agriculture's regulations is required for this application.
- f. The project is located within Fire District #1, a rural district. Measures such as enhanced building separation standards and development of a fire apparatus road are necessary to ensure safety.

**Conditions of Approval:**

- 1. The project must include the use of proper erosion and sediment control practices on the construction site and adjacent areas to prevent upland sediments from entering surface water. Refer to the Stormwater Management Manual for Eastern Washington at [http://www.ecy.wa.gov/programs/wq/stormwater/eastern\\_manual/manual.html](http://www.ecy.wa.gov/programs/wq/stormwater/eastern_manual/manual.html). All ground disturbed by construction activities must be stabilized. When appropriate, use native vegetation typical of the site. In addition, a General Construction Storm Water Permit from the Washington State Department of Ecology will be needed if the project is one acre or greater.
- 2. A **Mitigated Determination of Non-Significance (MDNS)** has been issued as part of the SEPA review and determination. An approved Conditional Use Permit, compliance with the required dairy Nutrient Management Plan, and compliance with the State Department of Agriculture's regulations is required for this permit.
- 3. The applicant shall comply with the State of Washington's requirements for Dairy operations including the implementation of a **Nutrient Management Plan (NMP)** for the operation. Nutrient management plans focus on water quality related issues. The applicant's current NMP for the dairy operation was completed for the current size of the operation. A copy shall be provided to the County to be placed in the CUP case file, if allowed per federal disclosure laws.
- 4. Any headcount expansion at the site shall comply with the applicable NMP in effect at the time of expansion.



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5. The Odor and Fly Control Guidelines adopted by County Resolution 2001-238 by the Board of County Commissioners states that an **Odor and Fly Control Plan** may be required as part of a Conditional Use Permit for animal operations. An Odor and Fly control Plan **is** required for this operation and expansion. The applicant is required to complete and submit an Odor and Fly Control plan by June 2022 (18 months from the date of CUP approval), which is consistent with the required NMP submittal.
  - a. To assist in being a good neighbor and encouraging positive neighbor relations, the applicant shall ensure the required Odor and Fly Control Plan discusses the following:
    - i. Field spraying of animal waste should only occur at times that will least impact surrounding neighbors. With this, spraying should not occur on weekends and on holidays when neighboring landowners may be spending an increased amount of time enjoying the outdoors; and
    - ii. Applicant should maintain an open door policy with surrounding land owners. Address neighbor issues to the best extent reasonably possible and in turn assist in eliminating nuisance issues to the best of applicants' ability.
6. The applicant shall, at all times, comply with the necessary Federal and State standards for dairy operations. This includes, but is not limited to the Washington State Department of Agriculture requirements for dairy operations.
7. **Approach permits** are required for any new approaches onto county roads.
8. New facilities such as barns, pen areas, and parlor expansion will need to be established as the headcount number increases. The applicant is required to comply with the requirements of the **County Building Division** regarding any new construction at the site. On Site Water for Fire Protection may be required upon completion of Building Department review of submittals and consultation with local Fire District in accordance with the International Fire Code (IFC).
9. The applicant must submit copies of Water Availability Notification form for proof of an approved potable water source and other information from WA State.
10. Before construction, applicant is required to conduct an archeological survey of the project in order to meet the requirements of the Department of Archaeology & Historic Preservation (DAHP).
11. The following **Fire Code** requirements shall be complied with: Prior to building permits being issued for the site, a fire apparatus lane shall be constructed to the site, a 20' clear area shall be provided around all buildings and the following setbacks are required for new construction on the property.

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- a. Setbacks: The following separation standards shall be required for all existing, new building(s)/structure(s) placed on this parcel:
    - i. Front yard setback: Twenty-five (25) feet from a road right-of way and/or a dedicated roadway/easement, and/or fifty-five (55) feet from the center line of such road right-of way and/or roadway/easement, whichever is greater.
    - ii. Rear yard setback: Twenty-five (25) feet.
    - iii. Side yard setback: Twenty (20) feet.
    - iv. Building separation standards will be determined at the time of building plan review. Typical separation standard is 60 feet.
  - b. Fire extinguishers shall be clearly marked.
12. Per Franklin County Ordinance Number 5-2007, as amended, prohibits the **accumulation of irrigation water on County Roads** in Franklin County. Compliance with this Ordinance is required for this operation.
  13. **Outdoor lighting** at the facility shall be shielded down. This will assist in ensuring the outdoor lighting will not become a nuisance to neighboring properties and will limit light pollution in the rural area.
  14. Any **discontinuance or abandonment** of the approved use (dairy operation) for a period of one (1) year shall null and void this CUP approval.
  15. The site shall be maintained at all times so as to not let the land become a fire hazard or accumulate with debris and weeds.
  16. Nothing in this CUP approval shall be construed as excusing the applicant from compliance with any federal, state, or local statutes, ordinances, or regulations applicable to this project.
  17. In accordance with the County's Zoning Ordinance, any special permit may be revoked by the Board of Commissioners if, after a public hearing, it is found that the conditions upon which the special permit was authorized have not been fulfilled or if the use authorized has changed in size, scope, nature or intensity so as to become a detriment to the surrounding area. The decision of the Board is final.
  18. This permit applies to the described lands and shall be for the above named individual and/or his heirs and/or assigns. Any transferring of this permit will require that notice be granted to the Franklin County Planning Department or the permit will be cancelled. It cannot be transferred to another site.
  19. Future expansions and improvements at the site shall comply with the submitted and approved site and building plans. To allow future flexibility for changes to the plans which are determined to be minor or incidental may be done administratively

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by the Planning Department. Major changes, which do not meet the intent of, or seriously re-align, the approved plans, shall be reviewed by the Planning Commission through a new Conditional Use Permit process prior to that change occurring.

20. By accepting the issuance of this permit, the Permit Holder(s) agree(s) to accept full responsibility for any and all operations conducted or negligence occurring at this location and any incidents that occur on surrounding properties caused by operations or negligence at this location; Permit Holder(s) further agree(s) to indemnify and hold the County harmless and agree that the County is in no way negligent in relation to granting this permit, or operations or negligence that occur at this location or on surrounding properties caused by operations or negligence on this property; Permit Holder(s) further agree(s) to accept full responsibility for any future cleanup needed due to activities conducted that this location that impact the surrounding properties, and obtaining and retaining appropriate insurance coverage.

**This Conditional Use Permit is issued this 13<sup>th</sup> day of April, 2021.**

**BOARD OF COUNTY COMMISSIONERS  
FRANKLIN COUNTY, WASHINGTON**

\_\_\_\_\_  
**Chair**

\_\_\_\_\_  
**Chair Pro-Tem**

**Attest:** \_\_\_\_\_  
**Clerk of the Board**

\_\_\_\_\_  
**Member**

Original to County Commissioners

Duplicate to File

Duplicate to Applicant

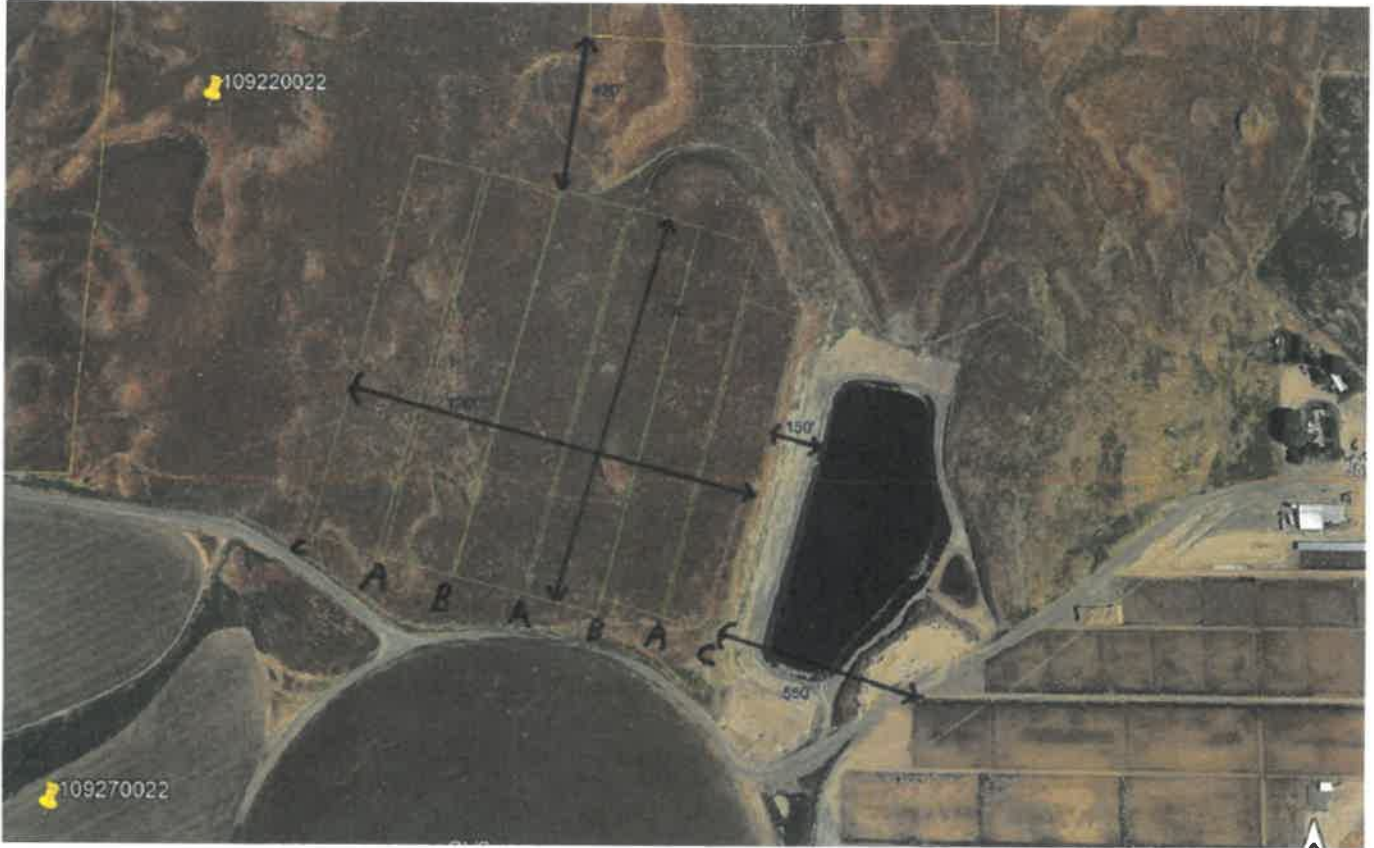
Duplicate to be Filed with Auditor

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**RESOLUTION NUMBER \_\_\_\_\_**

**EXHIBIT A: PROPOSED SITE PLAN**



## Derrick Braaten

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**From:** ECY RE SEPA HELP <sepahelp@ECY.WA.GOV>  
**Sent:** Thursday, April 1, 2021 11:50 AM  
**To:** Derrick Braaten  
**Subject:** [EXTERNAL] RE: Question regarding SEPA Review Notification/Aggregation of Facilities for Review

CAUTION: This email originated from outside of Franklin County. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Derrick,

From the information below I would concur that these are two separate facilities and doing SEPA independently of each other makes sense.

Because of community interest you may want to consider doing a broader public notice in the event you do further SEPA on either site. But at a minimum you would want to follow the procedures follow the public noticing requirements found in your municipal code: [Title 14 - DEVELOPMENT CODE ADMINISTRATION](#) | [Code of Ordinances](#) | [Franklin County, WA](#) | [Municode Library](#)

Thank you,

*Fran Sant*

(she/her)  
Environmental Review  
Department of Ecology  
360.407.6004



**From:** Derrick Braaten <dbraaten@co.franklin.wa.us>  
**Sent:** Tuesday, March 30, 2021 9:54 AM  
**To:** ECY RE SEPA HELP <sepahelp@ECY.WA.GOV>  
**Cc:** Matt Mahoney <mmahoney@co.franklin.wa.us>; Keith Johnson <kjohnson@co.franklin.wa.us>  
**Subject:** Question regarding SEPA Review Notification/Aggregation of Facilities for Review

THIS EMAIL ORIGINATED FROM OUTSIDE THE WASHINGTON STATE EMAIL SYSTEM - Take caution not to open attachments or links unless you know the sender AND were expecting the attachment or the link

Hello,

We have a proposal that is on the cusp of whether two proposals should be considered as one for purposes of SEPA Review and notification. An existing dairy, with 8,200 head, is over 2-miles from an existing feedlot with 3,500 head,

both owned by the same person. The original conditional use permit (CUP) for the 3,500 head feedlot was considered a separate facility from the dairy when approved in 2012. I have attached a map for reference.

The owner is requesting the expansion of the feedlot by 6,500 head, for a total of 10,000 head on the feedlot parcels. However, the dairy is still capped at the original 8,200 head and there is no request to expand that head count. The guidance provided by [Lead agency determination and responsibilities - Washington State Department of Ecology](#) is a bit unclear in relation to this application because neither facility is contingent on the other, and the head counts do not mix. In other words, the number of cows at the dairy is unchanged, and though some of the cows at the feedlot may be used at the dairy to replace cows that go dry, the dairy does not need the feedlot in order to operate, nor does the proposed expansion of the feedlot expand the dairy operation itself. Likewise, the existing, and proposed, feedlots do not need the dairy to operate. Both facilities are on separate water sources for both potable and irrigation, and both facilities have independent waste storage areas.

To date, we have processed the feedlot as a separate facility, including the SEPA Review and notification, due to its distance from the dairy, the fact it is not changing the dairy operations, and that neither facility's existence is contingent on the other. However, when this item went to the BoCC for final action, this approach was questioned by parties who are located outside of the original notification area (1-mile from the feedlot site's property boundaries), but would have been notified if the properties for the dairy operation had been included in the notification boundaries. Our primary concern is that we have met the legal requirements for proper SEPA notification and review.

Any clarification regarding this matter is appreciated,

*Derrick Braaten*

Planning and Building Director

Planning and Building Dept. | Franklin County, WA

Office tel. (509) 545-3521 | [www.co.franklin.wa.us/planning/](http://www.co.franklin.wa.us/planning/)



**FACT SHEET/STAFF SUMMARY**  
**Meeting before the Franklin County Board of County Commissioners**

***THIS IS A QUASI-JUDICIAL ACTION***  
***PLEASE AVOID, AND DISCLOSE, ANY EX-PARTE COMMUNICATIONS (CH***  
***42.36 RCW)***

**Case file:** CUP 2020-04 (Conditional Use Permit) and SEPA 2020-11

**PC Meeting Date:** January 5, 2021

**Open Record Hearing held before BoCC:** March 16, 2021

*See the staff report for the application details, description, explanation of public notice, etc.*

**BACKGROUND/APPLICATION SUMMARY:**

This is a continuance, regarding the final decision of the BoCC after holding an open record hearing on March 16, 2021, regarding Conditional Use Permit application number CUP 2020-04, seeking to allow the expansion of an existing "dairy replacement growing facility", processed as a feedlot, from its current head-count limit of 3,500 head to 10,000 head. At the hearing before the BoCC, based on oral testimony provided by the applicant, members of the public, and staff's analysis of the proposal, a variety of concerns were raised regarding whether the application and notice process used was appropriate.

Concern #1: Processing CUP 2020-04 independent of the existing dairy facility was not proper, due to the fact that some surrounding landowners were not mailed notice of the action, and they would have been sent such notice, had the CUP been processed including the dairy facility.

Concern #2: If the existing dairy operation was required to be included as part of the SEPA review, the total number of cows permitted on the site would have been different than advertised, with the total number being 18,200 head, rather than the 10,000 head provided in the notice.

Concern #3: Should CUP 2020-04 have been processed as an amendment to CUP 2012-03?

**STAFF ANALYSIS:**

**Regarding Concern #1:**

The notification process used for CUP 2020-04 was appropriate, as required under Franklin County Title 14, Development Code Administration, such that all surrounding landowners within 1-mile of the site were notified of the proposal. For land-use actions proposed to be located outside of an Urban Growth Area or Rural Settlement Area, all property owners within 1-mile of the property(s) shall be notified. (FCC 14.14.50.030(A)) CUP 2020-04 comprises parcel numbers 109-220-022 & 109-270-022, and all landowners located within 1-mile of the boundaries of these parcels were sent notification of the action on December 9, 2020, notifying the landowners of the January 5, 2021 public hearing before the Planning Commission. The notice stated that the request was to create a feedlot for up to 6,500 head. This information was clarified by the applicant to be a request to expand an existing facility with 3,500 cows, permitted through CUP

2012-03, to a total of 10,000 head, on, or about, the day of the public hearing held on January 5, 2021. This information was corrected in the record at the public hearing.

When presented to the Planning Commission, the SEPA Lead Official had determined this proposal should be designated as a DNS. Due to the disparity in advertised information provided prior to the hearing, information provided during the public hearing, and because the hearing was arranged to only accept remote testimony (due to COVID-19 measures), staff re-circulated a public notice on February 25, 2021 to all property owners within 1-mile of the site to clarify the head count and issued a SEPA revised MDNS (SEPA Register # 202101019) to allow additional public comment opportunity. Said notice also informed the public that a second open public hearing regarding the request would be held before the BoCC on March 16, 2021. No changes were made to the specific conditions the Planning Commission recommended, nor to the proposed number of conditions. The final SEPA Determination for this proposal is an MDNS.

Regarding Concern #2:

As provided for in the April 1, 2021 response from the Washington Department of Ecology (please see attached), the SEPA Lead Official was correct to process CUP 2020-04 as a separate facility from the dairy approved through CUP 2007-02. This is due to its distance from the dairy, the fact it is not changing the dairy operations, and though they may complement one another, neither facility's existence is contingent on the other. These two sites are separated by over 2-miles of crop circles, not range land. Cows at the feedlot may, or may not, be used to replace "dry" cows at the dairy, but there is no requirement they do so.

The requested head count at the feedlot does not allow for an increase in the head count at the dairy. CUP 2012-03 effectively changed the total acreage permitted to accommodate the 8,200 head count permitted through CUP 2007-02. CUP 2012-03 removes approximately 634 acres from the area designated as part of the dairy approved through CUP 2007-02, reducing the dairy properties to approximately 2,566 acres. No more than 8,200 head, as provided for in CUP 2007-02, may be located on the remaining 2,566 acres, and no more than 3,500 head are permitted on parcel numbers 109-220-022 & 109-270-022, as approved through CUP 2012-03. If CUP 2020-04 is approved, then the total permitted head count on these two parcels shall be 10,000 head.

Regarding Concern #3:

CUP 2012-03 allowed for parcels 109-220-022 & 109-270-022 to be used as a feedlot, or more specifically a "dairy replacement growing facility", with up to 3,500 cows. CUP 2020-04 seeks to expand this head count by 6,500 head, for a total of 10,000 head to be permitted on the two parcels. For the purposes of continuity and record keeping, CUP 2020-04 should have been processed as an amendment to CUP 2012-03. However, due to the material change being proposed, the same process would have been used if CUP 2020-04 was processed as a new CUP, or if it was processed as an amendment to CUP 2012-03.

As submitted, both the SEPA Checklist and application appeared to represent a new proposal for a feedlot with 6,500 head. There was no mention in the application or SEPA Checklist that there was an existing 3,500 head feedlot on these 634-acres. Just before the January 5, 2021 Planning Commission meeting, the record was corrected to reflect the actual request. As part of the corrected record, and to ensure all parties originally notified with the December 9, 2020 notice were aware that 10,000 head were proposed to be located on the properties instead of 6,500 head, a second notice was sent to all property owners within 1-mile of the site. Also, all relevant regulatory and commenting agencies were also notified of this correction, and a new SEPA determination was issued.

**CUP AND PROPERTY DEVELOPMENT HISTORY:**

CUP 2020-04 seeks to increase the number of cows permitted to be located at the “dairy replacement growing facility”, from the current allowance of 3,500 head to 10,000 head. The facility is located at 2270 Joyce Rd. Mesa, WA 99343, on parcel numbers 109-220-022 & 109-270-022. The site is located in the Southwest 1/2 of Township 13, Range 32, Section 22 and Northwest 1/2 of Township 13, Range 31, Section 27, W.M., Franklin County Washington. It is approximately 2.18 miles northeast of the Coulee Flats Dairy, located at 1170 Pepiot Rd., Mesa, WA 99343. The subject area is zoned Agricultural Production 20 (AP-20), with an Agricultural Comprehensive Plan Designation.

The applicant has two existing CUPs that affect the approximately 3,200 acres he owns in this area. CUP 2007-02 is the CUP for the commercial dairy operation, Coulee Flats Dairy. Originally, it applied to the entire approximately 3,200 acres (net) under ownership by the applicant. CUP 2007-02 permits a commercial dairy to be located on the site that exceeds 500 head, and allows for up to 8,200 cows, consisting of a mix of ages (4,300 milking cows, 900 dry cows, and up to 3,000 young cows (less than 2-years in age)), on the property(s). A master plan was submitted as part of the proposal, showing various barns, sheds, and other structures necessary to accommodate the proposed use, and providing for the feeding, sheltering, and processing needs of the cows at the facility.

CUP 2012-03 is the second conditional use permit issued for the facility. This CUP sought the creation of a “dairy replacement growing facility”, with up to 3,500 cows. Due to the fact there is no Franklin County process for specifically permitting this type of facility, the process for a feedlot was used, as this was the most analogous method available under Franklin County codes. The CUP was specific to two of the seven (7) properties owned by the applicant, making up approximately 634 acres (net) of the approximately 3,200 acres owned by the applicant. These properties are parcel numbers 109-220-022 & 109-270-022. The site is located in the Southwest 1/2 of Township 13, Range 32, Section 22 and Northwest 1/2 of Township 13, Range 31, Section 27, W.M., Franklin County Washington, approximately 2.18 miles northeast of the main office on Pepiot Rd.

CUP 2012-03 effectively changed the total acreage permitted to accommodate the 8,200 head count permitted through CUP 2007-02. CUP 2012-03 removes approximately 634 acres from the area designated as part of the dairy approved through CUP 2007-02, reducing the dairy properties to approximately 2,566 acres. No more than 8,200 head, as provided for in CUP 2007-02, may be located on the remaining 2,566 acres, and no more than 3,500 head are permitted on parcel numbers 109-220-022 & 109-270-022.

**Findings of Fact – Planning Commission:** The Planning Commission (with assistance from Planning Staff) made and entered the following findings from the record, and conclusions thereof:

**FINDINGS OF FACT:**

1. The proposed use in the AP-20 Zoning District **IS** in accordance with goals and policies of the County Development Regulations (Zoning) and the applicable Comprehensive Plan.
  - a. The land is zoned Agricultural Production 20 (AP-20) and the Comprehensive Plan designation is Agricultural.
  - b. Pursuant to the Comprehensive Plan, the approval of a Conditional Use Permit is required for large scale confined animal feeding operations.
  - c. A dairy operation greater in size than 500 head count requires approval of a conditional use permit.
  - d. A feedlot operation greater in size than 1,000 requires the approval of a conditional use permit.
  - e. The comprehensive plan states that the county will encourage agricultural industries in agricultural areas (*Comprehensive Plan, Pg. 94-98*).
  - f. While there are critical areas mapped on the parcel and in the vicinity of the dairy operation, no critical areas or buffers will be impacted by this proposal due to the distances from the operation to the features.
2. The proposal **WILL NOT** adversely affect public infrastructure.
  - a. The dairy's access is from Pepiot Road and Joyce Road.
  - b. Public Works has determined that it is not anticipated that the use will have a significant impact on the County Road System.
  - c. The project is located in Farm Unit 8 of Irrigation Block 11, Columbia Basin Project and the Bureau of Reclamation currently has irrigation facilities on and/or near the proposed project site.
  - d. Surface water runoff resulting from construction activities can potentially enter Project facilities and adversely affect water quality. Storm water containment practices shall be followed to minimize or eliminate this risk.

3. The proposal **WILL BE** constructed, maintained, and operated to be in harmony with the existing or intended character of the general vicinity.
  - a. The site location for the animal operation expansion is in an area zoned Agricultural Production 20 (AP-20);
  - b. The general area consists of farms, animal operations, and scattered single family homes;
  - c. The animal operation expansion is in harmony with and is compatible with the surrounding lands, including the existing and intended character of the agricultural area:
    - i. The animal operation and its expansion at this site is a compatible use with the Agricultural Production 20 (AP-20) Zoning District and the surrounding areas.
    - ii. The farm site is in an area zoned Agricultural Production 20 (AP-20).
    - iii. The farm site is not located near a Rural Settlement Area or a designated Urban Growth Boundary.
    - iv. Active farms and another animal operation is located near the proposed farm site.
    - v. The main dairy site is located over 3 miles from the nearest urban growth area.
      - i. This area has a minimum lot size of 20 acres and allows agricultural uses as a permitted use in this zoning classification.
      - ii. The residential area is designated in the County Comprehensive plan as Agricultural.
4. The location and height of the structure and site design **WILL NOT** discourage the development of permitted uses on property in the general vicinity or impair the value thereof.
  - a. The farm site is located in an agricultural area that is not densely populated and the farm site is not located near a Rural Settlement Area or a designated Urban Growth Boundary.
  - b. Agricultural industry and animal operations are consistent with the uses allowed in agricultural areas.
  - c. The area is zoned Agricultural Production 20 (AP-20).

- d. The height of future proposed structures and site design (as submitted) is in compliance with the AP-20 development standards. The dairy expansion will not discourage the development of permitted uses in the area.
  - e. The implementation of a dairy Nutrient Management Plan will help address the potential for buildup of nitrates and nutrients in the soil.
  - f. The use of proper erosion and sediment control practices on the construction site and adjacent areas will prevent upland sediments from entering surface water.
5. The operation in connection with the proposal **WILL NOT** be more objectionable to nearby properties by reason of noise, fumes, vibrations, dust, traffic, or flashing lights than would be the operation of any permitted uses within the district.
- a. The area is zoned Agricultural Production 20 (AP-20) which allows for a wide range of agricultural activities and animal agricultural operations to occur.
  - b. The proposed animal agricultural activity and operation is not more objectionable than other permitted uses allowed in the area. A dairy facility does not create more noise, fumes, vibrations, dust, traffic, or flashing lights than other agricultural uses permitted in the AP-20 zoning district.
  - c. The dairy expansion is in harmony with and is compatible with the surrounding lands, including the existing and intended character of the agricultural area.
  - d. To further ensure its compatibility with the surrounding agricultural area and reduce potential impacts to neighbors, the dairy operation can implement mitigation measures and comply with a State of Washington Dairy Nutrient Management Plan as enforced by the State of Washington, comply with an Odor and Fly Control Plan, and shield all lights on the property.
6. The proposal **WILL NOT** endanger the public health, safety, or general welfare if located where proposed.
- a. The public was notified of this proposal in accordance with all guidelines and requirements, and the Planning Department received **NO COMMENTS** in favor of the proposal, and one comment was received expressing concerns regarding the impact the proposal will have on the availability of water for surrounding properties.



- b. To protect water quality and health related issues, the applicant is required to comply with a State of Washington Dairy Nutrient Management Plan. The Nutrient Management Plan, as enforced by the Washington State Department of Agriculture has the following water quality objectives: "Preventing discharge of contaminated waste water to streams, drainage ditches, or other surface waters from the facility; Preventing migration of contaminants from the facility to the underlying aquifer; Using facility nutrients to supply crop nutrient needs at rates and times tailored to reach realistic yield goals; Meeting the requirements of the Dairy Nutrient Management Act of 1998, the Clean Water Act".
- c. The applicant currently has a Nutrient Management Plan for the existing dairy operation and dairy replacement growing facility. With the expansion, an updated Plan is required and shall be completed.
- d. Completion of an Odor and Fly Control Plan for the operation. This Plan will discuss numerous items including potential sources of odors and flies on the farm including methods to control and reduce odors and flies at the dairy site.
- e. A Mitigated Determination of Non-Significance (MDNS) has been issued as part of the SEPA review and determination. An approved Conditional Use Permit, compliance with the required Dairy Nutrient Management Plan, and compliance with the State Department of Agriculture's regulations is required for this application.
- f. The project is located within Fire District #1, a rural district. Measures such as enhanced building separation standards and development of a fire apparatus road are necessary to ensure safety.

#### **CONDITIONS OF APPROVAL:**

1. The project must include the use of proper erosion and sediment control practices on the construction site and adjacent areas to prevent upland sediments from entering surface water. Refer to the Stormwater Management Manual for Eastern Washington at [http://www.ecy.wa.gov/programs/wq/stormwater/eastern\\_manual/manual.html](http://www.ecy.wa.gov/programs/wq/stormwater/eastern_manual/manual.html). All ground disturbed by construction activities must be stabilized. When appropriate, use native vegetation typical of the site. In addition, a General Construction Storm Water Permit from the Washington State Department of Ecology will be needed if the project is one acre or greater.
2. **A Mitigated Determination of Non-Significance (MDNS)** has been issued as part of the SEPA review and determination. An approved Conditional Use Permit,

compliance with the required dairy Nutrient Management Plan, and compliance with the State Department of Agriculture's regulations is required for this permit.

3. The applicant shall comply with the State of Washington's requirements for Dairy operations including the implementation of a **Nutrient Management Plan (NMP)** for the operation. Nutrient management plans focus on water quality related issues. The applicant's current NMP for the dairy operation was completed for the current size of the operation. A copy shall be provided to the County to be placed in the CUP case file, if allowed per federal disclosure laws.
4. Any head count expansion at the site shall comply with the applicable NMP in effect at the time of expansion.
5. The Odor and Fly Control Guidelines adopted by County Resolution 2001-238 by the Board of County Commissioners states that an **Odor and Fly Control Plan** may be required as part of a Conditional Use Permit for animal operations. An Odor and Fly control Plan **is** required for this operation and expansion. The applicant is required to complete and submit an Odor and Fly Control plan by June 2022 (18 months from the date of CUP approval), which is consistent with the required NMP submittal.
  - a. To assist in being a good neighbor and encouraging positive neighbor relations, the applicant shall ensure the required Odor and Fly Control Plan discusses the following:
    - i. Field spraying of animal waste should only occur at times that will least impact surrounding neighbors. With this, spraying should not occur on weekends and on holidays when neighboring landowners may be spending an increased amount of time enjoying the outdoors; and
    - ii. Applicant should maintain an open door policy with surrounding land owners. Address neighbor issues to the best extent reasonably possible and in turn assist in eliminating nuisance issues to the best of applicants' ability.
6. The applicant shall, at all times, comply with the necessary Federal and State standards for dairy operations. This includes, but is not limited to the Washington State Department of Agriculture requirements for dairy operations.
7. **Approach permits** are required for any new approaches onto county roads.
8. New facilities such as barns, pen areas, and parlor expansion will need to be established as the headcount number increases. The applicant is required to comply with the requirements of the **County Building Division** regarding any new construction at the site. On Site Water for Fire Protection may be required upon completion of Building Department review of submittals and consultation with local Fire District in accordance with the International Fire Code (IFC).

9. The applicant must submit copies of Water Availability Notification form for proof of an approved potable water source and other information from WA State.
10. Before construction, applicant is required to conduct an archeological survey of the project in order to meet the requirements of the Department of Archaeology & Historic Preservation (DAHP).
11. The following **Fire Code** requirements shall be complied with: Prior to building permits being issued for the site, a fire apparatus lane shall be constructed to the site, a 20' clear area shall be provided around all buildings and the following setbacks are required for new construction on the property.
  - a. Setbacks: The following separation standards shall be required for all existing, new building(s)/structure(s) placed on this parcel:
    - i. Front yard setback: Twenty-five (25) feet from a road right-of way and/or a dedicated roadway/easement, and/or fifty-five (55) feet from the center line of such road right-of way and/or roadway/easement, whichever is greater.
    - ii. Rear yard setback: Twenty-five (25) feet.
    - iii. Side yard setback: Twenty (20) feet.
    - iv. Building separation standards will be determined at the time of building plan review. Typical separation standard is 60 feet.
  - b. Fire extinguishers shall be clearly marked.
12. Per Franklin County Ordinance Number 5-2007, as amended, prohibits the **accumulation of irrigation water on County Roads** in Franklin County. Compliance with this Ordinance is required for this operation.
13. **Outdoor lighting** at the facility shall be shielded down. This will assist in ensuring the outdoor lighting will not become a nuisance to neighboring properties and will limit light pollution in the rural area.
14. Any **discontinuance or abandonment** of the approved use (dairy operation) for a period of one (1) year shall null and void this CUP approval.
15. The site shall be maintained at all times so as to not let the land become a fire hazard or accumulate with debris and weeds.
16. Nothing in this CUP approval shall be construed as excusing the applicant from compliance with any federal, state, or local statutes, ordinances, or regulations applicable to this project.
17. In accordance with the County's Zoning Ordinance, any special permit may be revoked by the Board of Commissioners if, after a public hearing, it is found that the

conditions upon which the special permit was authorized have not been fulfilled or if the use authorized has changed in size, scope, nature or intensity so as to become a detriment to the surrounding area. The decision of the Board is final.

18. This permit applies to the described lands and shall be for the above named individual and/or his heirs and/or assigns. Any transferring of this permit will require that notice be granted to the Franklin County Planning Department or the permit will be cancelled. It cannot be transferred to another site.
19. Future expansions and improvements at the site shall comply with the submitted and approved site and building plans. To allow future flexibility for changes to the plans which are determined to be minor or incidental may be done administratively by the Planning Department. Major changes, which do not meet the intent of, or seriously re-align, the approved plans, shall be reviewed by the Planning Commission through a new Conditional Use Permit process prior to that change occurring.
20. By accepting the issuance of this permit, the Permit Holder(s) agree(s) to accept full responsibility for any and all operations conducted or negligence occurring at this location and any incidents that occur on surrounding properties caused by operations or negligence at this location; Permit Holder(s) further agree(s) to indemnify and hold the County harmless and agree that the County is in no way negligent in relation to granting this permit, or operations or negligence that occur at this location or on surrounding properties caused by operations or negligence on this property; Permit Holder(s) further agree(s) to accept full responsibility for any future cleanup needed due to activities conducted at this location that impact the surrounding properties, and obtaining and retaining appropriate insurance coverage.