

**COUNTY OF YAKIMA, WASHINGTON
OFFICE OF THE HEARING EXAMINER**

IN THE MATTER OF THE APPLICATION)	FILE NO. CUP2021-00048
BY LEANNE LIDDICOAT ON)	
BEHALF OF GIDDINGS CERASUS USA,)	HEARING EXAMINER
LLC. FOR TYPE 2 REVIEW OF A CHERRY)	DECISION
<u>PROCESSING AND PACKING FACILITY</u>)	

I. INTRODUCTION

On September 2, 2021, Yakima County Public Services received a Type 2 Conditional Use Permit application for the development of a cherry processing and packing facility from Leanne Liddicoat of Digital Design and Development on behalf of Aaron and Marlena Buchanan, who were owners of record at the time for the property proposed to be developed. The property was subsequently transferred to Giddings Cerasus USA, LLC. Based on public comments received on the application and related State Environmental Policy Act (SEPA) environmental documents, Public Services elevated the application review process to Type 3 review, invoking the jurisdiction of the Hearing Examiner to conduct a public hearing and render a decision on the application. A public hearing was conducted on June 30, 2022 in a hybrid in-person/on-line format. At the hearing, Ms. Liddicoat represented the current owners and Tommy Carroll represented Yakima County. Testimony was offered by numerous persons both in person and on-line. Public comments concerned potential traffic impacts and the adequacy of transportation impact analysis for the project, potential future impacts from expansion of the processing and packing activities to other types of fruit, impacts on the rural character of the area, potential well interference or loss of water security, dam safety associated with water storage on site, conflicts with military use of Pomona Road, cumulative impacts related to current military use effects, waste water management, decrease of property values, the likelihood of community benefits given labor and market conditions, power grid impacts, wildlife impacts from increased intensity of use, and impacts to recreational use of the Yakima River Canyon. At least one commenter indicated that they did not receive notice of the hearing. The Hearing Examiner viewed the site and environs immediately following the hearing. The record was supplemented with the Transportation Impact Assessment and a related addendum.

II. SUMMARY OF RECOMMENDATION

Because the application to establish a cherry processing and packing facility is supported by evidence and analysis allowing its favorable consideration under Yakima County Code (YCC) 19.30.80, the application is APPROVED, SUBJECT TO CONDITIONS to assure compatibility with

neighborhood land uses, the goals, objectives, and policies of *Horizon 2040* and compliance with pertinent development criteria, standards, and regulations. Those conditions are set out in section V. below.

III. FINDINGS

Based on the application, comments received during the comment period, and a review of the pertinent provisions of *Horizon 2040* (the Yakima County Comprehensive Plan), Title 19 YCC and other provisions of the Yakima County Code, the Hearing Examiner makes the Findings set out in this Section III. Any finding more properly determined to be a conclusion is deemed to be such.

1. PROPERTY INFORMATION:

Project Name:	Cherry Processing and Packing Facility
Zoning Designation:	Rural 10/5 (R10/5)
Future Land Use Designation:	Rural Self-Sufficient
Subject Parcel Number(s):	19142023003
Property Acreage:	Approximately 56.40 acres
Property Location:	The property is located approximately 2 miles northeast of the City of Selah at the intersection of Pomona and East Pomona Roads.
Property Owner:	Giddings Cerasus USA LLC
Mailing Address:	2880 Son Rise Loop Hood River, OR. 97031
Applicant/Agent:	Leanne Liddicoat
Mailing Address:	Digital Design and Development 1909 W. Lincoln Ave., Suite 1 Yakima, WA. 98902

2. GEOGRAPHY OF PROJECT SITE:

The subject property is located roughly 2 miles northeast of the City of Selah situated at the southeast corner of the intersection of Pomona and E Pomona Roads. The subject property is currently being farmed and is slightly rolling land with a gradual slope (low to the west, high to the east). There are a variety of soil types within the project area ranging from soils of statewide importance to prime farmland soils. These soils include Ritzville Silt Loam, Starbuck-Rock, Moxee Silt Loam and Esquatzel Silt Loam. The entire project site is located inside the Selah Moxee Irrigation district. There is however a man-made irrigation facility and canal along

the eastern parcel boundary that belongs to the Roza Irrigation District. Yakima County Critical Area maps do show a Type 4 stream running east to west through the middle of the property, however, based on comments submitted from the irrigation district the feature is a partially piped irrigation drain, not a Type 4 stream.

3. PROJECT DESCRIPTION:

The project would be located on 1 parcel roughly 56.40 acres in size and will consist of a 280,000 sq. ft. cherry processing and packing facility, outside bin storage and settling ponds. The site would include 286 parking spaces located principally on the east side of the packing facility. The facility will operate seasonally, primarily during cherry harvest. The facility will operate six days per week with 1 to 2 shifts with roughly 300 employees per shift. It is also anticipated that temporary agricultural worker housing will also be located on site in the future. The property would be accessed from East Pomona Road off of Washington State Highway 821. Water for the project would be obtained from a well to be developed on the central part of the property. Structures developed for the project would be no more than 35 feet in height (HVAC/mechanical equipment structures the facility rooves not included).

4. ZONING AND COMPREHENSIVE PLAN DESIGNATION:

The site is within the Rural 10/5 (R-10/5) zoning district, and within the Rural Self-Sufficient land use designation of the Yakima County Comprehensive Plan -*Horizon 2040*. The rural areas in Yakima County are intended to serve as a buffer between urban lands and resource lands, provide non-resource areas for future urban expansion, limit the costs of providing services to remote or underdeveloped areas, and retain the rural/agrarian character of the County while offering a variety of lifestyle choices for the residents. The R-10/5 zoning district is intended to maintain rural character and provide density incentives to encourage development where fire protection services and access to roads with a paved or other hard surface are available. The surrounding properties to the north, south and east are also within the R-10/5 zoning district. The area is developed with a mixture of vacant land, active agriculture, rural residential lots and a manufactured home park. The properties due west of the subject property is zoned Remote/Extremely Limited Development Potential (R/ELDP) due to their proximity to the Yakima River. One of the westerly lots is owned and operated by the Department of Defense to provide services to the nearby Yakima Training Center.

5. HEARING EXAMINER JURISDICTION:

The proposal is subject to Yakima County Unified Land Development Code – Title 19. The Agricultural processing and packing facilities fall within the definition of an “Agricultural Related Industry” in YCC 19.010.070(1). Agricultural Related Industries may generally be sited in the R-10/5 zoning district pursuant to Type 2 review proceedings in accordance with Table 19.14-1 in YCC 19.14.010(2). However, pursuant to 16B.03.040 “Classification of Project Permit Applications,” the level of review has been elevated to a Type 3 review process to require a

public hearing due to the comments received during an initial public comment period for the application. Type 3 applications are quasi-judicial actions and require an open record hearing by the Hearing Examiner. The Examiner's written decision constitutes the final decision. Public notice is provided on Type 3 actions. YCC 16B.03.030. The final decision of the Hearing Examiner must include findings and conclusions, based on the record, to support the decision. Such findings and conclusions also sets forth the manner in which the decision would carry out and conform to the County's comprehensive plan(s) and development regulations. YCC 16B.08.050(2).

6. NOTICE:

After the subject application was submitted, the Planning Division requested comments from other County agencies including the Building and Fire Safety Division, the Water Resources Division, the Transportation Division, the Utilities Division, and the Yakima Health District.

Chapter 16B.05 YCC requires that, among other recipients, notice be given to adjacent property owners (APO) of real property, as listed on the most current Yakima County Assessor records, located within 300 feet of any portion of the boundary of the proposed project permit application property. A Notice of Application (NOA), Notice of Completeness (NOC), Notice of Environmental Review (NOE) was originally noticed to adjoining property owners and agencies on September 22, 2021, with the comment period ending on October 6, 2021. A Notice of the SEPA Mitigated Threshold Determination of Non-Significance (MDNS) was issued on October 22, 2021, with a comment period ending on November 5, 2021. As a result of the SEPA comments, the applicant was required to prepare a Transportation Impact Analysis and a Cultural Resource Study for the proposed site. Immediately after the acceptance of the necessary studies, Yakima County on May 31, 2022, issued a final MDNS and Notice of Public Hearing.

Timeline of Hearing Notice:

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|------|---|---------------|
| i. | Notice of Final MDNS and Notice Public Hearing ¹ | May 31, 2022 |
| ii. | Legal Notice in Yakima Herald | June 1, 2022 |
| iii. | Posting of hearing notice on the property | June 15, 2022 |

7. COMMENTS:

During the comment periods, comments were received from the Yakama Nation, City of Selah, Zirkle Fruit Company, Washington State Department of Ecology (DOE), Selah-Moxee Irrigation District, Roza Irrigation District and neighbors. The comments are summarized as follows:

¹ An affidavit of mailing of notice to adjacent property owners is included in the Hearing Exhibits at page 11.

City of Selah –

The City of Selah submitted comments on October 6, 2021, regarding the potential for traffic related impacts to the surrounding transportation system. The city specifically raised concerns with how the increase in truck traffic could impact the Selah/Yakima County Fire District Station #2. In addition, the city commented that a water right analysis needs to be conducted by the applicant to ensure adequate water is available to the proposed use that does not negatively impact the city's own water supply. At the hearing, the City also requested that water for the project be supplied through a surface water diversion rather than a well in order to limit impacts to the aquifer that supplies city water.

Zirkle Fruit Company –

A comment letter was received on October 19, 2021, from Zirkle Fruit expressing a number of concerns regarding the proposed development. Issues raised in the letter included: groundwater withdraw concerns, industrial waste amounts, demands on the electrical grid, traffic impacts, noise, light and well impacts to neighbors. The letter also requested that the proposed development be elevated to a Type 3 review.

Washington State Department of Ecology (DOE) –

A comment letter was received on October 4, 2021, outlining four main issues: industrial wastewater/stormwater, Fresh Fruit Packing permits requirements, construction stormwater, and water quality. DOE requires the applicant follow Best Management Practices (BMPs) as outlined in the 2019 Eastern Washington Stormwater Management Manual (EWSWMM). DOE further requested the applicant consult with them regarding the industrial wastewater and stormwater requirements and the possible need for a Fresh Fruit Packing permit. Furthermore, DOE requires the applicant to obtain a NPDES Construction Stormwater General Permit for the development.

Selah-Moxee Irrigation District

Selah-Moxee Irrigation District (SMID) submitted a comment letter on September 28, 2021, outlining a number of concerns. Since the proposed development is within the SMID boundaries they must adhere to the district's policies to obtain irrigation. All irrigation facilities at the site must be kept in good condition and working order. Irrigation easements must be dedicated to any existing or proposed irrigation facilities located on the property that provide water to other nearby lands. The applicant will be required to provide the irrigation lines and easements to SMID as part of their approval process. SMID also requires any changes to existing irrigation facilities be submitted to SMID for review. If the property is subdivided, irrigation easement must be provided to all new lots within the subdivision.

Roza Irrigation District –

Roza Irrigation District submitted a comment letter stating that there is a drain that flows westerly from their existing canal that borders the subject property to the east, is under the Bureau of Reclamation's (BOR) jurisdiction and must not be impeded. The drain is partially piped as it traverses the subject property east to west.

Neighbor Comments –

Considerable number of neighbor comments were received during the associated comment periods for this proposal. In general, the comments were in opposition to the proposal, most expressing concerns regarding impacts to groundwater (both quality and quantity), increased truck traffic, excess noise, light and dust, negative impacts to wildlife, as well as decreased property values.

8. ENVIRONMENTAL REVIEW:

The Yakima County State Environmental Policy Act (SEPA) Responsible Official conducted a review of the application under the provisions of SEPA and issued a Final Mitigated Determination of Non-Significance (MDNS) on May 31, 2022, under County File Number SEP2021-00037. The Responsible Official determined that the project will not have a probable significant adverse impact on the environment and that an environmental impact statement was not required under RCW 43.21C.030(2)(c), provided the measures listed in the MDNS are taken to mitigate potential adverse impacts. This decision was made after a review of the completed environmental checklist addressing effects on elements of the built and natural environment. The Responsible Official also received comments from other agencies with regulatory jurisdiction over various aspects of the project (such as water quality, water quantity and irrigation management) that provided for limitation on impacts to resources with those jurisdictions. Further, the record contains other information on file that was developed and submitted by the applicant in response to comments on an earlier Preliminary MDNS issued in October 2021, including a cultural resources survey and Transportation Impact Assessment. The resulting measures included in the Final MDNS as necessary to avoid significant environmental impacts included the following:

Mitigation Measure A1: If ground disturbing activities encounter human skeletal remains during the course of construction, then all activity will cease that may cause further disturbance to those remains. The area of the find will be secured and protected from further disturbance until the State provides notice to proceed. The finding of human skeletal remains will be reported to the county medical examiner/coroner and local law enforcement in the most expeditious manner possible. The remains will not be touched, moved, or further disturbed. The county medical examiner/coroner will assume jurisdiction over the human skeletal remains and make a determination of whether those remains are forensic or non-forensic. If the county medical examiner/coroner determines the remains are non-forensic, then they will report that finding to the [Washington Department of Archaeology and Historic Preservation (DAHP)] who will then take jurisdiction over the remains. The DAHP will notify any appropriate cemeteries and all affected tribes of the find. The State Physical Anthropologist will make a determination of whether the remains are Indian or Non-Indian and report that finding to any appropriate cemeteries and the

affected tribes. The DAHP will then handle all consultation with the affected parties as to the future preservation, excavation, and disposition of the remains.

Mitigation Measure B1: A Senior Water Right (pre-1905) for the Yakima River mainstem or a tributary shall be obtained and placed into Washington State's Trust Water Right Program (TWRP) to offset identified volumes of water needed for this project prior to commencement of use.

Mitigation Measure C1: The Northwest Pipeline Corporation has identified a procedure for encroachments and development within their Right-of-Way. The applicant shall receive an encroachment permit from the Northwest Pipeline Corporation, or a designated representative, unless that company has stated in writing that one is not required. A copy of that statement shall be submitted to Yakima County Public Services Planning Division. All construction shall meet or exceed the Best Management Practices for development near the natural gas transmission line.

The Final MDNS effectively determined that the project presented no other potential significant impacts to the built or natural environment—notwithstanding public comments concerning potential traffic impacts from the project, potential well interference or loss of water security, dam safety associated with water storage on site, cumulative impacts related to current military use effects, waste water management, wildlife impacts from increased intensity of use, and impacts to recreational use of the Yakima River Canyon. "A SEPA determination [made by the SEPA Responsible Official] shall be deemed to be conclusively in compliance with SEPA, the SEPA rules, and the provisions of YCC Chapter 16.04, unless a SEPA appeal is filed in accordance with [Chapter 16B.06 YCC] or Chapter 36.70C RCW." YCC 16B.06.060(5). No appeal of the May 31, 2022 MDNS has been timely filed, so the Hearing Examiner does not have jurisdiction to review the adequacy of Responsible Official's evaluation of potential impacts to the built and natural environment raised in the public comments. Even had there been an appeal, the Responsible Officials determinations are entitled to substantial weight. The Responsible Official is authorized to withdraw the MDNS if presented with appropriate information as set out in WAC 197-11-340(3), but such a withdrawal process is outside of the scope of the current proceeding.

9. REVIEW CRITERIA AND THEIR APPLICATION TO THE PROPOSAL:

For a Type 3 review, the Hearing Examiner is charged to prepare written findings and conclusions stating specific reasons, upon which the decision or recommendation to approve, approve with conditions or deny the application is based. The minimum criteria required to be considered under YCC 19.30.080(7) are set out and analyzed in turn below.

- a. *The present and future needs of the community will be adequately served by the proposed development and the community as a whole will be benefited rather than injured.*

and fulfill the general legislative intent in YCC 19.10.010 rather than to regulate the economic decisions of an applicant or landowner that may be otherwise consistent with the regulations. Similarly, no regulations purport to limit number of cherry packing facilities in the area based on labor availability or industrial competition.

Selah and neighborhood groundwater supply: The City of Selah relies on groundwater in the vicinity for its municipal water supply. It also anticipates potential inclusion of the area near the packing facility within its Urban Growth Area, which also implicates water supply issues in the future. Neighbors raised concerns about the potential for well interference and groundwater quality degradation from the proposed development. The SEPA Responsible Official determined during the SEPA review that there may be adverse effects to groundwater quantity and supply from groundwater withdrawals unless adequate legal and physical availability of water is determined, and the appropriate water rights are obtained. Accordingly, The MDNS requires that a pre-1905 water right be obtained to mitigate for impacts to the aquifer from groundwater withdrawals through the proposed project.

Water resources are generally regulated by the State of Washington. To assure that community interests in water supply and water quality are preserved, the applicant is obliged to obtain all appropriate water rights and water quality permits, and comply with water quality permitting requirements and related best management practices. The applicant provided a water right analysis on September 17, 2021, from Aspect Consulting, LLC concluding that groundwater from the Saddle Mountains Basalt or Wanapum aquifers are physically and legally available for appropriation and groundwater withdrawals are in hydrologic continuity with mainstem Yakima River.

Acquisition of senior (pre-1905) upstream tributary or mainstem water right is necessary to offset consumptive use impacts to the Yakima River and the Total Water Supply Available (TWSA) at the Parker gage due to the hydraulic continuity between the proposed well and the river. The City of Selah requested that water for the project be supplied from a surface water diversion due to concerns about aquifer impacts associated with municipal water supply. The use of a surface water diversion was not included in the SEPA checklist, and has not been subject to SEPA review as a result. Based on the Aspect report, however, purchase of the senior mainstem Yakima River water right is expected provide suitable mitigation to support the pending water right application, and will avoid impairment of surface water resources or fish species listed under the federal Endangered Species Act.

Packing plant economic viability: As noted in the staff report, local agricultural land use and economies are tied to agricultural production processing and packing. Community interests are generally protected and advanced by assuring that the proposed development complies with the established development regulations and mitigation measures outlined in the associated MDNS (SEP2021-037). Public comment suggested that community benefits associated with employment may not be realized because of the unavailability of a labor pool to working in the packing facility. However, the intent of the land use regulations is to implement *Horizon 2040*

Landscaping: In partial response to concerns about the encroachment of agricultural industrial operations in the area, the applicant indicated at the hearing that it intended to develop and implement a landscaping plan for the project for aesthetic purposes, even though sitescreening and landscaping are not required within the R-10/5 zoning district. Such landscaping buttresses the suggestion that the project does not injure the community as a whole.

Power grid: Zirkle Fruit raised the issue of potential impact to the electrical grid from the additional load associated with project operations. Governmental services and utilities are part of the built environment that is assessed for impacts from a project as part of SEPA review. WAC 197-11-444(2)(d). As noted earlier, the SEPA Responsible Official identified no potential significant impact to public services and utilities from the project other than Northwest Pipeline effects.

Subject to the conditions set out in this decision, and in absence of a showing of other potential community detriment (in contrast to neighboring land use incompatibility) from the development, this criterion is satisfied.

b. *The proposed use is compatible with neighborhood land uses, the goals, objectives and policies of the Comprehensive Plan, and the legislative intent of the zoning district.*

Traffic and military use neighborhood land use impacts: Neighboring land uses include low density rural residential uses, recreational uses, military transportation facility uses, irrigation canal operations, and the Pomona View Manufactured Home Park. While some neighbors raised issues regarding the potential impacts to military use of the property directly to the west of the project, no such concerns were raised in any comments from military authorities. More pertinently, neighbors raised concerns regarding the cumulative effect of both project and military traffic in the area. Traffic may affect the use of nearby properties adversely to the point of residential users being unable to gain access to the public roads, but based on the current site plan, traffic would be added to East Pomona Road between the project access point and Highway 821, as well as Highway 821 itself, during shift changes. Traffic impacts other than those affected the use of a specific piece of property were addressed through SEPA and the associated traffic impact assessment, and the determination by the Responsible Official that traffic impacts are not significant are not subject to review in this proceeding.

Light and noise impacts: Neighbors also raised concerns about light and noise associated with the project. Light and noise emissions from a property are both regulated by County Ordinance. Light is addressed by YCC 19.10.040(10), which requires that “[exterior] lighting for all uses and signs shall be directed downward and otherwise arranged, fully shaded, screened, shielded, and of a design that results in the light being directed onto the site and of an intensity or brightness that does not reflect or cause glare or light intrusion into any adjacent or nearby residential use or interfere with the safe operation of motor vehicles.

Noise is regulated pursuant to Chapter 6.28 YCC, which is intended to control the level of noise in a manner which promotes commerce, the use, value, and enjoyment of property, sleep and repose, and the quality of environment. YCC 6.28.010. Generally, sounds from public road traffic, construction equipment, or lawfully established commercial and industrial uses are exempt from noise regulations in YCC 6.28.030, which provides

(1) It is unlawful for any person to make, continue, or cause to be made or continued or any person in possession of property to make, continue, or cause to be made or continued or allow to originate from the property any sound which:

(a) Is plainly audible within any dwelling unit which is not the source of the sound or is generated within two hundred feet of any dwelling unit;

(b) Either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others.

The SEPA checklist for the project indicates that the expected sources of noise include short term construction noise between 7:00 AM and 4:00 PM and truck and employee traffic. These sources of noise were not considered significant. However, environmental significance does not resolve issues of compatibility with neighborhood residential uses. Cf. *Cingular Wireless, LLC v. Thurston County*, 129 P.3d 300, 313, 131 Wn. App. 756 (Wash. App. 2006). If noise from the project operations on the site (as opposed to vehicle noise on public roads) violates the YCC 6.28.030 standards with respect to neighboring residential uses, it is not compatible with those residential uses. See YCC 19.10.070(9)(defining "incompatible"). While concerns have been expressed about noise, no substantial evidence of actual audible noise generation by the project that would result in such incompatibility has been offered up to this point. To assure compatibility, however, it is appropriate to condition the project on compliance with the standards of YCC 6.28.030 during operations, irrespective of operational exemptions.

Horizon 2040 Goals and Policies: As noted in the staff report, the proposed use constitutes an agriculturally related industry (defined in YCC 19.110.070(1)), which is allowed in the R 10/5 zoning district as Type 2 uses on the Allowable Land Use Table 19.14-1 in Chapter 19.14 YCC. Type 2 Administrative Uses shown are generally allowed in the zoning district. None of the goals and policies in the Land Use Goals and Policies section of Horizon 2040 bear expressly on agriculturally related industries.

Pertinent goals and policies include the following:

- Goal LU-R1 – Maintain the rural character of the County.
- Policy LU-R 1.1 Ensure that only rural densities and uses are permitted.

- ED 3.8 - Locate industrial areas so that access is functionally convenient to major transportation routes such as truck routes, freeways, railroads, and air terminals.
- Goal ED 4: Preserve and enhance the County's resource-based economy.
- Policy ED 4.5 - Support the development of a strong value-added product industry which supports the resource base.
- Policy ED 4.7 - Support efforts to improve working conditions and community services and provide sufficient housing for agricultural workers.
- Policy ED 6.1 - Support the efforts of County-wide business expansion and job retention programs.
- Policy ED 7.2 - Support private sector efforts to diversify the economy and broaden employment opportunities for all members of the labor force.

Residential development pre-dating the current zoning has occurred across Pomona Road and the adjacent rail line. Other residential development on large lots has occurred nearby, and there is a mobile/manufactured home park to the east of the irrigation bounding the subject property. Public comments noted that the vicinity is rural in character. Agriculturally related industry is argued to be inconsistent rural character. Yakima County's rural environment is one of its most attractive features. However, as *Horizon 2040* notes, the object of rural land use goals is to address residential density. Specifically: "More and more rural residents are voicing objections to new subdivisions occurring around them. The nature of these complaints varies, but a common theme is that the creation of more lots and houses detracts from the rural character to the point that it no longer seems rural. In response to growing citizen complaints and conflicts about the over-development of many rural areas, Yakima County has maintained an ongoing effort to strengthen development regulations. The primary purpose of higher standards has been to protect public health and safety and to improve the overall quality of rural subdivisions." *Horizon 2040* Ch.5 |4-5. Residential development has also occurred in Agriculture-zoned lands, but agriculturally related industry is permitted with minimal review in such areas. Agriculturally related industry is specifically permitted in the R10/5 zone, with the main goal of assuring compatibility with neighboring uses, so it is difficult to categorize such uses as "non-rural."

The placement of the proposed cherry processing and packing facility presents no incompatibility with the ED (Economic Development) goals and policies listed above. Public comments did note that indications on the site plan that future "H2A" (temporary farmworker) housing could be sited on the property depends on whether the housing is, in fact, properly characterized as farmworker housing. This will depend upon compliance with both US Department of Homeland Security visa rules and Washington Department of Health regulations

concerning temporary farmworker housing. Any development of worker housing at the locations indicated on the site plan will require appropriate certification of the facility operator with such rules and regulations.

Local irrigation districts provided comments requiring coordination of the project development with irrigation district and US Bureau of Reclamation infrastructure. The preservation of the agricultural resource based economy reasonably entails the protection of irrigation infrastructure, and approval of the project is appropriately conditioned accordingly on coordination with the irrigation districts to protect the infrastructure.

Compatibility with the legislative intent of the zoning district: The intent of the R 10/5 zoning district is “to maintain rural character and provide density incentives to encourage development where fire protection services and access to roads with a paved or other hard surface are available.” YCC 19.11.030(1)(b). As noted earlier, the concept emphasized in “rural character” relates to residential density, and agriculturally related industry is allowable in the zoning district. The record does not indicate any incompatibility with legislative intent for the R 10/5 zoning district.

c. *The site of the proposed use is adequate in size and shape to accommodate the proposed use.*

The proposal is for a 300,000 sq. ft. cherry processing, packing and storage facility on 56.40 acres. The anticipated percentage of impervious surfaces for the site is 43%. Submitted site plan shows the property has excess land available for potential expansion to include H2A housing if necessary.

d. *All setbacks, spaces, walls and fences, parking, loading sitescreening, landscaping and other features required by Title 19 YCC.*

The specific development standards as outlined in YCC 19.10.040 are addressed under Section III.10 below.

e. *The proposed use complies with other development and performance standards of the zoning district and Title 19 YCC.*

The specific development standards as outlined in YCC 19.10.040 are addressed under Section III.10 below.

f. *The site for the proposed use relates to streets and highways adequate in width and pavement type to carry the quantity and kind of traffic generated by the proposed use.*

Yakima County Roads has made the determination after reviewing the submitted Traffic Impact Analysis that the existing road network, with the newly proposed road access design and

required road improvements to Pomona Road, is adequate in regard to width and pavement type.

- g. *The proposed use will have no substantial adverse effect on abutting property or the permitted use thereof.*

Issues of compatibility with neighborhood land uses were analyzed in III.9.b , above. That analysis indicated that, in addition to the development standards, compatibility (avoidance of substantial adverse effects) can be addressed through appropriate conditions. At the hearing, public comments also raised concerns about the building height, which would have a different aesthetic impact as between a residential structure and a 300,000 square foot packing facility. Once again, however, the SEPA responsible official did not identify any significant adverse impact associated with the structural dimensions proposed for the facility. The proposed development will also be required to meet the development standards outlined in YCC 19.10.040. Also at the hearing, the applicant stated that the roof structure would not exceed 35 feet. Given compliance with the standard for the R10/5 zoning district and the lack of substantial evidence of adverse impacts from a compliant structure or use, there is no basis for any conditioning of building height.

10. GENERAL DEVELOPMENT REGULATIONS (YCC 19.10.040)

The development standards that generally apply for the type of project being proposed were analyzed in the staff report, and pertinent analyses are reiterated as follows:

- a. *Access Required:* (YCC 19.10.040(3))

All new development are required to have a minimum of 20 feet of lot frontage upon a public road or be served by an access easement conforming to the dimensional requirements of Sections 19.23.040 and 19.23.050 YCC to provide for access to the development. The approach location must be reviewed by the County Engineer for compliance with Chapter 10.08 YCC. Approach connections to other public roads are subject to review by the applicable agency. Verification of legal access and a valid road approach permit shall be required prior to final approval of any permit granted under Title 19 YCC. The Yakima County Transportation Division commented that

The Subject Property (Parcel 19142023003) has frontage to Pomona Road and East Pomona Road. These roadways, although classified as urban due to their proximity of the State Route and their Urban Highway Area, fall into a county rural zoning where urban amenities are not necessary. No urban amenities are required unless determined by WSDOT via SEPA. East Pomona Road is a (Functional Class 19) Urban local access in County's Rural 10/5 Zoning. Per 19.23 E Pomona Road meets the minimum design standard for rural access roadways.

e. *Maximum Building Height and Lot Coverage:* (YCC 19.10.030 & Table 19.11.030-2)

Building height is defined as “the vertical distance from grade plane to the average height of the highest roof surface” (YCC 19.01.070(2)). The maximum building height is intended to maintain building and structure heights that are compatible with the character and intent of the zoning district. Lot coverage is defined as “the percentage of the area of a lot covered by buildings, accessory structures, or other impervious surfaces” (YCC 19.01.070(2)). According to Table 19.11.030-2, within the R-10/5 zoning district, the maximum building height is 35 feet, and the maximum lot coverage is 45%.

The applicant initially indicated within the submitted application materials that the tallest point of the structure will be at least 50’ in height if the building’s mechanical facilities are included. The mechanical rooms or structures on the building’s roof are not included in the calculation of building height. Also at the hearing, the applicant stated that the roof structure would not exceed 35 feet. No exceedance of the maximum 35-foot standard is permissible without the processing of an administrative adjustment pursuant to Title 19 YCC. The proposed lot coverage of 43% falls under the required 45% for a R-10/5 zoned lot.

f. *Fencing:* (YCC 19.10.040(9))

As described within YCC 19.10.040(9), the purpose of fence standards is govern the location and height of fences to allow access to properties by utility employees and emergency response personnel and to maintain good appearance of residential areas and visual access along residential streets and between lots. No maximum fence height is specified for any use within the R-10/5 zoning district. The applicant has indicated in the application materials that a 6-foot chain link fence will be installed. As a condition of approval, the applicant shall show all fence locations, height and design on the final site plan prior to the issuance of building permits.

g. *Exterior Lighting:* (YCC 19.10.040(10))

Exterior lighting is regulated to minimize light pollution to neighboring properties and encourage true-color, full-spectrum light rendition in projects. Exterior lighting for all uses and signs must be directed downward and otherwise arranged, fully shaded, screened, shielded, and of a design that results in the light being directed onto the site and of an intensity or brightness that does not reflect or cause glare or light intrusion into any adjacent or nearby residential use or interfere with the safe operation of motor vehicles. As a condition of approval, all proposed exterior lighting will be required to comply with the Exterior Lighting requirements of YCC 19.10.030(10) and their locations shall be indicated on the final site plan.

h. *Stormwater Requirements:* (YCC 19.10.040(12))

This section is intended to ensure public and private development projects comply with the National Pollution Discharge Elimination System (NPDES) permit requirements under the

Federal Clean Water Act (CWA) where applicable. Stormwater quality and quantity concerns for project permits shall be addressed through:

- YCC Chapter 12.10;
- The environmental review process established by RCW 43.21C and YCC Chapter 16.04; or
- The requirements of the Washington Department of Ecology.

The Yakima County Water Resources Division commented that a Stormwater Plan is required to be submitted to the Yakima County Public Services Division in accordance with criteria found at YCC 12.10.240, 12.10.250, and 12.10.260. Approval of the Stormwater Plan by Yakima County Public Services is required prior to issuance of building permits and/or land disturbance. The Stormwater Plan is required to include an Operation and Maintenance plan and ongoing inspection requirements for any permanent Stormwater facilities in accordance with criteria found at YCC 12.10.330 and 12.10.340. The Division recommended as approval conditions that

- Stormwater must be retained on site.
- Any natural drainageways must not be altered or impeded. Upland drainage, if any, must be conveyed through the property in accordance with criteria found at YCC 12.10.250.
- A Stormwater Pollution Prevention Plan (SWPPP) for construction is required for more than one acre of disturbed ground. An Erosivity Waiver in lieu of a construction SWPPP may satisfy this requirement for those qualifying projects.

The application materials indicate that stormwater will be retained on site within an engineered stormwater retention system meeting the Yakima County and Eastern Washington Stormwater Requirements. Based on Division comments, as a condition of approval, , the applicant is required—prior to the issuance of building permits and/or land disturbance—to submit verification of the Department of Ecology’s approval for the NPDES and shall also submit a Stormwater Site Plan to and obtain approval from the Yakima County Water Resources Division. The Stormwater Plan is required to include an Operation and Maintenance plan and ongoing inspection requirements for any permanent Stormwater facilities in accordance with criteria found at YCC 12.10.330 and 12.10.340. Additionally, a Stormwater Pollution Prevention Plan (SWPPP) shall be submitted, and the applicant shall retain all stormwater on site and natural drainageways shall not be altered or impeded. An Erosivity Waiver in lieu of a construction SWPPP may satisfy this requirement for those qualifying projects. The applicant can contact the Yakima County Public Services Department: Water Resources Division at (509) 574-2300 with questions regarding the above comments.

11. OTHER SPECIFIC DEVELOPMENT STANDARDS

a. *Water and sewer* (Ch. 19.25 YCC)

Subsection 19.25.020(1)(a) YCC provides that the construction or placement of a structure requiring sewage disposal and/or potable water shall connect to a regional sewer system and area-wide public water supply system, except as specified in subsection YCC 19.25.020(1)(b). YCC 19.25.020(1)(b)(ii) allows that an alternative sewer and water system can be utilized when "...The extension of a regional and/or area-wide system is not "available" as defined in Section 19.25.030...". YCC 19.25.030(3) (Availability/Cost of Connection to either sewer or water) states, "A regional sewer system or area-wide public water system is not "available" if the Yakima Health District or service provider has determined that the costs of constructing a connection to the regional and/or area-wide system on a value per unit basis, exclusive of connection fees, is more than two times the estimated costs of improvements that would be required under Section 19.25.040, and the service provider does not require the connection as provided in Subsections 19.25.030(1) and (2)."

The applicant proposes to utilize an on-site septic system and well for a water source. The subject properties are located approximately 2 miles northeast of the City of Selah, which is the nearest available source for regional sewage and water supply. Because a regional water and sewage system is not available, Table 19.25-1 and Table 19.25-2 allow for individual systems to be utilized for both domestic water and sewage disposal. Comments were not received from the Yakima Health District during the comment period. As a recommended condition of approval all domestic water and sewage systems shall be reviewed and approved by the Yakima Health District prior to the issuance of building permits and verification of the Yakima Health District's approval shall be submitted to the planning division.

b. *Signs* (Ch. 1929 YCC)

The applicant indicated in their application that they were not proposing any signs with this project. Any future signs will need to comply with all sign requirements in Ch. 19.20 YCC.

c. *Sitescreening and Landscaping* (YCC 19.21.010(2))

The legislative intent for Chapter 19.21 YCC is to establish sitescreening standards to provide a visual buffer between uses of different intensity and between streets and structures, reduce erosion and stormwater runoff, protect property values, and eliminate potential land use conflicts by mitigating adverse impacts from dust, odor, litter, noise, glare, lights, signs, buildings or parking areas. Table 19.21.-1 does not require landscaping/plantings along property perimeters in the R-10/5 zoning districts. Sitescreening and landscaping is not required within the R-10/5 zoning district. However, the applicant indicated at the hearing that it intended to develop and implement a landscaping plan for the project for aesthetic purposes.

d. *Parking and Loading* (YCC 19.22.010-080)

All off-street parking and vehicle storage must be in conformance with Ch. 19.22 YCC. The parking standards in Table 19.22-2 are based on gross floor area of the facility to which parking

is accessory. The proposed cherry processing and packing facility is classified as “Agriculturally related industries and wholesale trade warehouses” which requires either 1 space for each employee based on the maximum working at any given shift, 1 space for each 300 sq. ft. of gross floor area for packing and processing areas, or 2 spaces for the first 1000 sq. ft. of gross floor area, plus 1 space for each additional 5,000 sq. ft. for controlled atmosphere storage, warehouse, and refrigeration areas depending on which method is most appropriate. The submitted application materials list a proposed 286 parking spaces for the facility. The application materials also state there will be roughly 300 employees per any given shift. Per Table 19.22-1, 1 parking space is needed per employee based on the number of employees per any given shift. Therefore, an additional 14 spaces are needed beyond what was proposed. However, at such time as any H2A housing is built on the site, the number of required parking spaces could be reduced based the lesser need for vehicle parking for employees residing on-site. Under state law, Yakima County has limited land use jurisdiction over the development of H2A housing, but since there is no guarantee that the H2A housing will be built at the time the main facility is constructed, a total of 300 parking spaces is needed at the onset. If H2A housing is constructed as part of the initial development of the facility, the total number of parking spaces at the facility may be reduced by the total number of H2A workers capable of being housed on the property. A final site plan needs to be submitted identifying all the required parking spaces associated with the facility. The applicant has indicated within the application materials that some of the parking spaces will be paved, and some will be gravel.

As a condition of approval, the applicant shall provide a minimum of 300 parking space that comply with the design of parking and loading facilities, construction and maintenance, and access and circulation standards as set forth in Ch. 19.22 YCC. All infrastructure shall be constructed prior to the issuance of the Certificate of Occupancy. If H2A housing is constructed at the onset of the main facility the number of parking spaces may be reduced by the number of H2A employees capable of being housed at the site. Any and all adjustments to the parking space total needs to be reflected on the final site plan submitted.

IV. CONCLUSIONS.

1. The application materials and received comments include evidence and analysis that supports a conclusion that the proposed packing facility, if appropriately conditioned, is consistent with the general development standards of YCC Title 19.
2. Except as otherwise expressly provided, the Hearing Examiner is authorized by YCC 19.30.100 to impose conditions on an approval to assure compliance with YCC Title 19 and other relevant provisions of Yakima County Code. The Administrative Official recommendation in the staff report contains a set of proposed conditions that largely serve this purpose. Any approval should include those conditions, subject to adjustment based on the results of the open record hearing. Similarly, conditions that mitigate for material impacts identified in the Findings should also be included in the approval.

3. As part of project review, the reviewing official is to determine if a proposed project is consistent with Yakima County's applicable development regulations or, in the absence of applicable regulations, the adopted Yakima County Comprehensive Plan. Consistency should be determined in the project review process by considering factors found in applicable plans and regulations. Title 19 criteria for project review refers to standards set in *Horizon 2040* and specific development regulations. Compliance with those standard assures satisfaction of the mandate for consistency review in YCC 16B.06.020.

4. The Findings above and these Conclusions support a recommendation for approval with conditions of the proposed agriculturally related Industry (cherry processing and packing facility) on 56.40 acres within the R-10/5 zoning district as described in CUP2021-00048, and SEP2021-00037.

V. DECISION

Based on the findings, analysis, and conclusions above, the application by Leanne Liddicoat with Digital Design and Development on behalf of Giddings Cerasus USA, LLC to establish the proposed agriculturally related industry (cherry processing and packing facility) as described in CUP2021-00048 and SEP2021-00037, is APPROVED SUBJECT TO THE FOLLOWING CONDITIONS.

The following conditions must be obtained within three years of the date of this decision. Note that this decision and time limit pertains to this conditional use action authorized for this approved land use only and does not include timelines associated with other permits (for example building permits). Failure to comply with all conditions will result in the revocation of this permit.

1. The applicant shall submit a final site plan that will show all required setbacks from public roads and from all exterior and interior property lines, all fence locations, height and design, exterior lighting, final number and location of parking spaces prior to the issuance of building permits and ground disturbances.
2. The applicant shall apply for all Building and Fire Life Safety permits (including but not limited to buildings, grading for site preparation, settling ponds, etc., fire flow, access, mechanical, etc..) for the proposed and existing structures and uses. All permits for the proposed and existing structures must be issued and all of permitted work inspected and finalized prior to occupancy. The applicant shall ensure that the project meets all Americans with Disabilities Act (ADA) requirements.
3. Pomona Road shall be improved to meet the Standard Plan RS-7 roadway cross section along the entirety of the western boundary of parcel 19142023003. The applicant shall pay the County Transportation Engineering review following a development authorization for public roads - \$ 4,435.00 prior to any further review by County Roads Staff.

The applicant shall submit 30% design plans stamped by a Professional Engineer licensed in the State of Washington for review and approval by the Yakima County Engineer. The applicant shall submit 90% design plans stamped by a Professional Engineer licensed in the State of Washington and submittals for materials being used for review and approval by the Yakima County Engineer prior to construction and shall attend a preconstruction meeting with Yakima County staff a minimum of 30 days prior to breaking ground for road construction. All construction is subject to inspection throughout the course of work by the staff of the County Engineer. Any change orders must be approved by the County Engineer. Upon completion of construction, Yakima County Roads staff will inspect the complete project, and provide a punch list of any outstanding items. All outstanding items shall be corrected prior to acceptance of the roadway.

Once completed, the Engineer of Record shall provide 100% design documents for the roadway improvements, to include all approved changes to the previously approved plans. If the roadway is found to be acceptable by the County Engineer, the office of the County Engineer shall submit to the BOCC a resolution to accept said roadway construction. Applicant shall obtain a road approach permit for the 2 accesses proposed in conjunction with this development. Process: Submit (1) one application for a road approach permit and pay the \$275 application fee. No road approach permit will be issued for the primary access of this site without an approved engineered design submitted in conjunction with the application. Engineered design shall be stamped by a Professional Engineer licensed in the State of Washington and approved by the County Engineer. The secondary, emergency/gated access does not require engineering and will be permitted to meet one of the County's standard designs.

4. The applicant shall obtain all required permits from the Washington State Department of Ecology (WDOE) as it pertains to the NPDES Construction Stormwater General Permit and the Stormwater Pollution Prevention Plan (Erosion Sediment Control Plan) as outlined in WDOE's October 4, 2021, comment letter on the project. Verification of the Department of Ecology's approval shall be submitted to the Yakima County Public Services Department: Water Resources Division prior to the issuance of building permits.
5. The applicant shall obtain all required permits from WDOE as it pertains to the Fresh Fruit Packing permits as well any and all permits associated with industrial wastewater retention, as outlined in DOE's October 4, 2021, comment letter. Verification of the Department of Ecology's approval shall be submitted to the Yakima County Public Services Department: Planning Division prior to the issuance of building permits.
6. A Stormwater Plan for the project shall be submitted to the Yakima County Public Services Department: Water Resources Division in accordance with criteria found at YCC 12.10.240 and YCC 12.10.250. Approval of the Stormwater Plan by Yakima County Public Services Department: Water Resources Division is required prior to land disturbance. The

Stormwater Plan is required to include an Operation and Maintenance plan and ongoing inspection requirements for any permanent stormwater facilities in accordance with criteria found at YCC 12.10.330 and 12.10.340. The applicant shall also prepare and implement a Stormwater Pollution Prevention Plan as required by WDOE. The applicant may contact the Yakima County Public Services Department: Water Resources Division at (509) 574-2300 with questions pertaining to the Stormwater Plan. All stormwater must be retained on site. Any natural drainageways must not be altered or impeded. Upland drainage, if any, must be conveyed through the property in accordance with criteria found at YCC 12.10.250. A Stormwater Pollution Prevention Plan (SWPPP) for construction must be submitted to Yakima County Public Services Department: Water Resources Division prior to land disturbance. An Erosivity Waiver in lieu of a construction SWPPP may be substituted subject to division approval if the project is qualified for such a waiver.

7. The applicant shall comply with all local irrigation district irrigation infrastructure requirements and other applicable rules and policies.
8. The applicant shall implement all mitigation measures set forth in the in the Final Mitigated Determination of Non-Significance issued under County File No. SEPA2021-00037.
9. All exterior lighting installed shall be directed downward and otherwise arranged, fully shaded, screened, shielded, and of a design that results in the light being directed onto the site and of an intensity or brightness that does not reflect or cause glare or light intrusion into any adjacent or nearby residential use or interfere with the safe operation of motor vehicles on nearby roads. Parking area lighting shall comply with YCC 19.22.070(5).
10. The applicant shall contact the Yakima Health District for review and approval of the domestic water and sewage systems prior to the issuance of building permits and verification of the Yakima Health District's approval shall be submitted to the planning division. The applicant may contact the Yakima Health District at (509) 575-4040 for questions pertaining to domestic water and sewage disposal.
11. The applicant shall obtain all water for the facility operations from a legal water source and in a manner consistent with Mitigation Measure B1 in the Mitigated Determination of Non-Significance issued under County File No. SEPA2021-00037. For an on-site water source, the applicant shall obtain the necessary water rights through the WDOE. Verification of the water right permit and adequate potable water supply shall be submitted to the Planning Division prior to the Certificate of Occupancy.
12. Per RCW 90.03.350, a Dam Safety construction permit is required for those dams or ponds which can impound a volume of 10 acre-feet or more of water or other liquids above ground level. If the applicant constructs a stormwater pond or settling ponds that can impound amounts of water equal to or greater than the above referenced criteria, it will need to apply for a dam construction permit with the WDOE and provide a copy of the

approved permit to the Yakima County Public Services: Planning Division prior to Certificate of Occupancy.

13. The applicant shall provide a minimum of 300 parking spaces constructed, at a minimum with gravel or crushed rock and shall comply with the design standards for parking and loading facilities, construction and maintenance, and access and circulation standards as set forth in Chapter 19.22 YCC. If housing for temporary agricultural workers under state and federal H2A programs is constructed at the onset of the main facility, the number of parking spaces may be reduced by the number of H2A employees for which the housing is designed and constructed. Any and all adjustments to the parking space total must be reflected on the submitted final site plan. All infrastructure shall be constructed prior to the issuance of the Certificate of Occupancy.
14. The applicant must obtain all necessary permits associated with developing over the existing natural gas pipeline and submit all approvals to Yakima County Public Services – Planning Division prior to Certificate of Occupancy.
15. All signs installed for the project to which Chapter 19.20 YCC applies by its terms shall comply with the requirements of that chapter, and all required permits for such signs shall be obtained.
16. The applicant shall comply with all development standards as outlined in Title 19 YCC including but not limited to setbacks, vision clearance, fencing, the building height, access, exterior lighting and glare. The rooves of all structures shall not exceed 35 feet in height.
17. The applicant shall assure that noise from the operation of the processing and packing facility does not violate the standards of YCC 6.28.030 irrespective of exemptions for truck traffic and permitted commercial or industrial activities.
18. The project shall be limited to development locations and operations described in this application and the associated application materials (which include but is not limited to revised site plan, narrative, forms, and plans) submitted with the application referenced as file numbers CUP2021-00048 and SEP2021-00037 and as supplemented by the aesthetic landscaping plan the applicant intends to implement. Any proposed future modification(s) to this project, including processing and packing facilities or operations for other types of agricultural produce shall be submitted to the Yakima County Planning Division for review and a decision based on County code.
19. The owners, their grantees and assignees in interest will abide by the terms of YCC 16B.07.050 – Compliance, Extension, Expiration and Reinstatement attached to this decision. The applicant shall complete all required conditions, submit documentation that all conditions were met and request County inspection or review to determine that the

requirements have been fulfilled within the timeframe specified in the decision and any authorized extensions.

DATED THIS 27TH DAY OF JULY 2022



PATRICK D. SPURGIN
HEARING EXAMINER *PRO TEM*