

**County of Yakima, Washington
Office of the Hearing Examiner**

In the matter of the Application by)	File Nos. CUP CUP2016-00019 &
)	SEP2016-00007
Tim Bardell)	
)	
For Type 2 Review of a Concentrated)	Hearing Examiner Decision
Animal Feeding Operation (Calf Yard) off)	
<u>of Glade Road near the City of Mabton.</u>)	

I. INTRODUCTION.

Tim Bardell of B7 Engineering, P.O. Box 487, Sunnyside, WA 98944 submitted an application for Type 2 review of a proposed Concentrated Animal Feeding Operation (CAFO) for a "calf yard" on properties that are owned by Fryslan Ranches Enterprises, LLC and FRH Enterprises, LLC, according to the Yakima County Assessor's records. The owners and the applicant are collectively referred to hereafter as "Fryslan." The same properties had been the subject of a 2015 application for a feedlot operation for which no administrative decision was issued. Based on the application materials, Fryslan wishes to withdraw an earlier (2015) application for a larger scale CAFO and pursue the current calf yard operation application, which was made on February 25, 2016. The County Planning Division invited public comment on the calf yard application and related environmental review under State Environmental Policy Act procedures on April 7, 2016. The current application was the subject of substantial public comment.

Based on the nature of written comments received on the application following the issuance of public notice of the Type (2) review process, the Yakima County Administrative Official referred the matter to the Hearing Examiner for a public hearing and decision. An open record public hearing was conducted on the application at Yakima City Council Chambers on July 6, 2017. Prior to the hearing, the County Planning Division provided a Staff Report and a substantial set of exhibits that included the application materials, maps, notices and notice affidavits, a technical hydrogeology study report and written agency and public comments and a hearing brief from Fryslan Ranch counsel Erika Hartlieb of STOKES LAWRENCE VELIKANJE MOORE & SHORE.

At the hearing, the staff report was presented by Dinah Reed. The applicant was represented by attorney Brendan Monahan. Public comment both favoring and opposing the application was presented at the hearing. Opposing comment from Mensonides Dairy, LLC and Art and Theresa Mensonides (collectively "Mensonides") was presented by attorney Brian Iller of RETTIG FORGETTE ILLER ADAMSON. Opposing comments were also offered by Agricultural

Consultant Stuart Turner, a City of Mabton representative, and neighbors David Strausz and Eduardo Molina. Adverse comments related to potential impacts to domestic water supply, air quality and odor impacts, traffic impacts on roads other than the proposed access road for the facility, manure tracking on county roads, and the inadequacy of the mitigation measures in the County's Mitigated Determination of Non-Significance to prevent adverse environmental impacts from the project. Adverse commenters challenged the likelihood that the operations would comply with mitigation measures other conditions, or regulatory requirements generally applicable to CAFOs based on their observations of past conduct by Fryslan at its other dairy operations, including Fryslan's manure waste and animal carcass management practices. They challenged the adequacy of proposed conditions on approval due to lack of effective enforcement mechanisms, and called for the preparation of an Environmental Impact Statement. There was also expression of concern regarding the breadth of the distribution of notice of the application and hearing.

At the Hearing Examiner's request Mr. Iller provided a letter brief concerning the scope of the Hearing Examiner's authority to require additional SEPA review as a result the hearing process. Ms. Hartlieb submitted a letter brief in response on July 17, 2017. The hearing record was closed at that time, although the Hearing Examiner viewed the site on July 29, 2017.

II. SUMMARY OF DECISION.

The proposed calf yard CAFO as described in the most recent application materials and analyzed in the Staff Report and other analysis in the Findings, is APPROVED in accordance with YCC 19.30.080(7), SUBJECT TO CONDITIONS designed to mitigate and avoid impacts from the project and to assure compliance with applicable development standards and *Plan 2015* under authority of YCC 19.30.100. The conditions of approval are set forth in the following Decision.

III. FINDINGS.

Based on the staff report and exhibits, the viewing of the site and comments received at the open record hearing, and a review of the pertinent provisions of *Plan 2015* and the County Zoning Ordinance, the Hearing Examiner makes the following Findings. Any finding more properly determined to be a conclusion is deemed to be such.

1. APPLICANT/OWNER.

- a. Owner: Fryslan Ranch
650 Hornby Road
Grandview, WA 98930
- b. Applicant: Tim Bardell
B7 Engineering
P.O. Box 487
Sunnyside, WA 98944

2. LOCATION AND PARCEL NOS.

The three subject parcels are located on and accessed off of Glade Road, also known as Mabton-Bickelton Road, and approximately 2 miles southeast from the City of Mabton. (Parcel Nos. 230817-21001, 230808-33001 and 230808-34001.

3. ZONING AND LAND USE

The subject property is zoned Agriculture (AG). The subject parcels total approximately 258 acres in size and are completely surrounded by AG zoned parcels that are large in size. Some neighboring parcels are owned by DNR and are under grazing leases. Frysian has several contiguous parcels in ownership in this area: 220813-11001/581 acres, 230818-1 1002/82 acres, 230818-12001/41 acres, 230818-21001/124 acres, 230818-22001/74 acres. These parcels in addition to the three subject parcels associated with the proposal total 1,115 contiguous acres of ownership. There are single-family residences on the project subject parcels. Additionally, there are few single-family residences located a distance to the north of this area (closest are ½ mile distant). The properties are undeveloped other than for the residences.

Based on testimony received at the public hearing and written testimony from Mr. Strausz, the land has been used for seasonal grazing. Statements from Mr. Turner and Mr. Molina indicate that the natural vegetation has been mowed on a portion of the site, and manure and animal carcasses from nearby dairy or calf operations have been stockpiled or disposed of on the property. The apparent stockpiling of placement of manure is confirmed by the Hearing Examiner's viewing of the site.

4. PROJECT DESCRIPTION

Frysian proposes to establish a new 30-acre "calf yard" located within the three adjoining parcels in the Agriculture (AG) zoning district. Access is off of Glade Road, a County rural major collector. The total acreage of the three parcels is 258 acres more or less. The new facilities would include: 16 acres of corrals, 4 acres of hutch yard with about 1500 calf hutches, one to four buildings totaling 15,000 square feet or less to house various support functions, and a 5 Mg lined waste water pond. The calf population is proposed to be about 1300 animal units. The calf yard would allow relocation of young and elementary-age calves from three current calf operations that supply cows to four dairies owned by Windmill Estates, LLC. The dairies each operate on an approved Dairy Nutrient Management Plan (DNMP).

Per the application narrative and site plan, the hutch yard would hold 1500 0 to 3-month-old calves averaging 150 pounds each. The corrals would hold 1200 3 to 5-month-old calves averaging 300 pounds each, except a set of larger corrals would hold 2000 5 to 10-month old calves averaging 400 pounds each. The estimated number of calves is consequently approximately 4700 calves. This is roughly consistent with the 1300 animal unit population estimate. The applicant indicates that the new facility allows the relocation of young calf (70-150 lb range) and elementary calf (150-350 lb range) raising operations from locations at parcels on Stover Road and Forsell Road.

The applicant's narrative also provides that the use of a shop building proposed on Parcel No. 230808-34001 is to shelter and repair equipment, as well as a location for new-born formula preparation and shelter for young and sick calves as needed. The lined waste water pond will be used to ensure that potentially contaminated storm water is captured, and to receive water used to clean and sanitize new-born formula equipment.

The calf yard as initially proposed would draw water from one of four permit-exempt stockwater wells that been completed into three different aquifers (groundwater sources). Because the facility represents a relocation of calf production rather than an increase in production, the applicant indicates that the facility will not result in an increase in consumptive use in the Yakima Valley. In addition, the completion of the four wells can allow selection of well use to avoid impacts to other water users in the vicinity.

The applicant also proposes that the facility would be covered by a "nutrient management plan" to address the animal waste stream from the calf yard facility. The nutrient management plan would be offered for approval by a regulatory agency with enforcement authority.

A Complaint Management System is included in the Operations Plan. Responsibility for complaint management and other communications with neighbors and regulatory agencies is assigned to Ruurd Veldhuis.

Details of the proposed operation are included in the narrative attached to the Type (2) review application.

5. COMPREHENSIVE PLAN DESIGNATION.

The Yakima County Comprehensive Plan (*Plan 2015*) designates the land use of the subject parcels as Agricultural Resource. The intent of Yakima County's Agricultural Resource land use category is to implement the Growth Management Act planning goals related to maintaining and enhancing natural resource-based industries, which includes productive agricultural industries.

6. NOTICE.

The first combined Notice of Application, Notice of Completeness, and Notice of Environmental Review was mailed to the applicant, property owner, agencies with jurisdiction, and adjoining property owners on April 7, 2016 with the comment period ending April 21, 2016. Notice was provided in accordance with the applicable ordinance requirements in the following ways:

- Mailing of hearing notice to property owners w/in 300 feet: June 16, 2017
- Final Threshold published in Yakima Herald-Republic: April 26, 2017
- Publishing of open record hearing in Yakima Herald-Republic: June 14, 2017
- Posting of hearing notice on the property: June 19, 2017

In some of the public comment, there were concerns raised about the April 7, 2016 notice not being mailed to Mr. Strausz. However, none of the comment identified any requirement in the Project Permit Review ordinance, Title 16B YCC, or any set of facts indicating that notice should have been sent to Mr. Strausz. Pursuant to YCC 16B.05.030(3)(a)(i)(A), "[Notice] of the proposal shall be sent to all owners of property located within 300 feet of any portion of the boundary of the proposed project permit application ... site." No evidence has been presented that the Strausz property is within 300 feet of the project boundary or any other adjacent property owned by Fryslan. Mr. Strausz subsequently became a party of record and received notices accordingly.

7. ENVIRONMENTAL REVIEW

The proposal is subject to review under the State Environmental Policy Act (SEPA). Yakima County is Lead Agency under SEPA and performed environmental review under file number SEP2016-00007. A proposed Mitigated Determination of Non-Significance (MDNS) was issued for comment on April 25, 2017. A Final MDNS was issued on June 16, 2017.

The Final MDNS identified the following mitigation measures that would be necessary to avoid significant adverse environmental impacts:

- Mitigation Measure A1: The feedlot shall operate in accordance with an approved Nutrient Management Plan (NMP) prepared for the facility.
- Mitigation Measure B1: The applicant shall submit a Dust Control Plan to the Yakima Regional Clean Air Agency prior to the start of construction. During both construction and normal operations, the applicant must comply with the provisions of the submitted Dust Control Plan and all permitting and regulatory requirements set forth by the Yakima Regional Clean Air Agency.
- Mitigation Measure C1: To reduce potential for larvae nurseries in the waste handling area, weeds will be prevented from growing by lining the [lined waste water] pond.
- Mitigation Measure C2: Vectors will be controlled by ensuring manure solids are as dry as possible to reduce the suitability of manure of growth medium for larval development.
- Mitigation Measure C3: To reduce odor corrals are kept as dry as possible to provide the least favorable environment for odors and fly pupae.
- Mitigation Measure C4: To reduce odor the disposition of dead animals is accomplished in a sanitary manner and in accordance with all state and local laws.
- Mitigation Measure C5: To reduce odors feed spillage around feed bunkers is kept to a minimum, especially under moist conditions.
- Mitigation Measure C6: To reduce odors all animal holding areas are kept

clean of excess manure.

- Mitigation Measure C7: To reduce odors manure is only applied on days when the wind is relatively calm so that the aerosols and odors are minimized from drifting onto neighboring areas.

The appeal period for the MDNS expired on June 30, 2017. No appeals were submitted to the County during the appeal period.

Mensonides provided comment and briefing in support of the proposition that the MDNS was inadequate, and should be replaced with a Determination of Significance. Mr. Strausz also commented that the MDNS was inadequate. The City of Mabton comments also urged the preparation of an Environmental Impact Statement, as did Mr. Turner. SEPA procedures are set forth in Chs. 16.04, 16B.05 and 16B.06 YCC. "A SEPA determination 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). All SEPA appeals must be filed in writing with the Yakima County Planning Division, shall comply with the appeal period timing and content requirements of YCC 16B.09.010 and must be accompanied by the filing fee established by YCC Title 20. No such appeal has been filed, and the MDNS must be deemed conclusively to comply with the applicable rules and ordinances.

8. JURISDICTION OF HEARING EXAMINER.

The proposal is subject to Yakima County Unified Land Development Code (Title 19 of the Yakima County Code or YCC). "Concentrated Animal feeding operation" means an animal feeding operation where more than 1,000 animal units are confined at the facility; and as further defined in the Code of Federal Regulations and regulated as a CAFO by the Washington State Department of Ecology. Concentrated animal feeding operations include: structure or pens for the concentrated feeding or holding of animals or poultry including, but not limited to, horses, cattle, sheep or swine. This definition includes dairy confinement areas, slaughter houses, shipping terminal holding pens, poultry and/or egg production facilities and fur farms, but does not include animal husbandry. YCC 19.01.070(1). The proposed animal unit capacity for the subject proposal is 1,300 animal units.

Proposals for "Concentrated Animal Feeding Operation" uses are subject to Type 2 review in the AG zoning district. See Table 19.14-1, Allowable Land Uses. Type 2 applications may be referred to the Hearing Examiner per YCC 16B.03.040, Table 3-2, Note (4), for final decision, "in a manner similar to a Type 3 application." Although referred for Type 3 review, Type 2 Administrative Uses shown on the Allowable Land Use Table 19.14-1 in Chapter 19.14 are generally allowed in the zoning district. The compatibility between a Type 2 Administrative Use and the surrounding environment cannot always be determined in advance. Therefore, a Type 2 Administrative Use may be conditioned to ensure compatibility and compliance with the provisions of the zoning district and the goals, objectives and policies of the Comprehensive Plan. Id. Note (5); YCC 19.03.030(2)(b)(iv). Type 3 decisions require an open record hearing by the Hearing Examiner,

and the Examiner's written decision constitutes the final decision. YCC 16B.03.030. Decisions must include findings and conclusions documenting the reasons for the decision, including the application of the following relevant decision criteria:

- (a) The present and future needs of the community will be adequately served by the proposed development and that the community as a whole will be benefited rather than injured;
- (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;
- (c) The site of the proposed use is adequate in size and shape to accommodate the proposed use;
- (d) All setbacks, spaces, walls and fences, parking, loading, sitescreening, landscaping, and other features required by Title 19 YCC;
- (e) The proposed use complies with other development and performance standards of the zoning district and this Title;
- (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;
- (g) The proposed use will have no substantial adverse effect on abutting property or the permitted use thereof

The Hearing Examiner is further authorized to condition any approval in accordance with YCC 19.30.100.

9. APPLICATION OF REVIEW CRITERIA TO THE CALF YARD PROPOSAL.

Each pertinent criterion and its application to the current proposal is set out in turn below:

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

(1) *Water requirements.* The State of WA Department of Ecology (DOE) commented that the two deep wells initially proposed to provide water to the project will cause a persistent state of decline in the Wanapum aquifer and will impair water availability and water rights. If the Wanapum wells were used for the projects, "main stem Yakima River mitigation for the impacts would be required." The City of Mabton also raised concerns about the potential interference of project wells with the city's water supply. Mensonides noted its concerns with interference with a well on property it acquired from the Washington Department of Natural Resources in its hearing comments. In response to Washington Department of Ecology comments concerning assurance of no net increase in water use from relocating of calf yard operations to the proposed site, the Staff Report recommended that, as a Condition of Approval, Fryslan must establish a "Deed

Restriction" that would limit future water withdrawal from Fryslan's existing CAFO's on parcel nos. 230909-33001, 230917-21001 and 230918-34001 to withdrawal only for domestic use for the houses and shops on those properties. The restriction is intended to eliminate permit-exempt stock watering use from the existing wells serving those properties. The animal units at Stover Road, Hornby Road and Den Boer Road will be re-located to the new Fryslan Ranch, as proposed, combining the operations to one facility. The purpose is to eliminate an increase in Water withdrawal in the Yakima Basin. The Staff Report also recommended a condition that Fryslan provide a schedule for the process for moving the cows from the existing CAFO's on parcel nos. 230909-33001, 230917-21001 and 230918-34001, the cessation of stock watering on those parcels, and an ongoing inspection plan by Yakima County, as an assurance that the Deed Restriction is complied with. Yakima County would work with the applicant and representative on the proposed schedule. It is not clear that a deed restriction is the most legally effective way of documenting the waiver by Fryslan or its successors of the right to use groundwater on its property for permit-exempt stockwater purposes on the existing CAFO properties.

Tim Bardell's comments on behalf of Fryslan at the hearing indicate that the project will employ the existing well developed into the Saddle Mountain Basalt aquifer. The hydrogeologic study provided in response to the Planning Division's request for additional information indicates that, based on conservative assumptions, drawdown at the Saddle Mountain Basalt well would produce drawdown of 2.19 feet on average at a distance of 1 ½ miles from the well. The hydrogeological report also indicates that the probability of any interference with wells completed into the aquifers stratigraphically above and below the Saddle Mountain Basalt aquifer is low. Mensonides indicated generally that its well acquired from DNR was not accounted for, but does not suggest that significant drawdown potential for the well is indicated. The City of Mabton's plans for additional well development are reported to rely on the Wanapum aquifer, and such a well does not appear likely to be affected from the Saddle Mountain Basalt well based on the hydrogeological desktop study. The adequacy of the hydrogeological report's well interference analysis was affirmed in a technical memorandum from the Department of Ecology.

Consequently, if the Saddle Mountain Basalt well is used to provide water for the calf yard, and stockwater use is discontinued at the other Fryslan properties in accordance with the Deed Restriction, the water quantity-related potential for adverse community impact does not appear substantial.

(2) *Water quality.* Mr. Stuart asserts that the facility would be in the "flood plain" and the area has been subject to flood events that could lead to compromised water quality. Mabton has also raised concerns about protection of drinking water quality. The holding capacity of the waste water pond proposed for the project is to be based on 25 year/24 hours storm event. The SEPA Responsible Official determined that project will not result in significant adverse environmental impacts based on the implementation of an approved Nutrient Management Plan. In addition, Fryslan provided information supporting the idea that the design of the facility in combination with the extensive vadose zone underlying the subject property would protect against manure/nutrient based groundwater contamination. Furthermore, the County recognizes that the project is proposed to be located in the Lower Yakima Valley Groundwater Management Area and requires either a stormwater site plan or an approved Nutrient Management Plan prior to ground disturbance for the project. These requirements will afford protection of groundwater supplies in the area.

(3) *Wildlife habitat.* The Washington Department of Fish and Wildlife (WDFW) commented that the subject property likely qualifies as an Upland Wildlife Habitat Conservation

Area (YCC Title 16C.1 I) in the Yakima County Critical Areas Ordinance. Comments centered on concerns of shrub-steppe habitat conversion, and that habitat mitigation be a condition of approval. WDFW requested that the habitat impacts be mitigated by a purchase of property or conservation easement of approximately a 2:1 ratio of conservation acres to impact acres, totaling approximately 60 acres subject to the conservation easement. WDFW identified measures that would address habitat concerns for the subject parcel, including:

- a. The project footprint would be limited to 40 acres and not further encroach into the shrub-steppe habitat to the south.
- b. If a conservation easement on current Fryslan property is selected, site restoration would be needed because the parcel was mowed in 2015, as evidenced by aerial imagery taken in May 2015 showing the site not mowed, but then in January 2016 when a site visit was conducted, the site had been mowed. No grazing would be allowed on the property covered by the conservation easement.
- d. Monitoring would be required to ensure successful revegetation of the easement area, as well as fire protection and weed control.
- e. Site selection is critical to ensure that the easement is not an island in the middle of development or disturbed areas.

Mitigation Measure E1 in the MDNS requires a permanent form of protection (conservation easement, deed restriction, etc.) of habitat that prohibits land disturbing activities shall be established on the subject property. The area of protection must meet ratios of protection established by WDFW. Evidence that this mechanism has been approved by WDFW and established must be provided to Yakima County Planning prior to construction and grading activities within the CAFO area.

(4) *Local transportation system.* A substantial amount of public comment raised concerns about the use of the potential use of Christensen and Rusk Roads as access to the calf yard, with attendant problems of traffic impacts to the residences and farm operations in the area, as well as manure tracking onto the bridge across the adjacent irrigation district lateral canal and the roads. Public comments predict that outcome, urging that the Christensen/Rusk Road route is the most likely route for access to the calf yard from other Fryslan operations in the area and the proposed use of Glade Road is a subterfuge. Use of the Christensen/Rusk Road Route was not analyzed as part of SEPA and is not included in the narrative information prepared for the application. Any approval of an application is properly conditioned upon the development substantially conforming with the site plan and application materials.

(5) *Air quality.* Mensonides urges that the proposed dust management plan condition on approval is insufficient to address air quality issues presented by the project, and that Fryslan should be required to obtain a Dairy Air Quality Plan approval from the Yakima Regional Clean Air Agency. The SEPA Responsible Official has determined that the project does not present significant adverse environmental impacts so long as mitigation measures are implemented. Mitigation Measure B.1 provides explicitly for compliance with clean air regulatory requirements.

(6) *Sunnyside Valley Irrigation District.* Sunnyside Valley Irrigation District offered the following comments:

- SVID does have a facility adjacent to the parcels for development. The Mabton West Lateral right of way, which is 80' in width centered on the lateral, is fee title right of way adjacent and parallel to the north boundary of parcel 230808-33001 and 230808-34001.
- Runoff or discharge into the Mabton West Lateral will not be allowed.

- Buildings will not be allowed within SVID easements or right-of-way.
- Grading or removal of soil will not be allowed within SVID easements or right-of-way.
- Obstructions including fences, roadways, gravel asphalt, etc. will not be allowed within SVID easements or right-of-way unless it is approved through the permitting process.
- Crossing the Mabton West Lateral will not be allowed unless approved through the permitting process.

There is no indication that Fryslan cannot comply with these requirements.

(7) *Enforcement effectiveness.* Mensonides and Mr. Turner commented that reliance on the local regulatory regimes for protection of the public and neighboring properties is misplaced. The commenters offered evidence that they say shows that Fryslan principals have a history of violation of environmental and agricultural regulatory requirements. They also argue that the mitigation measures are too vague to be effective. Fryslan for its part offers evidence intended to counter the assertions of regulatory noncompliance and to ascribe reasonable regulatory weight to the recommended conditions and mitigation measures. However, there has been no showing of the relevance of the various assertions of past Fryslan conduct to the land use project permit review at hand. As discussed earlier in III.7, above, the MDNS is deemed to conclusively avoid significant adverse environmental impacts from the proposal. Past compliance with permit or environmental regulatory requirements is generally not expressed in Title 19 YCC as a consideration is Type 2 or Type 3 decision criteria. If the Administrative Official determines that code violations have occurred, the process and penalties for addressing such violations is described in Ch. 16B.11 YCC.

It is unlawful for any person to erect, construct, establish, move into, alter, enlarge, use or cause to be used, any buildings, structures, improvements or use of premises contrary to Title 19 YCC. Development permits issued on the basis of plans and applications and conditions of approval authorize only the use, arrangement and construction set forth in the approved plans and application with any associated conditions of approval and the final site plan. Any use, arrangement, or construction inconsistent with that authorized violates Title 19 YCC and is punishable as provided in YCC Chapter 16B.11. YCC 19.01.020. No use, development or modification to a use or development may be established, placed, performed, constructed, made or implemented, in whole or in part without the issuance of a project permit by the Reviewing Official. YCC 19.30.020. YCC 16B.11.050 provides an array of penalties for violations of Title 19 YCC. Violation constitutes a public nuisance under that section. Furthermore, "the Reviewing Official may revoke a project permit issued under [Title 19 YCC] if it is ascertained that an application includes any false information material to the project permit approval." YCC 19.30.120(2)(a). In this context, an argument that enforcement of requirements applicable to an authorized CAFO are insufficient is not tenable.

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.*

(1) *Neighborhood Land Use Compatibility.* Public comment raised concerns about odor and disease vectors in addition to concerns addressed in III.9.a, above. "Compatibility" means the characteristics of different uses or developments that permit them to be located near each other in harmony with or without special mitigation measures. YCC 19.01.070(3). This is clearly a general standard. Agricultural uses dominate the vicinity, including several CAFO uses run by numerous operators within a mile to two miles from the proposed project. However, there are also residential uses on small parcels within ½ mile of the proposed facility. Agricultural uses of the

same general nature as the proposed use do not appear to have resulted in incompatibilities with the current residential uses based on any evidence in the record. These agricultural uses, including regulated CAFOs, have not prevented the establishment and continuation of the small-parcel residential uses in the area. If the effects of the proposed use were substantially dissimilar to existing agricultural uses or have a greater impact on neighboring uses because of specific, unique circumstances, then there may be a credible concern over compatibility for regulatory purposes, but no such dissimilarities or specific, unique circumstances have been identified in the record. CAFOs are generally permitted uses in the AG zone. Unless such specific facts to support an incompatibility determination are made a matter of record, a local government cannot readily show that the general standard of compatibility has been violated. See *Sunderland Family Treatment Services v. City of Pasco*, 127 Wn.2d 782, 797, 903 P.2d 986 (1995). ("Because the [ordinance] does not set forth any standards against which we can judge the reasonableness of the City's denial, the City has the burden of showing why a generally permitted use is inappropriate in this case.")

(2) *Plan 2015*. The intent of Yakima County's Agricultural Resource land use category is to maintain and enhance natural resource-based industries, which includes productive agricultural industries. The *Yakima County Comprehensive Plan (Plan 2015)* does not include provisions overtly regulating agricultural activities. Broader purposes of the plan are

- GOAL LU-ER-AG 1: Maintain and enhance productive agricultural lands and discourage uses that are incompatible with farming activities.
- POLICY LU-ER-AG 1.1: Encourage conservation of the County's high quality agricultural lands for productive agricultural use and protect the opportunity for these lands to support the widest variety of agricultural crops.

Calf yard production is necessary to provide stock for dairy operations, which are productive agricultural industries. The establishment of the calf yard operation as described and conditioned is consistent with *Plan 2015* goals and purposes.

(3) *Intent of the zoning district*. The AG zoning district is intended to preserve and maintain areas for the continued practice of agriculture and to permit only those new uses that are compatible with agricultural activities. "Agriculture" includes "livestock farming, dairying, animal feeding operations, animal husbandry, composting associated with the primary agricultural use, [and] land application of soil amendments or agricultural waste at agronomic rates." YCC 19.01.070(1). The calf yard proposal is part of Fryslan's "practice of agriculture."

c. *The site of the proposed use is adequate in size and shape to accommodate the proposed use*. The size and shape of the property do not appear limiting for the proposed calf yard use. The overall size of the three parcels is over 250 acres, which is adequate to contain the 30-acre calf yard operation.

d. *All setbacks, spaces, walls and fences, parking, loading, sitescreening, landscaping, and other features required by Title 19 YCC*. In the open record hearing process, the Administrative Official is responsible for performing analysis of the application and making a recommendation to the Hearing Examiner, who then makes the final determination. YCC 16B.08.020. Except as may otherwise be noted elsewhere in this decision, the staff report findings and analyses concerning the subject matter of YCC 19.30.080(7)(d) adequately and appropriately analyze the applicability of setbacks, spaces, walls and fences, parking, loading, sitescreening,

landscaping, and other features required by Title 19 to the proposal. The pertinent staff report findings and recommendations are included as an Appendix to this decision document. The Appendix is adopted as a finding herein except as otherwise noted. Taken together with the hearing exhibits and testimony at the hearing, the Appendix provides an adequate basis for related conditions on approval of the application.

e. *The proposed use complies with other development and performance standards of the zoning district and Title 19 YCC.* Except as may otherwise be noted elsewhere in this decision with regard to lot coverage standards, the staff report findings and analyses concerning the subject matter of YCC 19.30.080(7)(e) adequately and appropriately analyze the compliance of the proposal with other development and performance standards of the zoning district and Title 19 YCC. The pertinent staff report findings and recommendations are included as an Appendix to this decision document. The Appendix is adopted as a finding herein except as otherwise noted. Taken together with the hearing exhibits and testimony at the hearing, the Appendix provides an adequate basis for conditions on approval of the application.

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.* The project would be accessed from Glade Road, which is a major collector road in the county road system. With an appropriate road approach design, the traffic generated by the calf-yard on Glade Road has not been determined to present a substantial impact.

g. *The proposed use will have no substantial adverse effect on abutting property or the permitted use thereof.* The abutting properties are in agricultural use, and the installation of the calf yard in itself does not appear to interfere with those agricultural uses. So long as the private road connection to Glade Road is completed in accordance with County requirements and used as the access for calf yard operations, traffic impact to abutting properties does not appear to be substantial. So long as the project is operated in accordance with typical, regulated agricultural practices and proposed conditions and SEPA mitigation measures, there is not likely to be a substantial adverse effect on the abutting properties or uses.

h. *The development complies with all criteria in Chapter 19.18 applicable to the proposed use, unless otherwise administratively adjusted.* None of the special standards included in Chapter 19.18 YCC are applicable to this proposal.

V. CONCLUSIONS.

1. Based on the preceding Findings, the proposed calf yard CAFO as described in the most recent application materials and analyzed in the Staff Report and other analysis in the Findings, may be approved in accordance with YCC 19.30.080(7), subject to conditions designed to mitigate and avoid impacts from the project and to assure compliance with applicable development standards and *Plan 2015* under authority of YCC 19.30.100. The conditions of approval are set forth in the following Decision.

IV. DECISION.

The Conditional Use Permit application by Tim Bardell on behalf of Fryslan for a calf yard as set out in the application materials (County File No. CUP2016-00019 is APPROVED, SUBJECT TO THE FOLLOWING CONDITIONS:

1. The owner and operator of the Fryslan Ranch calf yard shall substantially comply with the site plan and narrative of operations plans included in the application materials for CUP2016-00019 and subsequent submittals required by the Planning Division, as may be amended by the following conditions of approval.

2. Prior to the issuance of building permits for calf yard and calf-yard related structures on parcel nos. 230909-33001, 230917-21001 and 230918-34001, property owners of all the parcels must execute and deliver to the Yakima County Planning Division a Deed Restriction, other restrictive covenant, or similar instrument, acceptable as to form to and enforceable by Yakima County, that limits future use of groundwater on those properties only to domestic use for the houses and shops on those properties, and eliminating permit-exempt stock watering on those properties or from the existing wells currently providing stockwater on those properties. The Deed Restriction or other restrictive covenant instrument will be reviewed and approved by Yakima County Planning Division and recorded with the Yakima County Auditor's office prior to issuance of building permits.

3. Prior to the issuance of building permits, the applicant shall provide a phased schedule to the Yakima County Planning Division for the process of moving the cows from the existing CAFO's on parcel nos. 230909-33001, 230917-21001 and 230918-34001, the cessation of stock watering at those CAFO's, and an ongoing inspection plan by Yakima County as an assurance that the Deed Restriction or other restrictive covenant is being complied with.

4. The applicant shall obtain all necessary Building & Fire Safety Division permits relevant to the construction of the proposed structures prior to the commencement of construction. Please contact the Yakima County Public Services Building and Fire Safety Division at (509) 574-2300.

5. The applicants shall obtain Road Approach Permits (RAP) for access from Glade Road from the Yakima County Public Services: Transportation Division prior to the issuance of building permits, for the existing accesses to the county roadway system. The owner and operator of the calf yard CAFO shall use Glade Road as the sole means of ingress and egress to the calf yard, unless the use of other routes are necessary due to *bona fide* emergency.

6. All mitigation measures in the Fryslan Ranch Mitigated Determination of Non-Significance date June 16, 2017 (County File No. SEP2016-00007) are adopted as conditions of approval of this decision.

7. A stormwater site plan in accordance with Yakima County Code Title 12.10 along with supporting documentation must be submitted to Yakima County Public Services Water Resources Division. The plan must be approved by Water Resources before any ground disturbing activities occur, and prior to the issuance of building permits.

8. The applicant shall comply with all Federal, State, and Local jurisdiction regulations pertaining to operations of a Concentrated Animal Feeding Operation.

9. Fifteen parking spaces shall be provided for employee parking. Parking areas shall be surfaced with a minimum of screened gravel or crushed rock, or better. Parking areas shall be graded and drained so all surface water is disposed of on-site and shall be designed according to

accepted engineering standards. Handicapped parking shall be provided in accordance with RCW 19.27.031.5.

10. New signs shall comply with the sign standards of YCC 19.10.040(12) in the AG zoning district.

The following are ongoing conditions that apply to the project for the life of the permitted use. Failure at any time to comply with these conditions can result in the revocation of this permit.

11. All structures shall meet a 50-foot setback from the centerline of the private road, and meet the requirements of side and rear setbacks in the AG zoning district per Title 19.11.010-2.

12. Exterior lighting shall be directed downward and otherwise arranged, 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 into any adjacent or nearby residential uses or interfere with the safe operation of motor vehicles on nearby roads.

13. All stormwater is required to be retained on site and upland drainage, if any, must be conveyed through the property in accordance with criteria found at YCC 12.10.130.

14. The project shall be completed in conformance with the application and site plan submitted with the application referenced as file number CUP2016-00019 and SEP2016-00007. Any changes may require a modification to this authorization. If any changes are planned in the future, please contact the Yakima County Public Services Planning Division at (509) 5742300 for assistance with the permitting process.

15. The owners, their grantees and assignees in interest shall meet the terms of Compliance, Extensions, Expiration, and Reinstatement requirements per YCC 16B.07.050. 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.

16. The project shall not extend beyond that described in this application and associated site plan submitted with the application referenced as file number CUP2016-00069 / SEP2016-00026 / VAR2016-00046. Any future modification(s) to this project shall be submitted to the Yakima County Planning Division for review and a decision based on County code.

17. Time Limit: The conditions of approval for this Conditional Use Permit must be completed within three (3) years of the date of the Hearing Examiner's decision. Extension of time for cause may be granted pursuant to Subsection 19.30.100(4)(c) of the Yakima County Zoning Ordinance. The applicant shall provide at least 176 parking spaces, per YCC 19.22.050.

DATED THIS 1st DAY OF AUGUST, 2017.



PATRICK D. SPURGIN

HEARING EXAMINER PRO TEMPORE

APPENDIX TO HEARING EXAMINER DECISION

CUP 2016-00019

ADOPTED YAKIMA COUNTY PLANNING DIVISION
FINDINGS AND ANALYSIS OF THE ADMINISTRATIVE OFFICIAL REGARDING
YCC 19.30.080(7)(d)&(e)

1. *Yards, Lots, Open Space and Off-Street Parking and Loading Spaces* (YCC 19.10.040(2)(b)). "No part of a yard, other open space, off-street parking or loading space required in connection with any development for the purpose of complying with this Title, shall be included as part of a yard, open space, off-street parking or loading space similarly required for any other development.

Staff Finding: Per YCC 19.22, prior to any change in the use of land or structures and/or prior to the occupancy of any new or enlarged structures off-street parking and loading shall meet the requirements outlined in YCC 19.22 and on Table 19.22-2. Parking facilities within the AG zoning district shall be surfaced with a minimum of screen gravel or crushed rock, or better. The applicant's narrative proposes there will 10-15 employees and proposes 15 parking spaces.

2. *Access* (YCC 19.10.040(3)) When a proposed use requires access to a County roadway, the approach location shall be reviewed by the County Engineer.

Staff Finding: According to the Yakima County Transportation Division, the applicant shall obtain a Road Approach Permit (RAP) from the Yakima County Transportation Division for the existing Glade Road accesses to the county road system prior to the issuance of building permits.

The Transportation Division provided the following comment:

"Per title 10.08.020 the applicant shall obtain a Road Approach Permit (RAP) from the Yakima County Transportation Division for the existing accesses to the county roadway system. The fact that the road approach application is in conjunction with a CUP must be disclosed by the applicant at the time of application. No future build permits cannot be issued without the completion and approval of a Road Approach Permit. In addition to the Road Approach Permit the applicant should verify or establish easements necessary to access the proposed new CAFO.."

3. *Land Uses* (YCC 19.10.040(4)). "Uses allowed within a zoning district are listed as permitted, administrative or conditional uses in the Allowable Land Use Table 19.14/

Staff Finding: The new calf yard falls under 'concentrated animal feeding operations' in Allowable Land Use Table 19.14-1, as a Type 2 review in the AG zoning district. Because

of the significance of the responses that were submitted during the comment period for the second MDNS issued for SEP2016-00007 it was determined that CUP2016-00019/SEP2016-00007 will be elevated to a Type 3 review process.

Pursuant to Title 16B.03.040 "Classification of Project Permit Applications", Note (2) Type 2 review, Administrative Use applications and Substantial Development permits may be referred by the Administrative Official to the Hearing Examiner for final decision, in a manner similar to a Type 3 application.

4. *Building Permits* (YCC 19.10.040(5)). "No building or other structure shall be erected, moved added to or structurally altered with a permit issued by the Building Official under RCW 19.27 and YCC Title 13. No building permit shall be issued except in conformity with Title 19."

Staff Finding: The applicant shall obtain and finalize all necessary permits for the proposed new calf yard from the Yakima County Public Services: Building & Fire Safety Division prior to construction. Please contact the Yakima County Building & Fire Safety Division at (509) 574-2300.

5. *Setbacks, Easements and Rights-of Way* (YCC 19.10.040(6)). In the Agriculture (AG) zoning district structural setbacks shall meet the setbacks set out in Table 19.11.010-2. Front and street side setbacks in the AG zoning district shall be 50 feet from centerline for private roads and a 10 foot side setback from a shared property line when there is no right-of-way or access easement. Rear setbacks are 10 feet from the property line of the adjoining lot.

Staff Finding: Glade Road is a County Road, classified as a major collector. The subject parcels do not abut Glade Road, but are accessed from a Private Road that runs east/west intersecting Glade Road All structures shall meet a 50 foot setback from the centerline of the private road, and meet the requirements of side and rear setbacks in the AG zoning district.

6. *Vision Clearance Triangles at Intersections and Driveways* (YCC 19.10.040(7)). "A vision clearance triangle shall be maintained at all driveways and curb cuts, and the intersection of an alley with a public street for vision and safety purposes. The vision clearance triangle shall measure 15 feet along the perpendicular street curb lines or pavement edge, or travel lane of the public street and 15 feet along the driveway or alley. The third side of the triangle shall be a straight line connecting the 15 foot sides described above."

Staff Finding: New structures must comply with the standards of the Vision Clearance Triangle.

7. *Maximum Building Height* (YCC 19.10.040(8)). "Lot coverage is the percentage of the area of a lot covered by buildings, accessory structures, or other impervious surfaces" (YCC

19.01.070(12)). Building height means the vertical distance from grade plane to the average height of the highest roof surface (YCC 19.01.070(2)).

Staff Finding: Lot coverage and building height are not specified for the AG zoning district (YCC Table 19.11.010-2).

8. *Fences, Walls and Recreational Screens* (YCC 19.10.040(9)). The provisions of YCC 19.10.040(9) "...shall govern the location and height of fences and walls, 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."

Staff Finding: The applicant proposes pipe and cable fence materials that will be five feet in height. The fencing proposed in the application meets the requirements of YCC 19.10.040(9).

9. *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 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.."

Staff Finding: The applicant is proposing outdoor lighting around the shop and mixing area. As a recommendation of the decision that applicant shall comply with YCC 19.10.040(10) for exterior lighting.

10. *Floodplain Development* (YCC 19.10.040(11)). "A pre-application meeting and a Flood Hazard Permit application is required for all new development in floodplains in order to minimize and mitigate potential adverse impacts to property and infrastructure while reducing risks to public health and safety."

Staff Finding: The subject parcels are not within the floodplain and therefore a preapplication meeting was not required.

11. *Stormwater Requirements* (YCC 19.10.040(12)) "...to ensure public and private development projects comply with the National Pollution Discharge Elimination System (NPDES) permit requirements under the Federal Clean Water Act where applicable. Stormwater quality concerns for project permits shall be addressed through
 - a. YCC Chapter 12.10;
 - b. The environmental review process established by RCW 43.2 IC and YCC Chapter 16.04; or

- c. The requirements of the Washington Department of Ecology.

Yakima County Water Resources Division provided the following comments:

Stormwater must be retained on site and upland drainage, if any, must be conveyed through the property in accordance with criteria found at YCC 12.10.130. The addition of more than one acre of impervious surface will increase runoff rates. The applicant should review their Dairy Nutrient Management Plan (DNMP) to ensure the stormwater facilities are adequate. If the DNMP needs to be updated, the revised plan should be submitted to the regulatory authority. A U.S. Environmental Protection Agency Construction Stormwater Permit may be required. For more information contact Margaret McCauley, mccauley.margaret@epa.gov, (206) 553-1772."

Staff Finding: The applicant is required to retain all stormwater on site and upland drainage, if any, must be conveyed through the property in accordance with criteria found at YCC 12.10.130. For additional questions, please contact Dianna Woods at Yakima County Public Services: Water Resources Division at (509) 574-2300.

12. *Signs* (YCC 19.10.040(12)). "All on-premises signs are accessory uses shall be subject to the same procedural and review requirements as the principal use, except that new signs accessory to existing or approved uses may be reviewed as modifications to existing or approved uses under Section 19.35.030. Off-premises signs and billboards are permitted as shown in Section 19.20.130.."

Staff Finding: In the AG zoning district one freestanding sign is allowed as an accessory use to the primary use, which can be 10 feet in height and not more than 32 square feet in size. The applicant proposes one sign that is 5' in height and 4'x5' in size, that is not illuminated and will be located at the entrance to the calf yard, which meets the requirements of YCC 19.20.