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Court of Appeals  
Division III  
State of Washington  
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COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION III

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VIVIAN LOOMIS FAMILY, LLC,

Appellant,

v.

JEFFREY BELL and PAULA BELL and LARGENT RANCH, INC.,

Respondent

No. 362001

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APPELLANT'S BRIEF

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## I. INTRODUCTION

The appellant, Vivian Loomis Family, LLC, is a landlord which owns agricultural property in Franklin County. In the fall of 2017, the landlord successfully terminated the oral year-to-year crop share lease with tenant Jeffrey Bell. Upon commencing the unlawful detainer action, Mr. Bell alleged he had already vacated the property. However, he eventually admitted that he continued to occupy the shop and ancillary buildings on the farm property. Mr. Bell argued that he needed the farm buildings and successfully convinced the trial court to deny the order granting writ of restitution.

The court's denial of the order was in error. Mr. Bell had no possessory right to remain in the shop and ancillary buildings after the year-to-year oral lease was terminated. There was no other lease between the parties for these buildings aside from the oral crop share lease under which Mr. Bell could claim a possessory interest therein. As a result, the Court should reverse the order denying motion for writ of restitution with instructions to the trial court to order issuance of a writ of restitution which restores the shops and buildings to Vivian Loomis Family, LLC.

## **II. ASSIGNMENT OF ERROR**

1. Whether the trial court erred in denying the motion for writ of restitution restoring possession of the shops and ancillary buildings.

The issues pertaining to this error are:

a. Whether the shop and buildings on the property constitutes “agricultural land” under the agricultural holdover tenant statute, RCW 59.12.035.

b. Under what other legal basis could Mr. Bell claim a possessory right to occupy the shops and ancillary buildings when the oral crop share lease was the only lease agreement between the parties?

## **III. STATEMENT OF THE CASE**

This appeal is another of the chapter in the story of the tenant who sought to avoid eviction for several years running. Appellant Vivian Loomis Family, LLC (Loomis) is the owner of real property located in Franklin County, Washington. *CP 3; 73*. Respondent Jeffrey Bell (Bell) was a long-time tenant of property under an oral crop share lease which lasted approximately 30 years. *CP 4; see also CP 74*. In April 2016, Loomis sent notice to Bell that it did not intend for Bell to continue farming the land for the 2017 crop year. *CP 4; CP 74*.

### **Previous Unlawful Detainer.**

On April 7, 2016, the prior attorney for Loomis sent a notice terminating tenancy to Bell which was delivered on April 13, 2016. *CP 4; CP 74*. Under RCW 59.12.035, an agricultural holdover tenant must be given notice to vacate within 60 days after the expiration of the term.

While there was considerable ambiguity as to when the oral crop share lease would “expire,” there was no dispute that the crop season for dry land wheat would not traditionally end until fall or, at the earliest, mid-summer. *See CP 15* (“[I]t doesn’t really matter whether the lease with Mr. Bell expired in July, August, September, October. We beat that date, whatever that date was, because we gave him notice before the end of the term.”); *CP 18* (“I saw Mr. Brock in one of his letters said [the crop season] ends September 30<sup>th</sup>.”). For reasons unknown, no additional notice to terminate tenancy was issued after April of 2016.

Loomis commenced an unlawful detainer action against Bell on September 26, 2016 relying on the April 2016 notice. *CP 4*. Bell appeared through counsel and moved to dismiss based on failure to give timely notice to vacate. *See generally, CP 8-20*. On October 31, 2016, the court heard the motion to dismiss and the motion for writ of restitution. *CP 8-9*. Bell’s counsel, likely recognizing that a season ending September 30<sup>th</sup> would give Loomis time to issue a new termination, threw additional ambiguity into the

expiration date by arguing that the harvest was completed on September 1<sup>st</sup> which was exactly 60 days before the hearing. *CP 12*. In discussing the timeliness, the court stated as follows:

I thought there was going to be an issue of when the previous term ended. I saw Mr. Brock in one of his letters said it ends September 30<sup>th</sup>. I frankly, I agree. It's always been my understanding and I would guess most of the farmers up there would say the term of the annual lease ends when the harvest – when the wheat's off the field, when the harvest is done. Obviously, it's not written because it was a handshake lease. That would require the notice to be given within 60 days after that period of time.

*CP 18*. Since there was no notice given after the expiration of the term, the court granted the motion to dismiss with the ominous warning that “if the property owners don't want Mr. Bell there, sooner or later he's got to be off.” *CP 19*.

#### **Unlawful Detainer 2 – Electric Boogaloo.**

For the 2017 crop year, Loomis was faced with the dilemma of terminating the lease within 60 days of its expiration without there being any agreement as to when this expiration would occur. So Loomis began issuing termination notices for all of the arguable expiration dates. On September 15, 2017, Loomis issued a notice of termination based on the representation from the previous season that harvest was complete on September 1<sup>st</sup> and based on the fact that all of the adjacent farmers aside from Bell had completed harvest. *CP 4-5; 27; 74*. Service was made by

posting and mailing. *CP 24-25; CP 41-42.* On October 2, 2017, a supplemental termination was sent to cover Bell's former attorney's representation that the crop year for dryland wheat traditionally ended September 30, 2017. *CP 5; 30; 74.*

In response to these notices, Bell simply discontinued harvesting the wheat crop to leave the expiration date in limbo. *CP 51.* Loomis issued supplemental notices terminating tenancy on October 23 and November 27<sup>th</sup>. *CP 51-52; 57.* On January 23, 2018, Loomis commenced the unlawful detainer action in Franklin County Superior Court. *See generally CP 3-6.* On March 15, 2018, Bell submitted an answer, affirmative defenses and counterclaim to the unlawful detainer. *CP 73-75.* In the answer, Bell alleged that he had vacated the property on October 31, 2017 and that he only remained in possession of the property that was subject to term leases through the federal Conservation Reserve Program. *CP 75; 76.* However, in the answer, Bell tacitly acknowledged in the prayer for relief that he remained in possession of the shops and property that was not subject to the Conservation Reserve Program.

Defendants have personal property and trade fixtures located on the property, and should be granted reasonable time to remove any property, particularly considering the fact that the tenant had occupied the entire property for 31 years, and no proper notice has been given applicable to said property.

*CP 77.* As an exhibit to the response, Bell provided a copy of a map showing the tracts of land subject to the Conservation Reserve Program.

*CP 79.* The shops and ancillary buildings are not within the Conservation Reserve Program tracts and would not be eligible to be included within the Conservation Reserve Program tracts. *CP 79; see also 7 C.F.R. § 1410.6(a).*

On March 19, 2018, the trial court heard argument on Loomis' motion seeking a writ of restitution. *RP 3/19/18, pg. 1*<sup>1</sup>. At the hearing, the parties agreed that a writ of restitution could not be issued as to the land that remained subject to the Conservation Reserve Program. *RP 3/19/18 pgs. 3; 11.* Based on Bell's representation that he relinquished possession of the wheat land, the remaining question was whether the writ should issue as to the shop and ancillary buildings on the property:

THE COURT: So what I understand is that as to those two, whatever number of parcels that we agree is the land that's not CRP, he's allowed access to those. So the question remains to what extent because the shop is not in the CRP land, to what extent it's not also treated the same by your client as the parcels, which have been essentially released, if you will, to allow someone else to farm them.

*RP 3/19/18 pgs. 14-15.* At the end of the hearing, the court requested additional briefing regarding whether these shops and buildings would fall

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<sup>1</sup> The transcripts for the March 19, 2018 and April 2, 2018 hearings were submitted by the transcriptionist as a single pleading. For clarity, Loomis will reference the date of the hearing and the page number of the combined transcripts when referencing this portion of the record.

under the agricultural holdover tenancy statute. *RP 3/19/18 pg. 18*. Bell and Loomis each filed supplemental memoranda regarding the statute and the termination of tenancy. *CP 88-90; 95-99*. On April 2, 2018, the trial court took additional oral argument on the issue and took the matter under advisement. *RP 4/2/2018, pg. 30*. On April 9, 2018, the court denied the order granting writ of restitution, stating as follows:

The question, from this Court's understanding, is resolving, and it intends to resolve today, is whether or not these ancillary buildings, are farm land within the meaning of the statute and, if so, whether or not that would be a violation of the CRP [...] land agreement, which clearly I think the federal law indicates that the state law cannot remove an individual from CRP land.

The question, I guess, is whether or not these ancillary buildings, these buildings are ancillary to the farm lands or ancillary to the CRP land or both, and how to resolve that issue. [...] [C]onsidering the circumstances of this case, this Court believes that to allow the plaintiffs to remove Mr. Bell from the ancillary buildings, which appear to be both ancillary to the farm land and to the CRP land, and traditionally have been used as I understand to service that land, would be essentially allowing the plaintiff to remove Mr. Bell from the CRP land if not specifically at least constructively.

*RP 4/9/18, pg. 10*. As a result, the court denied the motion granting writ of restitution. *CP 109*. Loomis moved for reconsideration, emphasizing that legally, the ancillary agricultural buildings were not and could not legally be within the Conservation Reserve Program. *CP 111-14*. The court denied the motion for reconsideration. *CP 137-38*. This appeal commenced.

#### **IV. LEGAL ARGUMENT**

The Court should reverse the trial court's order in this matter denying the motion for writ of restitution to restore Loomis' property to its rightful owner. The lease between the parties was an oral year-to-year crop share lease. This was the only lease between the parties under which the tenant could claim a right of possession to the agricultural buildings on the property. The tenant did not pay any separate rent for these buildings and did not have a separate agreement allowing him to possess the buildings. A termination of lease under RCW 59.12.035 for agricultural lands is effective for the entirety of the lease. As a result, the trial court erred when it denied the motion for writ of restitution.

##### **A. Standard of Review.**

Interpretation of a statute is a matter of law subject to de novo review. *Castro v. Stanwood Sch. Dist. No. 401*, 151 Wn.2d 221, 224, 86 P.3d 1166, 1167 (2004). Additionally, where there is no factual testimony where the court is required to assess credibility, the standard of review is de novo. *See In re Marriage of Rideout*, 150 Wn.2d 337, 350, 77 P.3d 1174, 1179 (2003).

Here, the issue before the Court is one of statutory interpretation: whether RCW 59.12.035 encompasses ancillary buildings on agricultural land and whether the Conservation Reserve Program would prevent

issuance of a writ of restitution to those buildings. As a result, the proper standard of review is de novo.

**B. The Court Should Reverse The Trial Court And Direct The Trial Court To Issue The Writ of Restitution Because RCW 59.12.035 Applies To The Entire Crop Share Lease Including Occupancy Of The Ancillary Buildings.**

The Court should conclude that RCW 59.12.035 applies to the entirety of a lease for agricultural lands, including ancillary agricultural buildings. RCW 59.12.035 states as follows:

In all cases of tenancy upon agricultural lands, where the tenant has held over and retained possession for more than sixty days after the expiration of his or her term without any demand or notice to quit by his or her landlord or the successor in estate of his or her landlord, if any there be, he or she shall be deemed to be holding by permission of his or her landlord or the successor in estate of his or her landlord, if any there be, and shall be entitled to hold under the terms of the lease for another full year, and shall not be guilty of an unlawful detainer during said year, and such holding over for the period aforesaid shall be taken and construed as a consent on the part of a tenant to hold for another year.

(emphasis added).

[T]he statute specifically fixes the relation of the parties by declaring that the tenant shall be deemed to be holding by permission of the landlord and shall be entitled to hold for another full year, yielding therefor the same rental that the parties agreed upon for the previous year, without the tenant being guilty of unlawful detainer during the year he holds over, and that such holding over for the period mentioned shall be taken as consent on the part of tenant to hold for another year.

*Bushnell v. Spencer*, 122 Wash. 200, 202, 210 P. 195, 195 (1922) (emphasis added). While there is minimal case law interpreting this statute, the body of case supports the position that the statute applies to the entirety of the agricultural lease, including ancillary portions of the property.

In *Smeltzer v. Webb*, Moses Smeltzer was the owner of a farm, and James Webb was the tenant of 600 acres of land which included a dwelling and another building. 101 Wash. 568, 568-69, 172 P. 750, 751 (1918). The lease was executed by the previous owner of the property and was sold to Smeltzer two months prior to the lease's expiration on November 1, 1915. *Id.* Prior to expiration, Smeltzer orally demanded that Webb vacate upon expiration of the lease. *Id.* at 569. Thereafter, Smeltzer entered the property with the consent of Webb in October and November of 1915 with the consent of Webb. *Id.* However, Webb continued to "occupy the dwelling and use a portion of the land for more than 60 days after the expiration of the specified term of the lease, and thereafter respondents commenced this action to recover possession of the whole of the premises." *Id.* at 570. Smeltzer commenced an unlawful detainer action and was received a writ of restitution for the dwelling and land which was occupied by Webb. *See Id.* On appeal, Webb argued that the trial court erred by admitting testimony of the oral demand instead of requiring written notice. *Id.* The court disagreed, concluding that oral notice was sufficient under the statute and

differed from other types of unlawful detainer actions requiring written notice and procedures for service. *Id.* (citing *Mounts v. Goranson*, 29 Wash. 261, 266, 69 P. 740, 741 (1902)).

The matter before the trial court in *Smeltzer* is substantially similar to the matter before this Court. Bell was the tenant under an agricultural lease which included some ancillary buildings, just like Webb. There was only one lease under which the tenants could claim a possessory interest. If anything, the situation in *Smeltzer* might have been more favorable to the tenant because one of the buildings at issue was a dwelling as opposed to this matter where all the property Bell remains in possession of is agricultural-related. The result in *Smeltzer* strongly suggests that the trial court erred in denying the writ of restitution.

In addition to the case law, the Court should also look to other situations in which the Washington Revised Code and the Franklin County Code address agricultural land as guidance for interpreting the phrase “agricultural lands” as used in RCW 59.12.035. RCW 59.12.035 does not define “agricultural lands” in the unlawful detainer title or chapter.

Under RCW 84.34.020(2):

“Farm and agricultural land” means any parcel of land that is twenty or more acres (1) devoted primarily to the production of livestock or agricultural commodities for commercial purposes; (2) enrolled in the federal conservation reserve program or its successor administered

by the United States department of agriculture; or (3) other similar commercial activities as may be established by rule.

(emphasis added). For planning purposes, the Growth Management Act defines “agricultural land” as “land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock, and that has long-term commercial significance for agricultural production.” RCW 36.70A.030. RCW 36.70A.177 of the GMA explicitly allows that agricultural zoning which prohibits nonfarm use may still “allow accessory uses.” Additionally, the Franklin County Code includes “[a]ccessory uses, buildings, and structures if they are clearly incidental to a permitted use and when placed upon the same lot or parcel with a permitted use” as allowed in agriculturally zoned production areas. FCC 17.12.030.

As applied to the property at hand, Loomis is the owner of five contiguous parcels in Franklin County, Washington in which Bell was the tenant under the oral crop share lease. The shop and buildings which give rise to the dispute in this appeal are not segregated from the wheat land farmable acreage. The property is zoned as Agricultural Production – 40

acres by Franklin County and is designated as Agriculture – current use by the Department of Revenue under RCW 84.34. *See* WAC 458-53-030.

More importantly, there is no other lease under which Bell could claim a possessory interest in the property in this matter. There is only one lease between the parties that could apply to this acreage and the agricultural buildings: the oral crop share lease. Bell did not pay any additional consideration to occupy these buildings beyond the crop share agreement as was conceded by counsel for Bell. *See RP 4/2/18 pg. 27.*

It is also worth noting that if Bell's interpretation of the statute is correct, it would be highly detrimental to agricultural tenants in the future. A landlord would be able to evict an agricultural tenant from the ancillary portions of the property that were not being used directly for growing crops at any time, including during the crop season. This would allow the landlord to legally frustrate the quiet enjoyment of the tenant whose livelihood may depend on that farm operation. The whole point of RCW 59.12.035 is to give agricultural tenants the security that they will be able to continue their operation for another full year without interference. Creating a piecemeal distinction between the crop land itself and the ancillary agricultural buildings hinders, rather than furthers, that intent. As a result, the Court should conclude that trial court erred by denying the motion for writ of restitution.

**C. The Ancillary Buildings Are Not Subject To The Conservation Reserve Program.**

Additionally, the trial court erred in concluding that the Conservation Reserve Program could create a possessory right in the ancillary buildings. The Conservation Reserve Program is a program established by the Department of Agriculture for the care and management of highly erodible cropland, marginal pasture land and grassland. 16 U.S.C. § 3831(b).

The objectives of the CRP are to cost-effectively reduce water and wind erosion, protect the Nation's long-term capability to produce food and fiber, reduce sedimentation, improve water quality, create and enhance wildlife habitat, and other objectives including, as appropriate, addressing issues raised by State, regional, and national conservation initiatives and encouraging more permanent conservation practices, such as, but not limited to, tree planting.

7 C.F.R. § 1410.3(c). Eligible land consists solely of cropland, marginal pasture land and grassland. 7 C.F.R. § 1410.6(a). It does not and cannot include any accessory buildings. *See id; see also* CRP-1 (Appendix) § 5.

Subject to the approval of CCC, the Conservation Plan will include some or all of the following information and requirements:

- (1) The vegetative or water cover to be established on the CRP land;
- (2) A tree planting plan, developed in cooperation with the Forest Service, if trees are to be established as the vegetative cover on the CRP land;
- (3) A schedule of completion dates for establishment of the cover on the CRP land;

- (4) The level of environmental benefits which must be attained on the CRP land;
- (5) Any other practices required for the establishment or maintenance of the cover on the CRP land including weed, insect, pest, and other controls of undesirable species, and such maintenance as necessary to avoid an adverse impact on surrounding land as determined appropriate by CCC, taking into consideration the needs of water quality, wildlife concerns, and other factors.
- (6) The acreage will not be disturbed during the primary nesting season for wildlife as determined by CCC.
- (7) Management activities authorized by paragraph 6.

CRP-1 (Appendix) § 5. “Management activities” are limited to “managed grazing or harvesting of the cover on the CRP land, including biomass, as necessary to avoid an adverse impact on surrounding land.” CRP-1 (Appendix) § 6. “Unless otherwise specified by the Deputy Administrator, no uses of any kind are authorized on designated CRP acreage during the contract period.” 7 C.F.R. § 1410.63 (emphasis added).

As applied to the situation at hand, 7 C.F.R. § 1410.63 is legally dispositive. Unless the property at issue is cropland, marginal pasture land and grassland, it cannot be subject to the Conservation Reserve Program. There is no dispute that the ancillary buildings are not located within the tracts of land subject to the Conservation Reserve Program. *See CP 79.* Indeed, there is nothing in the record that would support Bell’s argument that the eviction would interfere with the Conservation Reserve Program beyond counsel for Bell’s oral representations. *See 4/2/18, pg. 25.* If

anything, the pleadings by Bell concede that the has no legal or factual basis for remaining in possession of the ancillary buildings:

[T]he defendants have substantial trade fixtures and personal property located on farm. The trade fixtures and personal property do not interfere with the farming by the new occupier of the wheatland in question.

[...]

Defendants have personal property and trade fixtures located on the property, and should be granted reasonable time to remove any property, particularly considering the fact that the tenant had occupied the entire property for 31 years, and no proper notice has been given applicable to said property.

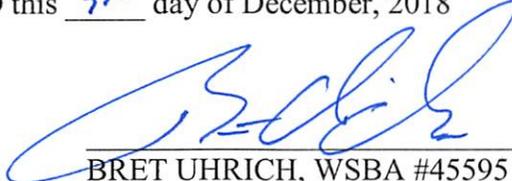
*CP 77.* Respectfully, whether Bell's continued possession "interfere[s]" with the current tenant's farming is not a defense to an action for unlawful detainer. Loomis is the owner of the property. Bell does not have a legal right to possess the property and Loomis is entitled to possession. As a result, the Court should conclude the trial court erred by denying the motion for writ of restitution.

## V. CONCLUSION

The Court should conclude that the issuance of a writ of restitution was appropriate in this matter and reverse the decision of the trial court. Loomis gave proper notice terminating the year-to-year oral crop share lease with its tenant, Bell. This is the only lease under which Bell could claim a possessory right in the ancillary agricultural buildings on the property. As a result, the Court should conclude that the buildings are

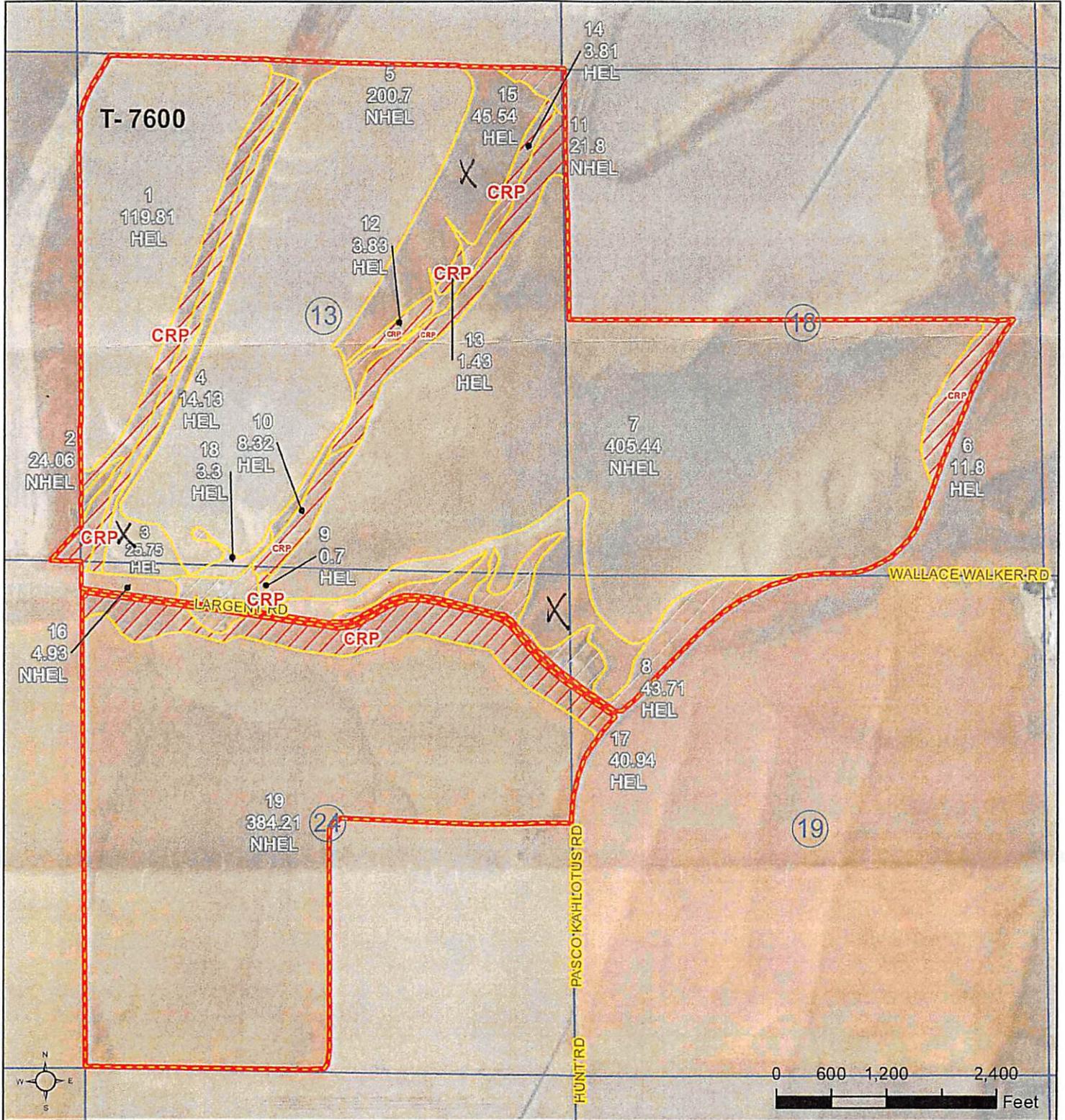
subject to the notice under RCW 59.12.035 and that issuance of a writ of  
restitution as to this property is proper.

DATED this 3<sup>rd</sup> day of December, 2018



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BRET UHRICH, WSBA #45595



- Tract Boundary
  - Other Ag
  - Common Land Unit
  - CRP
  - Cropland
- Wetland Determination Identifiers**
- Restricted Use
  - ▼ Limited Restrictions
  - Exempt from Conservation
  - Compliance Provisions

2016 Program Year  
Map Created April 20, 2016

CD: 11101  
exp. 9/30/2026

Farm 4313  
Tract 7600

Tract Cropland Total: 1364.21 acres

United States Department of Agriculture (USDA) Farm Service Agency (FSA) maps are for FSA Program administration only. This map does not represent a legal survey or reflect actual ownership; rather it depicts the information provided directly from the producer and/or National Agricultural Imagery Program (NAIP) imagery. The producer accepts the data 'as is' and assumes all risks associated with its use. USDA-FSA assumes no responsibility for actual or consequential damage incurred as a result of any user's reliance on this data outside FSA Programs. Wetland identifiers do not represent the size, shape, or specific determination of the area. Refer to your original determination (CPA-026 and attached maps) for exact boundaries and determinations or contact USDA Natural Resource Conservation Service (NRCS).

**U. S. DEPARTMENT OF AGRICULTURE**  
Commodity Credit Corporation

**APPENDIX TO FORM CRP-1, CONSERVATION RESERVE PROGRAM CONTRACT**

**NOTE:** The authority for collecting the following information is Pub. L. 107-171. This authority allows for the collection of information without prior OMB approval mandated by the Paperwork Reduction Act of 1995. The time required to complete this information collection is estimated to average 3 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

**1. DEFINITIONS**

The following definitions are applicable to the Conservation Reserve Program (CRP) Contract:

- A. CRP contract or CRP-1** means the program documents including form CRP-1, the applicable contract appendix, conservation plan and the terms of any required easement, if applicable, entered into between CCC and the participant. Such contract shall set forth the terms and conditions for participation in the CRP and receipt of CRP payments.
- B. Current agricultural market value** for offer evaluation purposes means the amount in dollars per acre as determined by CCC to be the adjusted price at which the land placed in the CRP could be rented based on the average cash rental rate, or equivalent, per acre, and which is paid for dryland cropland at the time at which this contract is signed by the participant.
- C. Vegetative cover** means perennial or permanent grasses, legumes, forbs, and shrubs with a life span of 10 years or more, or trees.
- D.** All other words and phrases, unless the context of subject matter otherwise requires, shall have the meanings assigned to them in the regulations governing the Conservation Reserve Program which are found at 7 CFR Part 1410.

**2. ELIGIBILITY REQUIREMENTS FOR CONSERVATION RESERVE PROGRAM**

- A.** By signing the CRP contract, the participant, except in the case of persons qualifying solely as a tenant, certifies that such participant will control the land subject to the contract for the contract period and, if applicable, any easement period and shall, upon demand, provide evidence to CCC demonstrating that such participant will control the land for that period.
- B.** Land otherwise eligible for the CRP shall not be eligible, except as agreed otherwise, in writing, by CCC, if the land is subject to a deed or other restriction prohibiting the production of agricultural commodities or where a benefit has or will be obtained from a Federal agency in return for the participant's agreement not to produce such commodities on the land during the same time as the land would be enrolled in the CRP. By offering land for enrollment, the participant certifies as a condition for payment that no such restrictions apply to such land.

**3. RESTRICTIONS ON PAYMENTS TO FOREIGN PERSONS**

- A.** Any person who enters into this CRP contract or participates in such contract at any time who is not a citizen of the United States or an alien lawfully admitted into the United States for permanent residence under the Immigration and Nationality Act (8 U.S.C. 1101 et. seq.) shall be ineligible to receive annual rental payments under this contract unless such person meets the requirements of 7 CFR Part 1400 which shall be applicable to this contract.
- B.** Persons succeeding to a CRP contract subject to a reduction in payment under this paragraph 3 for any preceding party shall not be eligible for payments during the contract period greater than those that could have been received by such preceding party.

#### 4. AGREEMENT

##### A. The participant agrees:

- (1) That the applicable CRP-2 and CRP-1 and its addenda shall be considered an offer to enter into the Conservation Reserve Program on the terms specified on Form CRP-1 and its addenda. The offer, until revoked, may be accepted by CCC provided further, that liquidated damages may apply in the case of a revocation as specified elsewhere in this Appendix;
- (2) To place eligible land into the CRP for a period of 10 years, or as agreed to by CCC for a longer period not to exceed 15 years, from the effective date of the CRP contract executed by CCC;
- (3) To comply with the terms and conditions of the Conservation Plan;
- (4) To establish, maintain, and replace, as specified in the CRP contract, the practices agreed to in the Conservation Plan;
- (5) Not to harvest or sell, nor otherwise make commercial use of, trees or forage or other cover on the CRP land including the shearing or shaping of trees for future use as Christmas trees (the participants may conduct pruning, thinning, stand improvement, or other activities consistent with customary forestry practices on land that is planted to trees); provided further, however, that CCC may, in its discretion and only in writing or by publication intended for a general allowance for CRP lands in particular States or regions, permit, in certain emergencies, certain commercial uses, as specified by CCC, which may be conditioned on a reduction in CRP payments otherwise payable under this contract;
- (6) Not to undertake any action on land under the participant's control which tends to defeat the purposes of this contract, as determined by CCC;
- (7) To annually certify crop and land use for the farm with the CCC on the appropriate form, accurately listing all land enrolled in CRP on the farm, not later than the final reporting date determined and announced by the Farm Service Agency, or successor agency;
- (8) To control on land subject to a CRP contract all weeds, insects, pests and other undesirable species to the extent necessary to ensure that the establishment and maintenance of the approved cover is adequately protected and to provide such maintenance as necessary to avoid an adverse impact on surrounding land, taking into consideration water quality, wildlife and other factors;
- (9) Not to disturb the acreage under contract during the primary nesting and brood rearing season for wildlife, except as approved by CCC;
- (10) To annually file required forms as requested by CCC for payment limitation determinations;
- (11) To file applicable forms required by CCC for Adjusted Gross Income (AGI) determinations;
- (12) That it is understood any payment or portion thereof due any participant will be made by CCC without regard to any question of title under State law, and without regard to any claim or lien which may be asserted by a creditor, except agencies of the U. S. Government. Offsets for debts owed to agencies of the U. S. Government shall be made prior to making any payments to participants or their assignees.
- (13) To perform certain periodic management activities described in the conservation plan to maintain the approved cover such as light discing, burning, etc.

**B. CCC agrees, subject to the availability of funds:**

- (1) To share the cost with owners and operators of establishing an eligible practice, or an identified unit thereof, agreed to in the Conservation Plan as described herein, except that, in no case may the share of CCC exceed an amount equal to 50 percent of the price at which the land placed in the CRP could be sold for use as farmland at the time at which this contract is signed by the participant, unless the CCC otherwise approves such amount, provided further, that such approval must specifically reference the particular land placed in the CRP under this contract;
- (2) To pay the agreed-upon annual rental payment, including any incentive payment, based upon the shares to which the parties have agreed as set forth on Form CRP-1 for a period of years not in excess of the contract period;
- (3) To pay to the participant, to the extent required by CCC regulations, an interest penalty on cost-share payments, incentive payments, and all annual rental payments not made by the date, as determined by CCC, that the payment is due;
- (4) To make annual rental payments after October 1 of each year of the contract period.

**5. CONSERVATION PLAN****A. Subject to the approval of CCC, the Conservation Plan will include some or all of the following information and requirements:**

- (1) The vegetative or water cover to be established on the CRP land;
- (2) A tree planting plan, developed in cooperation with the Forest Service, if trees are to be established as the vegetative cover on the CRP land;
- (3) A schedule of completion dates for establishment of the cover on the CRP land;
- (4) The level of environmental benefits which must be attained on the CRP land;
- (5) Any other practices required for the establishment or maintenance of the cover on the CRP land including weed, insect, pest, and other controls of undesirable species, and such maintenance as necessary to avoid an adverse impact on surrounding land as determined appropriate by CCC, taking into consideration the needs of water quality, wildlife concerns, and other factors.
- (6) The acreage will not be disturbed during the primary nesting season for wildlife as determined by CCC.
- (7) Management activities authorized by paragraph 6.

**B. By signing the Conservation Plan, the participant agrees to implement the practices specified in such Conservation Plan on the CRP land even if such practices differ from those listed on Form CRP-1.****6. MANAGEMENT ACTIVITIES**

Subject to the approval of CCC, the Conservation Plan may include managed grazing or harvesting of the cover on the CRP land, including biomass, as necessary to avoid an adverse impact on surrounding land, as determined appropriate by CCC, taking into consideration the needs of the vegetative cover, wildlife concerns, and other factors. Managed grazing or harvesting may be conditioned on a reduction in CRP payments otherwise payable under this contract, as determined by CCC.

**7. COST-SHARE PAYMENTS**

- A.** Subject to the availability of funds, cost-share payments shall be made available upon a determination by CCC that an eligible practice, or an identifiable unit thereof, has been established in compliance with the conservation plan and with appropriate standards and specifications.
- B.** CCC will not make cost-share payments in excess of 50 percent of the actual or average cost of establishing the eligible practice specified in the Conservation Plan as determined by CCC. It is understood that all cost-shares from all sources must be reported to CCC and that a reduction in the CCC cost-share may be made if there are other cost-shares received. Such reductions will be made to the extent required or allowed by the program regulations.
- C.** Except as otherwise provided for in program regulations, cost-share assistance may be made available under the CRP only for the establishment or installation of an eligible practice. In order to receive cost-share assistance, the participant, upon completion of the practice, must file Form AD-245 or similar form approved by CCC, for approval by CCC.

**8. PROVISIONS RELATING TO TENANTS AND LANDLORDS**

- A.** Payments shall not be paid under this CRP contract if CCC determines that:
  - (1) The landlord or operator has:
    - (a) when the acreage offered is not enrolled in the CRP at the time of signup:
      - (i) not provided tenants who have an interest in the acreage being offered at the time of signup an opportunity to participate in the benefits of the program;
      - (ii) reduced the number of tenants on the farm as a result of or in anticipation of enrollment in the CRP.
    - (b) when the acreage offered is enrolled in the CRP at the time of signup, not provided tenants with an interest in the CRP contract acreage an opportunity to participate in the benefits of the program if:
      - (i) the tenants are otherwise involved in farming other acreage, as determined by CCC, on the farm at the time of signup; or
      - (ii) the tenants have an interest in the acreage being offered on the effective date of the new CRP-1.
  - (2) The landlord or operator has deprived any tenant of any benefits to which such tenant would otherwise be entitled.
  - (3) If any such conditions as identified in (1) and (2) occur or are discovered after payments have been made, all or any part of the payments, as determined by CCC, must be refunded with interest and no further payments shall be made.
- B.** After this CRP contract is approved, the operator or tenant may, with the approval of CCC, be replaced for purposes of the CRP contract and for payments to be made under the contract if such tenant or operator, as determined by CCC:
  - (1) terminates their tenancy voluntarily or for some reason other than being forced to terminate their tenancy by the landowner or operator in anticipation as, or because of, participation in the program;
  - (2) fails to maintain tenancy, as determined by CCC, throughout the CRP contract period;
  - (3) files for bankruptcy and the trustee or debtor in possession fails to affirm this CRP contract;
  - (4) dies during the term of this CRP contract and the administrator of the operator or tenant's estate (or a similar person with authority to administer the affairs of the operator or tenant) fails to succeed to this contract within the time required by CCC; or
  - (5) was removed for cause, as determined by CCC.

- C. The removal of an operator or tenant from the agreement shall not release the operator or tenant from liabilities for actions arising before such removal.

#### **9. ERRONEOUS REPRESENTATION AND SCHEME AND DEVICE**

- A. A participant who is determined to have erroneously represented any fact affecting a determination with respect to this CRP contract and the regulations applicable to this CRP contract, adopted any scheme or device which tends to defeat the purposes of this CRP contract, or made any fraudulent representation with respect to this contract will not be entitled to payments or any other benefits made in accordance with this CRP contract and the participant must refund to CCC all payments received by such participant, plus interest and liquidated damages thereon, with respect to the CRP contract. Such liquidated damages will be determined in accordance with paragraph 10 of this Appendix.
- B. Unless CCC regulations provide otherwise, refunds determined to be due and owing to CCC in accordance with this CRP contract will bear interest at the rate which CCC was required to pay for its borrowings from the United States Treasury on the date of the disbursement by CCC of the monies to be refunded. Interest will accrue from the date of such disbursement by CCC.
- C. The remedies provided under paragraph 9A of this Appendix shall be applicable in addition to any remedies under criminal and civil fraud statutes, including 18 U.S.C. 268, 287, 371, 641, 1001; 15 U.S.C. 714m; and 31 U.S.C. 3729, or any other remedy available under law.

#### **10. LIQUIDATED DAMAGES**

It is mutually agreed that in the event the CRP contract is breached by the participant, the CCC will suffer substantial damages which may not be possible to quantify with certainty. Therefore, in addition to the refund of payments received plus interest due, for breach of contract prescribed in this contract, the participant agrees to pay an amount equal to the product obtained by multiplying: (1) 25 percent of the rental payment rate per acre on Form CRP-1 by, (2) the number of acres that are the subject of the CRP contract. Such amount shall be due as liquidated damages in addition to such other damages or amounts as may be due, and not as a penalty.

#### **11. NOTIFICATION OF CHANGES TO TERMS AND CONDITIONS OF THE CONTRACT**

CCC agrees that, if any changes of any terms and conditions of this CRP contract, including changes necessary to reconcile the practices listed on the CRP-1 to those specified in the conservation plan, become necessary prior to the date that this contract is approved on behalf of CCC, CCC will notify the persons signing the CRP-1 of such change and such person will be given 10 days from the date of notification in which to agree to the revised terms and conditions or to withdraw from the offer. The participant agrees to notify the CCC of an intention to withdraw from the offer within 10 days from the date of the issuance of such notice and further agrees that failure to notify the CCC will constitute agreement to the revised terms and conditions.

#### **12. CORRECTIONS**

CCC reserves the right to correct all errors arising from entering data or computations in the contract.

#### **13. TERMINATION OF CONTRACT; JOINT LIABILITY**

If a participant fails to carry out the terms and conditions of this CRP contract but CCC determines that such failure does not warrant termination of this CRP contract, CCC may require such participant to refund, with interest, payments received under this CRP contract, or require the participant to accept such adjustments in the subsequent payment as are determined to be appropriate by CCC. Participants that sign the CRP-1 with zero percent interest in the annual rental payment shall not be held responsible for contract compliance.

**14. CONTRACT MODIFICATIONS**

- A.** CCC may modify this contract to add, or substitute certain practices when:
  - (1) The installed practice failed to adequately control erosion through no fault of the participants;
  - (2) The installed measure has deteriorated because of conditions beyond the control of the participants; or
  - (3) Another practice will achieve at least the same level of environmental benefits.
- B.** Concurrence of NRCS and the conservation district may be obtained by CCC when modifications to this contract involve a technical aspect of a participant's Conservation Plan.

**15. EFFECTIVE DATE AND CHANGES TO CONTRACT**

- A.** The CRP contract is effective when, as determined by CCC, it has been signed by the participants and an authorized representative of CCC. Except as otherwise determined by CCC, as permitted by regulations or other law, the CRP contract may not be revoked or revised unless by mutual agreement between the parties. If, after the effective date of this contract, CCC determines that the offered acreage was erroneously enrolled or otherwise ineligible for enrollment, CCC may terminate the contract. Such termination shall not effect payments already made to the participants as of the time of termination. Within the dates established by CCC, the CRP contract must be signed by all required participants.
- B.** In the event that a statute is enacted during the period of this CRP contract which would materially change the terms and conditions of this CRP contract, the CCC may require the participants to elect between acceptance of modifications in this CRP contract consistent with the provisions of such statute or termination of this CRP contract.

**16. TRANSFER OF LAND**

- A.** If a new owner or operator purchases or obtains the right and interest in, or right to occupancy of, the land subject to this contract, such new owner or operator, upon the approval of CCC, may become a participant to a new CRP contract under the same terms and conditions with CCC covering such transferred land;
- B.** With respect to the transferred land, if the new owner or operator becomes a successor to the existing CRP contract, the new owner or operator shall assume all obligations under such contract of the previous participant;
- C.** If the new owner or operator becomes a successor to a CRP contract with CCC:
  - (1) Cost-share payments shall be made to the participant who established the practice; and
  - (2) Annual rental payments to be paid during the fiscal year when the land was transferred shall be divided in an equitable manner, as determined by CCC.

- D.** A new owner or operator will not be eligible to succeed to the CRP contract or receive payments under the contract if a previous participant in the contract maintains or acquires any interest of any kind in the property including, but not limited to, present, future, or conditional interests, or reversionary interests, or any option with respect to the property. In addition, unless otherwise approved in writing by CCC for the particular contract, a new owner or operator will not be eligible to succeed to the CRP contract, if a lender has or will obtain an option to purchase the property, any other right of occupancy, or share in the equity in the property which is not conditional on a foreclosure or other remedy for nonpayment of debt or on a voluntary transfer by the person seeking to succeed to the CRP contract.
- E.** The participant certifies that no person has, or will, obtain an interest in the property that would render the new owner or operator to be ineligible to succeed to the CRP contract under the provisions of this paragraph. The existence or acquisition of such an interest by another person shall be considered a breach of the contract for which the CCC may terminate the contract and enforce the remedies provided in this Appendix.
- F.** If a participant transfers all or part of the right and interest in, or right to occupancy of, the CRP land and the new owner or operator does not become a successor to such contract within 60 days, or such other time as determined appropriate by CCC, of such transfer, such contract will be terminated with respect to the affected portion of such land and the original participant must:
- (1) Forfeit all rights to any future payments with respect to such acreage;
  - (2) Refund all or part of the payments made with respect to such contract plus interest thereon, as determined by CCC; and
  - (3) Pay liquidated damages to CCC as specified in paragraph 10 of this Appendix.

## 17. REGULATIONS TO PREVAIL

The regulations in 7 CFR Part 1410 for the CRP are incorporated herein. In the event of a conflict between these regulations and the terms of this Appendix, the provisions of the regulations will prevail.

## 17.12.030 - Permitted accessory uses.

The following uses shall be permitted as accessory in the AP-40 zone:

- A. Accessory uses, buildings, and structures if they are clearly incidental to a permitted use and when placed upon the same lot or parcel with a permitted use;
- B. One animal unit shall be allowed for each full ten thousand (10,000) square foot increment of land within the same parcel minus the area set aside for the minimum effective lot size for the dwelling on the lot (twelve thousand (12,000) square feet); provided, that all barns, barnyards, chicken houses, or corrals shall be located not less than twenty-five (25) feet from a public roadway and not less than ten (10) feet from any adjoining or abutting property held under separate ownership. This requirement only applies to parcels that are less than twenty (20) (net) acres in size, and may be waived upon the approval of a conditional/special use permit;
- C. Home occupations;
- D. Accessory dwellings.

(Ord. 7-2005 § 6.3.0, 2005)

**WALKER HEYE MEEHAN & EISINGER PLLC**

**December 03, 2018 - 4:23 PM**

**Transmittal Information**

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