

**THE FOLLOWING MEMO HAS BEEN
SCANNED WITHOUT EXHIBITS FOR
THE HEARING TO BE CONDUCTED
BY THE
BENTON COUNTY BOARD OF
ADJUSTMENT
ON
THURSDAY, JANUARY 5, 2012 – 7 P.M.
PLANNING ANNEX
1002 DUDLEY AVENUE
PROSSER, WA 99350**

**IF YOU WISH TO OBTAIN A COMPLETE
PACKET INCLUDING THE EXHIBITS
PLEASE CONTACT THE BENTON
COUNTY PLANNING DEPARTMENT AT
736-3086 FROM TRI-CITIES
OR
786-5612 FROM PROSSER
OR
EMAIL AT
planning.department@co.benton.wa.us**

EXHIBIT LIST FOR CUP 11-10 – JEFFREY/YVETTE FITZGARRALD

BOARD OF ADJUSTMENT APPLICATION EXHIBIT LIST			
	Exhibit #	Document Name	Dated
BOAR 1 INCLUDES:	BOAR 1.1	Conditional Use Permit	November 30, 2011
	BOAR 1.2	Addendum for CUP 11-10	November 29, 2011
	BOAR 1.3	Plot Plan	November 30, 2011
	BOAR 1.4	Roof Framing/Shearwall Design	November 30, 2011
	BOAR 1.5	Benton Franklin Health Dept. Comments	August 25, 2011
	BOAR 1.6	Letter from Applicants	November 9, 2011
	BOAR 1.7	Letter from Applicants	November 30, 2011
	BOAR 1.8	Two pictures of the structure	
BOARD OF ADJUSTMENT STAFF MEMO EXHIBIT LIST			
	Exhibit #	Document Name	Dated
BOAM 1 INCLUDES:	BOAM 1.1	Staff Memo	December 22, 2011
	BOAM 1.2	Comments Building Dept.	December 6, 2011
	BOAM 1.3	Comments Benton County Fire Marshal	December 6, 2011
	BOAM 1.4	Comments Benton PUD	December 7, 2011
	BOAM 1.5	Comments Public Works	December 9, 2011
	BOAM 1.6	Comments SVID	August 15, 2011
	BOAM 1.7	Comments Dept. of Ecology	December 12, 2011
	BOAM 1.8	Comments Benton Franklin Health Dist.	December 19, 2011
	BOAM 1.9	Notice of Open Record Hearing	December 12, 2011
	BOAM 1.10	Site Map	December 14, 2011
	BOAM 1.11	Aerial of the site	2008
BOARD OF ADJUSTMENT HEARING JANUARY 5, 2012			
	Exhibit #	Document Name	Dated
BOAH 1 INCLUDES:			

EXHIBIT SHEET – E-1 – Exhibit listing
 BOAR – Board of Adjustment Record Exhibits
 BOAM – Board of Adjustment Memo Exhibits
 BOAH 1 - Documents submitted during the hearing

Benton County Planning Department

Planning Annex, P.O. Box 910, 1002 Dudley Avenue, Prosser WA 99350, Phone: (509) 786-5612 or (509) 736-3086, Fax (509) 786-5629

MEMO DATE: DECEMBER 22, 2011
MEETING DATE: JANUARY 5, 2012
TO: BENTON COUNTY BOARD OF ADJUSTMENT
FROM: BENTON COUNTY PLANNING DEPARTMENT
RE: CONDITIONAL USE PERMIT APPLICATION – CUP 11-10

APPLICANTS/

PROPERTY OWNERS: JEFFREY & YVETTE FITZGARRALD, 27601 N. CROSBY RD.
PROSSER, WA. 99350

SPECIFIC REQUEST: The applicants, Jeffrey & Yvette Fitzgerrald, are requesting a special use permit for the operation of commercial dog kennel for the keeping of up to 12 dogs that are older than six months in age. The site is currently developed with a 1350 sq ft single-family dwelling a 45X50 sq ft garage a 30X50 garage and the new 12X43 building for an indoor kennel. For a temporary shelter to house discarded, dumped, injured and abandoned dogs and find permanent homes for them.

BACKGROUND:

Site Location: The site is located on a developed site South of the intersection of Crosby Rd. and McCreddie Rd. in Section 19, Township 9 North, Range 25 East, W.M.

Land Use: The site is currently developed with a single-family dwelling and outbuildings. The surrounding properties are developed for agricultural purposes. The nearest residence is located approximately 700 feet to the north.

Zoning: The site and surrounding properties are zoned Rural Lands Five. Parcels west of Crosby Rd. are zoned GMA Agriculture.

Comprehensive Plan Designation: Site and surrounding areas are Rural Lands Five. Parcels to the west of Crosby Rd. are designated "GMA Agriculture".

State Environmental Policy Act: Categorically exempt, under WAC 197-11-800(13).

APPLICABLE DEVELOPMENT REGULATIONS:

1. The Benton County Code Section 11.16A.050 the following uses may be permitted on a single parcel of record within the Rural Lands Five Acre Zoning District (RL-5) if a conditional use permit is issued by the Board of Adjustment after notice and public hearing as provided in BCC 11.52.090."
2. Benton County Code Section 11.52.090(a) states:
Conditional Use and Special Permit, General Standards. The conditional use/special permit application process allows the Board of Adjustment to review the location and design of certain proposed uses, the configuration of improvements, and the potential impacts on the surrounding area. The

application process also allows the Board of Adjustment to ensure development in each zoning district protects the integrity of that district. The notice, hearing, decision and enforcement procedures are as set forth herein and in BCC 11.52.089.

Certain uses are classified as conditional uses/special uses because of their unusual nature, infrequent occurrence, special requirements, or potentially significant impacts to the environment, public infrastructure or adjacent properties, and/or possible safety hazards and other similar reasons.

Once granted, a conditional use/special permit may be transferred by a holder thereof after written notice to the Board of Adjustment; provided the use and location must remain the same and the transferee must continue to comply with the conditions of the permit and, if applicable, the requirements set forth in BCC 11.52.070.

3. Benton County Code Section 11.52.090(d) states:

"Conditional Use/Special Permit—Permit Granted or Denied. A conditional use/special permit shall be granted only if the Board of Adjustment can make findings of fact based on the evidence presented sufficient to allow the Board of Adjustment to conclude that, as conditioned, the proposed use:

- (1) is compatible with other uses in the surrounding area or is no more incompatible than are any other outright permitted uses in the applicable zoning district;
- (2) will not materially endanger the health, safety, and welfare of the surrounding community to an extent greater than that associated with any other permitted uses in the applicable zoning district;
- (3) would not cause the pedestrian and vehicular traffic associated with the use to conflict with existing and anticipated traffic in the neighborhood to an extent greater than that associated with any other permitted uses in the applicable zoning district;
- (4) will be supported by adequate service facilities and would not adversely affect public services to the surrounding area;
- (5) would not hinder or discourage the development of permitted uses on neighboring properties in the applicable zoning district as a result of the location, size or height of the buildings, structures, walls, or required fences or screening vegetation to a greater extent than other permitted uses in the applicable zoning district;

If reasonable conditions cannot be imposed so as to allow the Board of Adjustment to make the conclusions required above, the conditional use/special permit application shall be denied."

4. The Benton-Franklin Health District requires that:
 - The facility is served by an approved public water supply in accordance with WAC 246-291.
 - The facility is served by an on-site sewage disposal system that is permitted, installed and approved in accordance with Benton-Franklin District Board of Health Rules and Regulations No. 2 for the intended use.
 - The lot must meet minimum land area requirements as specified in Benton-Franklin District Board of Health Rules and Regulations No.2.The Health District has stated that some or all of the requirements may be waived if there are no employees on site.
5. The Washington State Department of Ecology has commented that on-site disposal of commercial wastes and wastewaters are illegal unless specifically approved by the Department of Ecology: this includes wastewaters sent to septic systems.
6. Sunnyside Valley Irrigation District does have a facility, Spring Creek Waste way, within the parcel of this application.
 - a) This facility runs along the eastern boundary of the above referenced parcel. As long as the proposed development is not within the eastern 100 feet of the parcel, it will not affect their facilities. If any development work is to be performed within 100 feet of the permitted use, Sunnyside Valley Irrigation District must be notified
 - b) Runoff and/or crossings into or across any SVID facility will not be allowed unless approved through the permitting process.
 - c) Buildings or permanent structures will not be allowed within SVID easements or right of way.
 - d) Obstructions will not be allowed within SVID easements or right of way without permits.
 - e) Storm drainage will not be allowed to discharge into SVID drains without permits.
7. The applicants are proposing to use individual indoor kennels. Typically, the Board of Adjustment has approved special permit applications for dog kennels when the animals are housed in kennels indoors with sheetrock siding to minimize noise and with proper ventilation.
8. The applicants did not address in their application how waste from the animals would be handled. Any waste must be disposed of according to state and local laws.
9. The Conditional Use Permit application does not request any signs, or any on-site employees and states that, hours for customers are by appointment only.

FINDINGS OF FACT:

The following findings of fact are based on comments received prior to the date of this staff memo dated December 22, 2011. Any comments received after the completion of this staff memo or submitted during the advertised public hearing of CUP 11-10 will need to also be considered by the Board of Adjustment and may add to findings different than those set forth below. The Board may decide to adopt these findings as their own or amend/add to these Findings of Fact or the proposed listed conditions after the open public hearing.

1. The applicants/property owners are Jeffrey & Yvette Fitzgarrald, 27601 N. Crosby Rd. Prosser, WA 99350.
2. The applicants are requesting approval of a Conditional Use Permit Application for the operation of a commercial dog kennel for up to 12 adult dogs on a 2.50-acre parcel.
3. The application for CUP 11-10 was submitted to Benton County on November 30, 2011, and declared complete on December 6, 2011.
4. Conditional Use Permit 11-10 did not require that a Notice of Application be published.
5. The notice for the Benton County Board of Adjustment Open Record Hearing was published on December 15, 2011, in the Tri-City Herald and mailed to property owners of record within 300 feet of the outer boundaries of the parcel. The Open Record Hearing is scheduled for January 5, 2012.
6. Conditional Use Permit Application CUP 11-10 is categorically exempt from the requirements of the Washington State Environmental Policy Act, under WAC 197-11-800(13).
7. The site is currently developed with a 1350 sq ft single-family dwelling a 45X50 sq ft garage a 30X50 sq ft garage and the new 12X43 sq ft building for the kennel. The surrounding properties are developed for agricultural purposes. The nearest residence is located approximately seven hundred (700) feet to the north.
8. The site and surrounding properties are zoned Rural Lands Five (RL-5). Parcels west of Crosby Rd. are zoned GMA Agriculture.
9. The Benton County Comprehensive Plan designated the site and surrounding areas as Rural Lands Five (RL-5). Parcels to the west of Crosby Rd. are designated "GMA Agriculture".
10. The Benton County Department of Public Works requires that the approach onto Crosby Rd. be paved to County Standard Plan 96-05 standards for multi use and commercial access.
11. The applicants have constructed a permanent facility so that noise and climate control for the animals will not be an issue.
12. The proposed use would not materially endanger the health, safety, and welfare of the surrounding community to an extent greater than that associated with any other permitted uses in the rural lands five zoning district such as schools, churches, libraries, community club houses, stills, packaging sheds and five borders and/or lodgers in any one family dwelling unit.
13. The proposed use as shown in the application would not cause the pedestrian and vehicular traffic associated with the use to conflict with existing and anticipated traffic in the neighborhood to an extent greater than that associated with any other permitted uses in the rural lands five zoning district such as schools, churches, libraries, community club

houses, stills, packaging sheds and five borders and/or lodgers in any one family dwelling unit. If the kennel were not open to the public, there would not be any additional traffic.

14. The proposed use as shown in the application would be supported by adequate service facilities, if the conditions of approval as requested by the Planning Staff were required. The proposed use would not adversely affect public services to the surrounding area. There is no evidence to support that the site would not be adversely affected. The residence on site is served by all the necessary services.
15. The surrounding area is not completely developed, however, the proposed use as shown in the application is unlikely to hinder or discourage the development of permitted uses on neighboring properties in the Rural Lands Five zoning district as a result of the location of the dog kennel because of the distances involved between parcels.

DISPOSITION OF THE APPLICANT'S REQUEST:

A conditional use/special permit shall be granted only if the Board of Adjustment can make findings of fact based on the evidence presented sufficient to allow the Board of Adjustment to conclude that, as conditioned, the proposed use:

- (1) is compatible with other uses in the surrounding area or is no more incompatible than are any other outright permitted uses in the applicable zoning district;**
- (2) will not materially endanger the health, safety, and welfare of the surrounding community to an extent greater than that associated with any other permitted uses in the applicable zoning district;**
- (3) would not cause the pedestrian and vehicular traffic associated with the use to conflict with existing and anticipated traffic in the neighborhood to an extent greater than that associated with any other permitted uses in the applicable zoning district;**
- (4) will be supported by adequate service facilities and would not adversely affect public services to the surrounding area;**
- (5) would not hinder or discourage the development of permitted uses on neighboring properties in the applicable zoning district as a result of the location, size or height of the buildings, structures, walls, or required fences or screening vegetation to a greater extent than other permitted uses in the applicable zoning district; and**

CONDITIONS OF APPROVAL:

If the Board of Adjustment decides to approve Conditional Use Permit CUP 11-10, based on the information presented at the public hearing and after making such findings that support that decision, the Planning Department recommends that the following conditions be included:

1. Applicants shall not conduct any of the activities within the scope of Conditional Use Permit CUP11-10 until the applicants are in compliance with all the conditions set forth herein. The applicants shall notify the Benton County Planning Department in writing

when the conditions set forth herein have been completed. The Planning Department shall not issue the special permit until those conditions have been met. The Conditional Use Permit shall not become effective until issued by the Planning Department.

2. If the conditions of approval have not been met and the Planning Department does not issue the conditional use permit within one (1) year from the time the Board of Adjustment conditionally approved the conditional use permit, the Board of Adjustment may declare its approval null and void at a regular Board of Adjustment meeting. Prior to doing so, the applicants shall be notified in writing at the applicant's last known address at least twelve (12) days in advance of the upcoming Board of Adjustment meeting.
3. That the applicants continue to meet the requirements of the Benton-Franklin Health District as outlined in the August 25, 2008, letter. The applicants are to provide the Planning Department with written verification that all of the Health District's requirements have been met. The applicants shall continue to meet all such requirements while Conditional Use Permit CUP 11-10 is in effect.
4. That the applicants provide written verification from the Benton County Public Works Department that the approach onto Crosby Rd. has been constructed to 96-05 standards. The applicants shall continue to meet all such requirements while Conditional Use Permit CUP 11-10 is in effect.
5. The requested special permit shall not be granted for the keeping of more than 12 dogs (6 months and older) on the site. The applicants shall continue to meet all such requirements while Conditional Use Permit CUP 11-10 is in effect.
6. That the dogs be kept in a kennel that is indoors with insulated walls and ceiling and sheetrock interior to minimize noise and with proper ventilation. The housing of dogs inside a residence is not permissible due to sanitary conditions. The applicants shall continue to meet all such requirements while Conditional Use Permit CUP 11-10 is in effect.
7. That the property owner and the proprietor(s) of the business shall comply with all requirements of the Benton County Building Department, the Benton County Fire Marshal, and all other local, state and federal regulations pertinent to the conditional use permit. The requirements of or permission granted by the Board of Adjustment shall not be construed as an exemption from such regulations. The applicants shall continue to meet all such requirements while Conditional Use Permit CUP 11-10 is in effect.
8. That any waste created as a result of the special permit must be disposed of off-site in compliance with all local, state and/or federal regulations. The applicants shall continue to meet all such requirements while Conditional Use Permit CUP 11-10 is in effect.
9. As requested in the application, the proposed kennel by the applicants does not have any non-resident employees and no signs are to be used to identify the kennel. The applicants shall continue to meet all such requirements while Conditional Use Permit CUP 11-10 is in effect.
10. The Revised Code of Washington 16.52.310 for a Dog Breeding Facility, in its entirety, will constitute Condition 11. Commercial Kennel. Dog breeding - Limit on the number of

dogs required conditions and penalty. The applicants shall continue to meet all such requirements of RCW 16.52.310 while Conditional Use Permit CUP 11-10 is in effect.

- 11 A person may not own, possess, control, or otherwise have charge or custody of more than fifty dogs with intact sexual organs over the age of six months at any time.

Any person who owns, possesses, controls, or otherwise has charge or custody of more than ten dogs with intact sexual organs over the age of six months and keeps the dogs in an enclosure for the majority of the day must at a minimum:

(a) Provide space to allow each dog to turn about freely, to stand, sit, and lie down. The dog must be able to lie down while fully extended without the dog's head, tail, legs, face, or feet touching any side of an enclosure and without touching any other dog in the enclosure when all dogs are lying down simultaneously. The interior height of the enclosure must be at least six inches higher than the head of the tallest dog in the enclosure when it is in a normal standing position. Each enclosure must be at least three times the length and width of the longest dog in the enclosure, from tip of nose to base of tail and the shoulder blade to shoulder blade.

(b) Provide each dog that is over the age of four months with a minimum of one exercise period during each day for a total of not less than one hour of exercise during such day. Such exercise must include either leash walking or giving the dog access to an enclosure at least four times the size of the minimum allowable enclosure specified in (a) of this subsection allowing the dog free mobility for the entire exercise period, but may not include use of a cat mill, jenny mill, slat mill, or similar device, unless prescribed by a doctor of veterinary medicine. The exercise requirements in this subsection do not apply to a dog certified by a doctor of veterinary medicine as being medically precluded from exercise.

(c) Maintain adequate housing facilities and primary enclosures that meet the following requirements at a minimum:

Housing facilities and primary enclosures must be kept in a sanitary condition. Housing facilities where dogs are kept must be sufficiently ventilated at all times to minimize odors, drafts, ammonia levels, and to prevent moisture condensation. Housing facilities must have a means of fire suppression, such as functioning fire extinguishers, on the premises and must have sufficient lighting to allow for the observation of the dogs at any time of day or night.

Housing facilities must enable all dogs to remain dry and clean.

Housing facilities must provide shelter and protection from extreme temperatures and weather conditions that may be uncomfortable or hazardous to the dogs.

Housing facilities must provide sufficient shade to shelter all the dogs housed in the primary enclosure at one time;

A primary enclosure must have floors that are constructed in a manner that protects the dogs' feet and legs from injury

Primary enclosures must be placed no higher than forty-two inches above the floor and may not be placed over or stacked on top of another cage or primary enclosure

Feces, hair, dirt, debris, and food waste must be removed from primary enclosures at least daily or more often if necessary to prevent accumulation and to reduce disease hazards, insects, pests, and odors; and

All dogs in the same enclosure at the same time must be compatible, as determined by observation. Animals with a vicious or aggressive disposition must never be placed in an enclosure with another animal, except for breeding purposes. Breeding females in heat may not be in the same enclosure at the same time with sexually mature males, except for breeding purposes. Breeding females and their litters may not be in the same enclosure at the same time with other adult dogs. Puppies under twelve weeks may not be in the same enclosure at the same time with other adult dogs, other than the dam or foster dam unless under immediate supervision.

(d) Provide dogs with easy and convenient access to adequate amounts of clean food and water. Food and water receptacles must be regularly cleaned and sanitized. All enclosures must contain potable water that is not frozen, is substantially free from debris, and is readily accessible to all dogs in the enclosure at all times.

(e) Provide veterinary care without delay when necessary. A dog may not be bred if a veterinarian determines that the animal is unfit for breeding purposes. Only dogs between the ages of twelve months and eight years of age may be used for breeding. Animals requiring euthanasia must be euthanized only by a licensed veterinarian.

12. Any person who violates subsection (1) or (2) of section RCW 16.52.310 will be guilty of a gross misdemeanor.

BENTON COUNTY
PLANNING
DEPARTMENT



SPECIAL PERMIT APPLICATION SP 08-12
DATE PRINTED 9/26/08
EXHIBIT NO. _____

Benton County does not warrant, guarantee, or accept any liability for accuracy, precision or completeness of any information shown hereon or for any reference made hereon. Any use of this information is at the user's own risk. Benton County makes no warranties, expressed or implied, and any oral or written statement by any employee of Benton County or agents thereof to the contrary is void and ultra vires. The information shown herein is a preliminary product of the Benton County Geographic Information Systems, and is prepared for presentation purposes only.

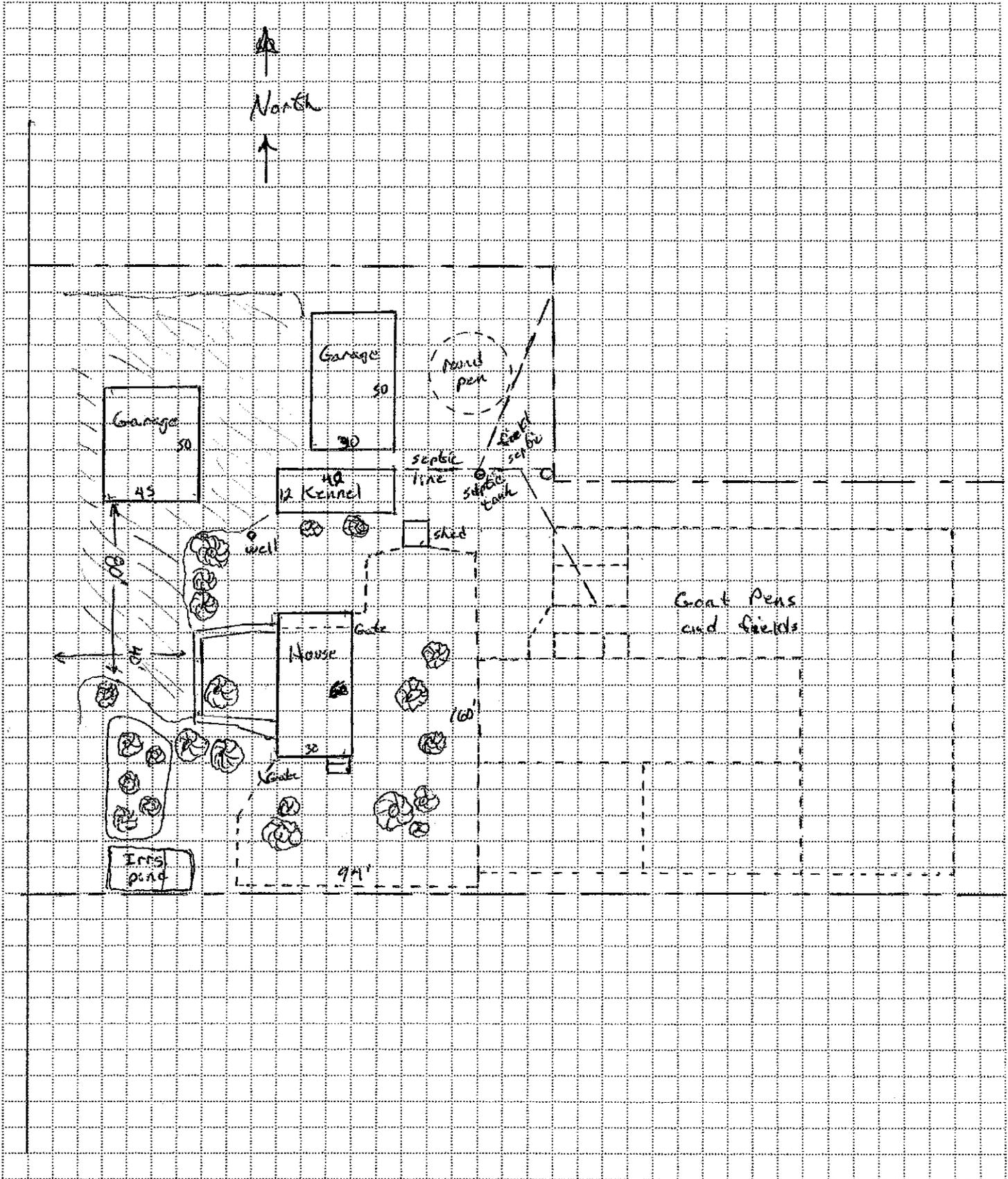


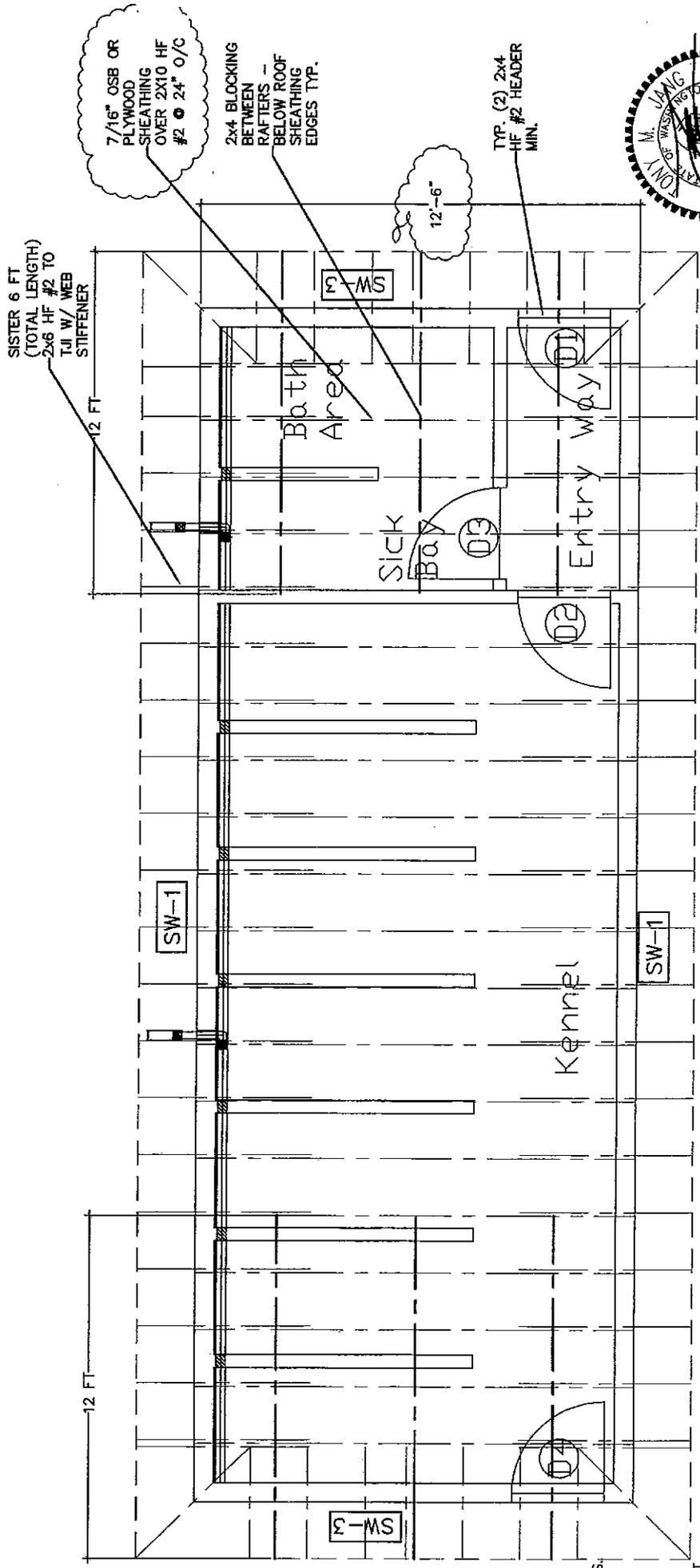
SITE PLAN FOR _____

Scale 1" = 50' or 1" = 100'

Please specify

PLEASE INDICATE NORTH





10/10/11

PROJECT ADDRESS:
27601 N CROSBY RD.
PROSSER, WA 99350

ROOF FRAMING & SHEARWALL

SCALE 1/4"=1'-0"

S

CP