

Farm Worker Housing and the Washington Law Against Discrimination

BRIEFING PAPER

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OVERVIEW AND POSITION

There is a severe lack of farmworker housing in the State of Washington. This Executive Summary provides an overview of farmworker housing issues as related to fair housing and civil rights in Washington State. The Washington State Human Rights Commission (WSHRC) is the state's civil rights enforcement agency and enforces the Washington Law Against Discrimination (WLAD), RCW 49.60. The WSHRC is increasingly concerned about race and national origin discrimination against farmworkers in the area of housing. The WSHRC is available to provide technical assistance to cities, counties, state agencies, growers, and advocates who want to eliminate race and national origin discrimination in farmworker housing.

The WSHRC is researching standing in cases of farmworker housing discrimination and is willing to work with stakeholders to pursue options for legal actions that will allow people to seek relief for national origin and racial discrimination in housing. Generally speaking, a plaintiff in a court case has standing if he or she 1) has injury in fact, 2) the injury was caused by the unlawful conduct of the defendant, 3) and the plaintiff's injury can be remedied by the relief sought.

Together, growers and farmworkers have earned our state's reputation as an agribusiness industry leader. This distinction did not happen overnight, but through collaboration, communication, and hard work. We should all work toward the same high industry standards in the area of farmworker housing. Such an achievement will serve to make our state even more of an industry leader.

SUMMARY OF RECOMMENDATIONS

The WSHRC would like to see the farmworker housing shortage eliminated, and farmworkers provided with sanitary, safe, and livable housing. The fact that farmworkers in the state who lack adequate housing are predominately of one national origin group creates disturbing implications that human needs are not being met and that benefits are being distributed in an unfair and inequitable way. The WSHRC recommends elimination of the specter of possible national origin discrimination in the area of farmworker housing.

Every family is entitled to safe, decent and affordable housing. The Universal Declaration of Human Rights states, “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.” Article 25. There are many best practice models for creating safe, affordable farmworker housing. These models incorporate a variety of approaches. There are many options for both on and off farm sites; temporary and permanent; and subsidized and unsubsidized. Housing should be provided for all farmworkers.

ANALYSIS OF POSITION

The WSHRC is the state agency responsible for Washington Law Against Discrimination (WLAD), RCW 49.60. The WLAD prohibits discrimination based on prohibits discrimination in employment (non-tribal employers with eight or more employees), housing, places of public accommodation, and credit and insurance transactions, on the basis of race, color, creed, national origin, sex, sexual orientation, including gender expression/ identity, marital status, honorably discharged veteran or military status, age (over 40), the presence of any sensory, mental, or physical disability, the use of a trained dog guide or service animal by a person with a disability, retaliation for opposing an unfair practice, filing a whistleblower complaint with the Washington State Auditor, or filing a nursing home abuse complaint.

In American society, housing is seen as a central determinant of wealth and success. People must be given the opportunity to live and participate as full citizens in society. Without adequate housing, running water, and electricity, it is difficult to fully participate in many aspects of our society. Children are much more likely to succeed in school when provided stable housing. Exposure to pesticides and other chemicals continues to be of concern, especially for women and children. The WSHRC has many concerns when an entire class of people faces increased challenges and barriers to obtaining and living in adequate, safe, clean housing.

Washington State relies heavily on the income generated by agriculture. The Federal Reserve Bank of San Francisco estimates that agribusiness makes up over \$5 billion or 2% of Washington State’s Gross State Product (GSP) (Robinson). The market, which is our society’s primary mechanism for providing housing, does not favor construction of less profitable low-income housing. The Washington State Department of Community, Trade, and Economic Development (CTED) says that Washington’s 170,000 farmworkers support the state’s \$5.3

billion dollar agricultural industry (CTED, 2005). This means that each farmworker brings in \$31,177 annually, just in farm work.

There is a prevalent myth that immigrants do not contribute to the economy and that they take more than their share. In the case of immigrant farmworkers, there are many economic benefits farmworkers provide to a geographical area, in addition to supporting the agricultural industry. A 2006 report published by the Texas Comptroller of Public Accounts found that undocumented immigrants “generate more taxes and other revenue than the state spends on them” (p. 1). Texas and Washington State are similar in that neither state collects state income tax and instead relies on other state and local taxes.

The WSHRC has contracts with the U.S. Equal Opportunity Employment Commission (EEOC) and the U.S. Department of Housing and Urban Development (HUD). As a result, the WSHRC also enforces some federal civil rights laws, including fair housing laws, in Washington State. HUD enforces Title VIII of the Civil Rights Act of 1964, which prohibits discrimination in housing on the basis of race and national origin, as well as a number of other factors. HUD defines a farmworker as “someone who works primarily in agriculture or an agriculture-related industry, like food processing” (HUD, Facts About Farmworkers and Colonias). In addition, migrant farmworkers move from community to community in patterns, usually based on season and job availability, while “seasonal” farmworkers live in one community year round (HUD, Facts About Farmworkers and Colonias). HUD states that the most severe farmworker housing issues are in Florida and the Pacific Northwest.

The WSHRC has been hearing about a number of issues related to farmworker housing discrimination:

- The Office of Rural and Farmworker Housing, a non-profit advocacy organization, filed two complaints with the WSHRC in 2002. The complaints were referred to the US Department of Justice due to their adverse impact on Hispanic farmworkers. Elements in both Pasco and Benton City attempted to prevent the construction of farmworker housing in their communities. In the Benton City case, some members of the community itself voiced loud opposition to the housing and were on record as stating that they did not want Benton City to become like Mabton, a mostly Latino community.
- In May 2007, the WSHRC hosted a Commission forum in Shelton, WA. A number of these attendees also spoke out about national origin discrimination in the area of housing.
- In July, 2006 it was reported at a WSHRC forum that a contractor was renting a two bedroom house to 25 men at \$200 a person in Sunnyside.
- In Wenatchee a trailer park was closed. The owner generously offered to relocate the residents. The community opposed it. The owner was unable to relocate the trailer park.

- In Royal City in 2001, 22 farmworker housing complaints were filed with HUD. The owner was charging inconsistent rents, giving fines for city ordinance violations, charging for children that worked in the fields. Nothing was done.
- In Mattawa, singlewide trailer houses are divided into apartments and rented to farmworkers. There were reports of raw sewage on the ground.
- In response to issues in Wenatchee, the WSHRC hosted a community forum in September, 2007. Forum attendees spoke about many of the same issues, including lack of running water and electricity, unhealthy living conditions, shortage of housing, families forced to live in the orchards, and a neighborhood lawsuit to stop the construction of temporary migrant farmworkers in a neighborhood.

The WSHRC continues to hear reports similar to the ones above. The WSHRC is aware of farmworker housing problems in the Wenatchee, WA area. The building permits of the Bella Vista project in East Wenatchee were revoked because the predominately Anglo neighborhood cited overconcentration of low income housing in one area. Neighborhoods in these "not in my back yard" (NIMBY) cases often use zoning and other regulatory concerns to prevent the construction of housing for farmworkers. Anglo communities also often oppose transitional housing for farmworkers. Such opposition can be discriminatory if denial of housing opportunities is based on national origin or race. On the other hand, First Amendment free speech rights protect people's ability to speak their mind about such issues.

Potential community concerns might include the added pressure to the community infrastructure including increased water demand, added traffic to the area, additional students in the local schools, water and septic issues, allegations of increased crime and illegal overcrowding in dwelling units, and negative effects on property values. Community acceptance strategies must be individually suited for specific counties and towns in order to address the various types of concerns the public will have with a given project proposal. However, in a spirit of equity, fairness, and humanity, communities of whatever predominant race and ethnicity should encourage and facilitate adequate housing for all residents and visitors.

Even within farmworker communities, there are individuals who may be at more risk for experiencing employment and housing discrimination. This may include women, families with children, people with disabilities, and the elderly. According to Maria Ontiveros, ninety-nine percent of female farmworkers report that sexual harassment is an ongoing issue (p. 6). There are often intersections between housing and employment discrimination with regard to discrimination against farmworkers. For example, there may not be a clear distinction between work and non-work hours and women experiencing sexual harassment from field supervisors may not have any escape or access to support and resources, especially when being housed on-site.

Many growers have chosen to hire contractors instead of directly hiring employees. Contractors then become the party arranging housing (Ontiveros, p. 5). In this way, contractors can control almost all aspects of a person's life during the time of employment. Ontiveros describes the situation in the following:

At the end of a long day, the farmworker returns to her house. Her house may consist of a cardboard, plywood, or tin shack, which may be part of a camp nestled in the hills. She most likely does not have a telephone or other access to the world. If she lacks housing, she will make a home in the fields. After her long day at work, she is now expected to cook, clean, and take care of the children. Like so many women, she must perform double-duty (p. 8).

It is reasonable to assume that issues of sex discrimination and sexual harassment cannot be separated from issues of farmworker housing discrimination.

Housing discrimination issues are often compounded when people are limited English proficient (LEP). Many farmworkers often experience extreme language barriers. A recent report by the Pew Hispanic Center found that less than one-quarter of Latino immigrants are able to speak English well (p. 1). The report also finds that “Latinos cite language skills more frequently than immigration status, income/education or skin color as an explanation for discrimination against them. In 2007, 46% said it was the biggest cause of discrimination against Latinos” (p. 1).

BRIEF HISTORY OF FARMWORKER HOUSING ISSUES

There was the time, about 40 years ago, when many who were concerned about the poor in America looked at the plight of migrant farmworkers and were hopeful. Those were the days of the CBS documentary “Harvest of Shame,” when Edward R. Murrow brought the farmworkers’ lives into our living rooms and César Chávez was organizing the United Farmworkers Union. But past hopes for progress have been unfulfilled.

We were once a nation of agricultural workers with 90 percent of Americans living on farms. Those days are long gone as farming has become agribusiness and there is a growing separation between consumers and producers, especially where production involves physical work or hand labor.

New farmworker housing is generally built when either a county or a city makes housing possible by identifying sites and granting permits, and when a non-profit or for-profit farmworker housing or low income housing developer lines up the necessary financing from state and federal sources. Identifying sites, getting permits, and arranging financing takes years, which exacerbates the discrepancy between supply and demand. The construction of new housing for farmworkers lags significantly behind the need.

Washington State has a long history of dealing with issues related to farmworker housing. As Washington State becomes more diverse and its demands for farmworkers grow, there will likely be an increased need for farmworkers and housing.

In particular, housing discrimination is prevalent against Hispanic families. Hispanics often have large families and some housing providers intentionally discriminate against families with children, through overcrowding and charging excessive rents and fees per person. Micro-colonias (trailer parks that are substandard and rented to farmworkers) are prevalent in Central and Eastern Washington. Agricultural workers are subjected to unthinkable living conditions, including

overcrowding and lack of sanitation. It is estimated that 157,000 of Washington's farmworkers are without decent housing.

It is becoming more difficult for non-profit agencies to find locations to build farmworker housing.

- The Yakima Valley Council for Community Action was established in 1965, in part to address issues important to farmworkers;
- Tomas Villeneuve founded the United Farm Worker (UFW) Cooperative in Toppenish WA (Seattle Labor History Project, 2007).
- The Office of Rural and Farmworker Housing was established by the Legislature in 1971;
- In 1996, Governor Lowry signed HB 2778 to provide tax-free materials and labor used in constructing housing designated for farmworkers (State of Washington, March 1996).
- In 1999, the Washington State Department of Health (DOH) was given statutory authority to create rules for licensing and overseeing farmworker housing. This program still continues under DOH and is known as the Migrant Farmworker Housing Program (MFHP). MFHP conducts investigations into violations of farmworker housing standards; provides consultation for growers and other entities who want to comply with the law; and conducts inspections to make sure that housing is in compliance with the law.
- Since 1999, the Washington State Department of Community, Trade & Economic Development (CTED) has been funded to provide services under the Housing Trust Fund division of CTED. Since 1999, the Legislature has funded CTED \$8 million per biennium to provide financial and technical assistance to growers, advocates, and others working on the development of farmworker housing.

HOUSING REQUIREMENTS FOR FARMWORKERS

Some farmworkers are employed under federal H2-A and H2-B visa programs. Growers can use the H2-A program to hire agricultural workers and the H2-B program to hire people to work in the forestry and meat packing industries. According to federal law, employers of H2-A workers must provide transportation and housing. Employers of H2-B workers are not held to the same standards and do not have to provide housing or transportation. In general, H2-A and H2-B employees are required to work within the industry designated on the visa, or can be found in violation of visa requirements.

People working under H2-A and H2-B visas are people who have come to the U.S. for an opportunity to improve their lives and the lives of their families. People have often paid thousands of dollars for the opportunity to work in the United States and are often unable to make enough money to repay their debts. Guestworkers often put their own homes or other assets up as collateral for repaying loans to cover travel and visa expenses.

Housing provided under the H2-A program must meet standards under the federal Occupation and Safety Health Act (OSHA) and enforced by the U.S. Department of Labor (DOL). 29 CFR 1910.142. Housing can be provided by the employer, or the employer can provide rental housing. However, many advocates see challenges with lack of enforcement actions for those who violate the law.

Depending on the type of employment, employers may not be obligated to house workers. Although many farm owners have historically housed workers on their properties, that practice is no longer the norm. Advocacy organizations often suggest that farmworkers be housed off the work site and close to core services such as schools, laundromats, and shopping centers. Many zoning ordinances have also complicated the matter in recent years. For example, Ventura County, CA land use policies now prohibit farmers from housing more than a very few of their employees on their agriculturally zoned land. Only one-third of all farm owners in California provide housing for workers (Ventura County Ag Futures Alliance, p. 15). Therefore, farmworkers must compete for housing with all other residents in the area, yet have the fewest resources to do so.

There are many types of farmworker housing, including tents, yurts, micro-colonias, buses and RVs, and multi-family housing structures. Many types of farmworker housing are without toilet facilities, electricity, running water, and cooking facilities.

The Housing Assistance Council (HAC) is a non-profit organization in California whose mission is to support the development of rural low income housing nationwide. HAC conducted a national survey of farmworker housing conditions over a two and a half year period ending in June 2000. Survey results cited severe overcrowding, substandard housing conditions, and housing cost burdens as consistent challenges across the United States. Farmworkers reported a median monthly income of \$860 with the median monthly housing cost taking over 40% of the monthly income. A high percentage of the households reported poverty-level incomes. (California Polytechnic State University, p. 21).

TYPES OF FARM WORK IN WASHINGTON STATE

According to the Washington State Employment Security Department, Washington is the number one producer of over eleven crops such as apples, cherries, and raspberries (Agricultural Workforce Report). Washington State relies heavily on revenue from its agricultural and forestry sector. There are many types of farmwork in Washington State, including:

- Cherry, apple, asparagus, and other fruit and vegetable harvesting in Eastern and Central Washington;
- Floral harvesting, such as tulips in the Skagit Valley;
- Forestry work in Western Washington such as Salal harvesting; Salal is a greenery used in floral arrangements;
- Aquaculture farming, including the harvesting of oysters and other shellfish in Western Washington;

As a result of Washington's diverse agricultural, forestry, and aquaculture economies, there may be specific considerations for farmworkers based on the specific industry and geographic location in the state. Different climates within the state also impact farmworker housing. Migrant farmworkers and growers do not always know exactly when a particular harvesting season will begin, making it difficult for farmworkers to find housing when moving for seasonal positions (Holley, 577).

RACIAL AND ETHNIC REPRESENTATION OF WASHINGTON FARMWORKERS

Few state and local agencies track occupation, and many farmworkers fear reporting their status due to a cultural mistrust of government and fear of deportation. Most state and local agencies maintain client information such as race and ethnicity, however this is not an accurate measure of services provided to the farmworker population. Those of Hispanic origin are often found in other industries such as construction. Although difficult to report on farmworker status, organizations serving this population must be vigilant in their efforts to collect this information.

Many farmworkers are Hispanic or Native American. Some farmworkers in the Pacific Northwest are indigenous peoples from Mexico and Central America. As a result, language barriers can be significant, as many people may not speak English or Spanish. Some people speak Spanish as a second language. Indigenous languages spoken may include Qanjobal, Mam, Mixteco, Triqui and Zapotec. Additionally, some farmworkers travel to the U.S. from Thailand and other Southeast Asian countries.

The National Center for Farm Worker Health (NCFWH) conducted studies in 2000 and 2003 to provide a count of the farmworkers in Washington State, as well as other states. Based on this study, an estimated 4% of Washington State's population is comprised of migrant and seasonal farmworkers (NCFWH, 2000). The study also found that more than 2000 farmworkers lived in 15 counties and most other counties had at least some population of farmworkers.

WHAT IS THE DEMAND FOR FARMWORKER HOUSING?

It is reasonable to expect that a community will be able to better assist farmworkers when they are provided with solid estimates as to the demand for farmworker housing. With realistic projections, a community is better able to proactively apply for and utilize existing resources for grant monies and technical assistance. However, there must be the will to provide such housing, based on economic, humanitarian, or legal reasoning. There are a variety of models for estimating the demand for farmworkers. The California Polytechnic State University estimates the need for farmworkers using the following model:

Example: Demand Estimate

“The demand for farm worker housing in the Shandon Area (California) can be calculated by measuring the amount of production of various crops in the vicinity, and the quantity of labor required for its production. By mapping the production of crops using Geographic Information Systems (GIS) and querying its associated database, we were able to determine the total acreage of individual crops in the area. As the number of farm labor hours needed per acre of individual

crops is known (SLO County Farm Worker Housing Needs Study – 1990), we were able to use the average work hours per week to calculate an estimate of the number of farm workers needed to work in the vicinity” (College of Architecture and Environmental Design, p. 33).

Example: Demand Estimate

The State of Michigan Interagency Migrant Services Committee published an enumeration report in 2006 using the following methodology:

“The four separate industry classifications within the study MSFW definition (field agriculture, nursery/greenhouse — crops grown under cover, food processing and reforestation) were each addressed differently. Adjustments were made to worker estimates to account for duplicate counts within and across counties. Finally, population sub-groups and the number of children and youth in specific age categories were calculated.” (IMSC, p. 9).

Many growers suffer from a lack of workers. Providing housing will help guarantee a return of workers. Fortunately, there are many options for funding such initiatives in Washington State. Many of these funders provide technical assistance in addition to funding. See Appendix A for a list of possible resources for growers, contractors, and advocates.

CONCERNS WITH CURRENT STATE OF FARMWORKER HOUSING

Washington State’s economy and success is undoubtedly tied to agriculture and related industries. Growers continue to experience a labor shortage. One common sense solution is to provide safe, clean housing for farmworkers. In 2001, a survey was conducted in California to determine the need for farmworker housing. The survey found that only one-third of growers provided housing, with development cited as the major deterrent to providing housing (2001). Additional concerns included regulatory burdens; insurance; maintenance of housing; and liability. The study also found that farmers generally recognized and valued affordable, quality housing for farmworkers, but did not want to own or manage the housing on their own (Ventura County Ag Futures Alliance, p. 15).

Farmworkers have a particularly difficult time finding available, affordable housing because of extremely low and sporadic incomes and mobility. Most of the small, rural communities where migrant workers may seek employment do not have the rental units available for the seasonal influx. In addition, migrant workers may not be able to afford security deposits, pass credit checks, or commit to long-term leases. Overcrowding and substandard housing are significant housing problems for farmworkers.

The WSHRC is concerned about community groups who aim to keep farmworkers out of particular towns or particular areas within towns. Housing violations often go unreported because people are afraid to speak to the government or risk losing housing. Orchards are often not an appropriate housing location due to the use of pesticides there.

The “not in my backyard” approach may create liability issues for cities and other government entities. For example, an ordinance was passed last year in Hazelton, PA and aimed to eliminate

undocumented immigrants from living or working within Hazelton city limits. The ordinance also requires city materials to only be written and distributed in English. Hazelton is now in litigation over the ordinance, having lost at the District Court level in a suit brought by the American Civil Liberties Union, the Puerto Rican Legal Defense Fund and allied groups.

In addition to the moral and ethical implications of denying fellow human beings safe and sanitary housing, communities need to be educated about the potential of fair housing violations when they exclude people based on their national origin.

Housing on or very near orchards can raise health concerns. For example, even a low rate of pesticide use can be toxic to people if there is ongoing exposure. Lifestyle and poor living conditions contribute to a higher frequency of tuberculosis, diabetes, infections and chronic illnesses. According to an Oregon Health and Sciences University (OHSU) report, migrant laborers have the poorest health of any group in the country. The most commonly reported health factors for this population and their children are: lower height and weight, respiratory disease, parasitic conditions, skin infections, chronic diarrhea, vitamin A deficiency, accidental injury, heat-related illness and chemical poisoning (OHSU, 2007).

Other challenges go beyond the shortage of farmworker housing and the lack of services:

- Some organizations make a negative association between immigration issues, farmworkers, and the need for housing.
- Some anti-immigrant organizations say that undocumented individuals are breaking the law and do not deserve housing services or assistance.
- Some groups, including anti-immigrant organizations and neighborhood associations, protest farmworker housing when it's in town or near developing neighborhoods. These cities are often the same towns that are economically dependent on agriculture and the patronage of farmworkers to spend money and pay taxes while doing business in town.

It is the humane and right thing to do to adequately house workers and their families while they are working in the United States. Farmworkers help keep our food prices low and help keep our farmers in business.

HOUSING AND EDUCATIONAL SUCCESS

There are many studies that show a correlation between homelessness and educational achievement. In 2002, Congress reauthorized the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.) that requires states to ensure homeless students equal access to education. The Act also prohibits the segregation of homeless students from the rest of the student population. However, many young people who are farmworkers or whose come from a family of farmworkers face barriers in getting to school.

Celina Wille, a Youth Development Specialist with Texas Agricultural Extension Service, reported that in 1999, there were over 12,000 college-age youth working as farmworkers (1999).

Wille cites several ongoing challenges that youth from farmworker families face, including constant migration, interruption of studies, and low grades and low scores on standardized tests. Many of these students drop-out by middle school, and even more by high school. In addition, many of these youth do not want to have careers as farmworkers, as work often seen as low paying and very difficult. As a best practice, the Texas Agricultural Extension Service hosted a 4-H sponsored event to offer youth an overview of the career opportunities in the food and fiber industries to increase self-esteem and offer career opportunities.

A recent article about this issue was published by Bill Tierney, of the Center for Higher Education Policy Analysis (CHEPA). Tierney reported that “support structures still don’t exist for homeless youth” (p. 2). There are also other challenges. For example, students develop emotional and social problems at a higher rate than low income and poor students (Tierney, p. 2). In addition, Tierney reports that there is a strong likelihood that youth who experience homelessness will also struggle with homelessness in adulthood (p. 2). Tierney asks the following: “In a democracy that is predicated on its citizenry having high wage and high skill jobs so that we all might participate in the public sphere can we afford to ignore children who are most at risk?” Lack of affordable housing is cited as the most frequent reason for family homelessness (CHEPA, p. 4). Money and effort spent on housing farmworker children would go a long way in reducing individual and social challenges in school, work, and beyond, both in childhood and in adulthood.

RELEVANT CONSTITUTIONAL PROTECTIONS, CASE LAW AND REGULATIONS

While there is longstanding case law regarding national origin, race, and sex discrimination as related to farmworkers, there is less case law at the intersection of farmworkers and housing discrimination. At the same time, there seems to be a developing consensus in the courts related to this matter. There are also some federal protections with regard to farmworker housing. For example, the federal Migrant and Seasonal Agricultural Worker Protection Act (MSPA) also has certain health and safety regulations that apply to temporary or seasonal housing, regardless of the number of migrant workers who live on site. 29 CFR §500.130-135. A checklist for compliance with the MSPA can be found at the U.S. Department of Labor’s website at <http://www.dol.gov/compliance/guide/mspa.htm>.

While there is not substantial case law on this subject, there are longstanding prohibitions against certain types of discriminatory zoning practices. The case of City of Cleburne v. Cleburne Living Center (1985), regarded the purchase of a building with the goal of housing Cleburne Living Center, a community center in Cleburne, TX. The community center’s mission was to provide services to people with cognitive disabilities. After submitting permits and attempting to open the center, the city council denied issuing a special permit. A lower court upheld the practice, but the U.S. Supreme Court overturned the ruling on the basis of the U.S. Constitution’s Equal Protection Clause. Justice White, in speaking for the court, said the following:

“When social or economic legislation is at issue, the Equal Protection Clause allows the States wide latitude and the Constitution presumes that even improvident decisions will eventually be rectified by the democratic processes. The general rule gives way, however, when a statute classifies by race, alienage, or national origin. These factors are so seldom

relevant to the achievement of any legitimate state interest that laws grounded in such considerations are deemed to reflect prejudice and antipathy -- a view that those in the burdened class are not as worthy or deserving as others. For these reasons and because such discrimination is unlikely to be soon rectified by legislative means, these laws are subjected to strict scrutiny and will be sustained only if they are suitably tailored to serve a compelling state interest. Similar oversight by the courts is due when state laws impinge on personal rights protected by the Constitution.” City of Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432 (1985).

Cities and towns may face increased liability when creating zoning ordinances that automatically prohibit housing for people on the basis of a protected class. Also see section above regarding City of Hazelton, PA and discriminatory zoning ordinances.

The Fourteenth Amendment of the U.S. Constitution states in part, “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. Am. XIV, § I. The Washington State Constitution’s Special Privileges and Immunities Clause also has strong language about equal protection: “No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations.” Wash. Const. Sec XII.

Most case law regarding farmworker housing issues is at the state level. For example, the 1971 case of New Jersey v. Shack (58 N.J. 297; 277 A.2d 369; 1971 N.J.) addressed the question of whether land owners can claim violation of trespassing statutes when migrant farmworkers housed on-site had visitors. Tredesco, the property owner, did not want two advocates – a medical provider and an attorney – to visit the homes of farmworkers or have private conversations with those housed on his property. In issuing the opinion, Chief Justice Wientraub stated, “Property rights serve human values. They are recognized to that end, and are limited by it. Title to real property cannot include dominion over the destiny of persons the owner permits to come upon the premises. Their well-being must remain the paramount concern of a system of law. Indeed the needs of the occupants may be so imperative and their strength so weak, that the law will deny the occupants the power to contract away what is deemed essential to their health, welfare, or dignity.” However, exclusion from property continues to happen across the country, including in the Pacific Northwest. In addition, some farmworkers have little if any right to recourse in cases of real or perceived housing violations.

While the H2-A visa does require that growers provide housing, there are many challenges that make inadequate housing the reality for many farmworkers. Many sources report that H2-A visa holders do not have the same tenancy rights as farmworkers living and working under other provisions. In addition, there are often misclassifications between H2-A workers who must be provided housing and H2-B workers who are not required to be provided housing. According to the Southern Poverty Law Center (SPLC), some people picking fruit in orchards are misclassified as packing house workers, a job under H2-B classification (p. 23). The SPLC’s report finds that about 9 in 10 H2-A guestworkers are from Latin American countries (p. 14).

While housing is required under the H2-A visa, enforcement is often lacking (SPLC, p.34). In addition to enforcement challenges, housing under the H2-A program is often on-site. Guestworkers with H2-A visas are not allowed to change employers, even if employees are given less working hours than they were promised.

In 2002, the U.S. Department of Justice (USDOJ) filed a complaint against the City of Agawam, MA for violation of Title VIII of the Civil Rights Act of 1964 as well as federal Fair Housing Act. At the time of the complaint filing, census reports found that over 97% of the City's residents were Anglo. C & E Tobacco, Inc. owned a property in Agawam and employed about sixty people to harvest tobacco. C & E was required to provide housing for the workers as part of their participation in the H2-A program. When C & E began to build housing in Agawam, the City found that farmworker housing was not a proper use under City zoning ordinances. Black Jamaican and Hispanic Puerto Rican men were employed by C & E and Anglo residents spoke publically against the proposed housing. The USDOJ asserted that the City denied the building permits on the basis of race, color, and national origin. See U.S. Department of Justice v. City of Agawam. The City of Agawam was ultimately required to change its zoning ordinance to allow multi-family dwellings, and to cease its discriminatory practices on the basis of race, color, and national origin.

A similar case was filed by the American Civil Liberties Union (ACLU) on behalf of the Community Housing Development which alleges that the City of Pasco's zoning ordinances were discriminatory and unconstitutionally vague. In 2002, SeaMar (a local non-profit healthcare and service provider working with the Hispanic community) purchased a vacant hotel from the City of Pasco, with the intention of creating housing for farmworkers in the area. Later in the year, the City issued a moratorium on licenses and permits for service providers in the downtown core. This policy decision essentially created a business district within town that prohibited the providing of community services. The ACLU filed a lawsuit against the City on the basis that the ordinances were unconstitutionally vague.

A lack of farmworker housing that is due to intentional creation of lack of housing for some national origin groups might be national origin discrimination under the WLAD. Where housing for other ethnic groups is not objected to by decision making authorities, while housing for Hispanics is routinely denied, a case of disparate impact discrimination might be made.

CONFLICTS OF LAW

There are many potential federal, state, and municipal conflict of law. Examples include the Growth Management Act, zoning ordinances, and regulations regarding licensing and inspection of farms and housing. The maze of legal requirements is a challenge for both growers and farmworkers and can complicate efforts to provide housing in a neutral and nondiscriminatory way.

The Growth Management Act (GMA) was implemented in 1990 and is found under RCW 36.70. The original intent of the GMA was to encourage environmental stewardship, economic growth, and continued health and safety for Washington residents. RCW 36.70.010. According to a recent report from CTED, the GMA was originally intended to allow local governments to

interpret and implement GMA when creating zoning ordinances, but the original intention has been skewed as boards and outside interest groups continue to make more and more determinations without local input (CTED, p. 20).

Statutes designed for one purpose should not be implemented in such a way as to deny basic human rights, such as that to adequate housing.

LACK OF FARMWORKER HOUSING AS A HOMELESSNESS ISSUE

It is useful to discuss farmworker housing and discrimination issues within the broader context of homelessness. Homelessness is a growing concern in many areas of Washington State. High rates of homelessness cause expense to taxpayers, limit economic development, and can cause many social problems. There is a strong relationship between farmworkers and homelessness. With only a small portion of farmworkers actually being provided housing, farmworkers are vulnerable to being homeless or at risk of becoming homeless. A 2004 report by the Affordable Housing Advisory Board within CTED established that only about 10% of homes needed for farmworkers in 2003 were actually registered with the Washington State Department of Health (Housing Advisory Plan, p. 31).

Lack of housing and the constant threat of homelessness can lead to poor school attendance and limited learning; decreased nutrition and risk of various diseases; increased stress and violence within the family; increase in social problems such as littering, noise, vandalism, and public nuisance; high rates of alcohol and drug use; and difficulty in finding future housing. A 2006 report by the Regional Task Force on Homelessness in San Diego, CA, found that “as the residential areas have increased in size, the number of homeless farm worker and day laborers has decreased” (p. 67). As many housing advocates and experts assert, housing security is vital in order for people to succeed in other areas such as employment, education, and civic engagement.

POSSIBLE NEXT STEPS

We have the opportunity to make better decisions in Washington State. Together, growers and farmworkers have earned our state’s reputation as an industry leader. This distinction did not happen overnight, but through collaboration, communication, and hard work. Fortunately, there are strong federal and state fair housing laws in place. We should all work toward the same high industry standards in the area of farmworker housing. Such an achievement would serve to make our state even more of an industry leader.

There are many possible news steps the WSHRC and other interested parties could take on this issue:

- Convene stakeholder workgroup to further discuss the issue and possible actions; such a workgroup should include grower and agribusiness representatives;
- The WSHRC could join the Access to Justice Planning Team. Other state agencies, including Employment Security and CTED, are members;

- The WSHRC could file amicus briefs for ongoing lawsuits on the issue;
- The WSHRC could offer to present at more housing and homelessness conferences across the state and nationally to address the issues at the intersection of discrimination and farmworker housing;
- The WSHRC could co-host a Washington State farmworker housing summit to address ongoing issues;
- Build relationships and work more closely with other state agencies concerned about farmworker housing and discrimination issues. Such agencies could include the Governor's Commission on Hispanic Affairs, Department of Health, Employment Security, and Department of Community, Trade, and Economic Development;
- Develop a strategy for conducting outreach to farmworkers. This effort would be a continuation of current efforts and would start when the WSHRC's Tri-Cities office opens in Summer, 2008;
- Obtain funding and conduct a study on the intersections of farmworker housing and national origin discrimination in Washington State;
- Research the legal possibilities for investigations regarding the connection between lack of housing needed by predominately Hispanics and national origin civil rights violations. There are challenges in such an approach, especially regarding standing. Therefore, partnerships could be made with people and organizations that do have standing.
- Do nothing.

PROACTIVE STEPS FOR DISCRIMINATION-FREE FARMWORKER HOUSING

Short-term solutions for stakeholders, including advocates, policy makers, and growers:

- Hire bilingual staff;
- Support and help fund growers who want to be industry leaders in the area of housing;
- Fund and conduct studies regarding pesticide drift, which can permeate housing sites if they are close enough to orchards;
- Seek best practices from other organizations working on these issues.

Long-term solutions for stakeholders, including advocates, policy makers, and growers:

- Fund a study to better understand and educate the public about the income and economic stability farmworkers generate for the state;

- Create and enforce laws to encourage farmworker housing;
- Eliminate zoning ordinances that prohibit farmworkers from living or staying in certain parts of Washington cities;
- Educate the general public about how farmworkers contribute to the state's economic health and well-being;
- Growers build housing for their workers:
- Build partnerships with legal services and others working on these issues:
- Raise consciousness about the seriousness of the issue:
- Make the connection between farmworker housing, economic development, and the vibrancy of the agribusiness economy in Washington State.
- Incentivize the building of farmworker housing.

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For more information, please contact:

Marc Brenman, Executive Director
Washington State Human Rights Commission
P.O. Box 42490
Olympia, WA 98504
360-753-2558 or mbrenman@hum.wa.gov

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APPENDIX A

RESOURCES FOR GROWERS, CONTRACTORS, and ADVOCATES

There are many resources that can assist in the development of safe, clean farm worker housing. These resources include, but are not limited, to the following:

- Washington State Department of Community, Trade, and Economic Development's (CTED) Farmworker Housing Program online at www.cted.wa.gov/site/516/default.aspx.
- Rural Community Assistance Corporation Loans and Grants online at www.rcac.org.
- HUD's Community Development Block Grant online at <http://www.hud.gov/offices/cpd/communitydevelopment/programs/>.
- Low Income Housing Tax Credits; information available at www.danter.com/taxcredits.
- U.S. Department of Agriculture's (USDA) Rural Housing Service's Rental Assistance Program and USDA's Section 514 Loan Program online at www.rurdev.usda.gov

APPENDIX B

LIST OF STAKEHOLDERS

Federal Government Entities:

U.S. Department of Agriculture Rural Development (USDA)
U.S. Department of Housing and Urban Development (HUD)

Washington State Entities:

Governor's Commission on Asian Pacific American Affairs
Governor's Commission on Hispanic Affairs
Governor's Office of Indian Affairs (GOIA)
Washington Apple Commission
Washington Asparagus Commission
Washington Beef Commission
Washington Blueberry Commission
Washington Dairy Products Commission
Washington Fryer Commission
Washington Grain Alliance
Washington Potato Commission
Washington Red Raspberry Commission
Washington Seed Potato Commission
Washington Tree Fruit Research Commission
Washington Wine Commission
Washington State Commission on Pesticide Registration
Washington State Department of Agriculture
Washington State Department of Community, Trade, and Economic Development
Washington State Department of Employment Security
Washington State Department of Labor and Industries
Washington State Land Use Study Commission
Washington State Office of Superintendent of Public Instruction (OSPI)

Non-Profit

Catholic Charities Housing, Inc
Spokane - www.catholiccharitiesspokane.org/
Western Washington - www.ccsww.org/
Yakima - www.yakimadiocese.org/

Jefferson Center for Education and Research - http://www.jeffctr.org/our_work.htm

APPENDIX C**INNOVATIVE PROGRAMS AND BEST PRACTICES**

Cabrillo Economic Development Corporation

See <http://www.cabrilloedc.org/> and

http://cabrilloedc.org/docs/press%202007/vista_spring_summer_07.pdf.

First Fruits Orchards

See <http://www.firstfruits.com/website/>.

Fair Housing Development Center

See <http://www.fhdc.org/>.