



Public Services

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VERN M. REDIFER, P.E. - Director

February 5, 2018

TO: Gary Long & Parties of Record
FROM: Karri Espinoza, Office Coordinator *KE*
RE: Hearing Examiner Recommendation -- File Nos. ZON2017-00006

On, February 1, 2018 the Yakima County Hearing Examiner issued his recommendation on the rezone of certain properties South of Naches from Rural/Extremely Limited Development Potential to Agricultural. The Examiner's recommendation is enclosed.

The Hearing Examiner's recommendation will be presented to the Board of County Commissioners for consideration at a closed record public hearing. You will be notified when this date has been set. If you have any questions on the recommendation, please contact Dinah Reed at 574-2300.

Encl.: *Hearing Examiner Recommendation*
Cy: *Parties of Record*

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If this letter pertains to a meeting and you need special accommodations, please call us at 509-574-2300 by 10:00 a.m. three days prior to the meeting. For TDD users, please use the State's toll free relay service 1-800-833-6388 and ask the operator to dial 509-574-2300.

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

In the matter of an Application for a Minor Rezone by)	Yakima County File Nos. ZON2017-00005
)	
Long Ranch LLC)	
)	
To Rezone Certain Properties South of Naches from Remote/Extremely Limited Development Potential <u>(R/ELDP-40) to Agricultural (AG)</u>)	HEARING EXAMINER RECOMMENDATION

I. INTRODUCTION.

On September 7, 2017, the Yakima County Public Services Department Planning Division received a minor rezone application from Long Ranch, LLC (by and through Brad Englund of Englund Law P.S). The application requests an amendment to the official zoning map established by Yakima County Code Title 19 (Unified Land Development Code or ULDC) to change the zoning of a portion of a “split zoned” parcel from Rural/Extremely Limited Development Potential (R/ELDP) to Agriculture (AG). The balance of the parcel is already zoned AG. The affected parcel has long been used for various kinds of agricultural activity, including orchard use and livestock grazing. The area used for agricultural activities includes the portion proposed to be rezoned, although that property contains steep slopes of a type not generally used for agricultural production.

An open record hearing was conducted on the rezone application on January 19, 2018. A summary of the staff report was presented at the hearing by Dinah Reed. Attorney Brad Englund represented the applicant. No public comment was offered at the hearing, nor was there any written public comment provided during the application and State Environmental Policy Act comment periods.

II. SUMMARY OF RECOMMENDATION.

This application for a minor rezone should be approved.

Based on the staff report and exhibits, the viewing of the site and comments received at the open record hearing, and a review of pertinent provisions of the Yakima County Unified Land Development Ordinance (Title 19 YCC) and Yakima County’s Comprehensive Growth Management Plan (“*Horizon 2040*”), the Hearing Examiner makes the following

III. FINDINGS.

1. APPLICANT AND PROPERTY OWNER.

Owner Representative: Brad Englund
Englund Law P.S.
105 S. 3rd Street, #105
Yakima, WA 98901

Property Owner: Long Ranch, LLC
8730 S. Naches Road
Naches, WA 9893

2. LOCATION AND PARCEL NUMBERS.

The subject parcel is located at 8736 S. Naches Road, on the south side of the road, approximately 1,660 feet from the intersection of S. Naches Road and Lewis Road, and approximately one mile south of the City of Naches. The Assessor's Parcel Number for the property 171415-22002.

3. APPLICATION.

The applicant requests that the subject property be rezoned to Agriculture (AG) from its current R/ELDP zoning. This application is made in accordance with ULDC 19.36.030 which provides: "Rezone applications consistent with Table 19.36-1 and not dependent upon a comprehensive plan or sub-area plan amendment shall be considered minor rezones. These quasi-judicial actions, when site-specific, may be processed at any time under Type 4 review pursuant to YCC Section 16B.30.030." No new structures or other specific development are proposed with this application.

4. HEARING EXAMINER JURISDICTION.

The Hearing Examiner has jurisdiction to conduct open record hearings and issue recommendations on applications subject to Type 4 review. YCC 16B.03.030 (Table 3-1). Minor rezones are subject to Type 4 review. Id. (Table 3-2).

5. PROPERTY DESCRIPTION, LAND USE, AND ZONING AND COMPREHENSIVE PLAN DESIGNATIONS.

The subject parcel is 63.3 acres. The R/ELDP zoned strip is located on the southern half of the subject parcel. It is part of a large ridgeline of steep, rocky terrain that runs from northwest to southeast for over 6 miles. According to a letter drafted by Professor W.F. Hendrix, WSU Yakima County Extension, Animal Sciences/Irrigated Pasture/Range/Riparian Management Department, and made part of the record in this case, all 63.3 acres have excellent soil types and conditions for agricultural uses, and the steep slope vegetation comprises native grasses that are representative of vegetation types present prior to non-Indian settlement of the region. Long Ranch has planted and managed irrigated pasture on most of the targeted portion of the property. A principle feature of the current R/ELDP-40 property is that it possesses oversteep slopes, the development of which is subject to review under Title 16C YCC.

Parcels to the east and west are either split-zoned lots or within the AG zoning district, and either in agriculture production or are smaller home sites to the south along the ridgeline. Surrounding parcels range in size from approximately 2 acres to 20 acres.

Zoning: The subject property is currently zoned R/ELDP-40. Parcels to the east and west within the AG zoning district, except for parcels with steep slopes and rockier terrain associated with the long ridgeline that runs from northwest to southeast for over 6 miles through the vicinity. The ridgeline portion of the properties in the vicinity have been zoned Rural/Extremely Limited Development Potential, which has resulted in nine (9) split-zoned parcels.

Comprehensive Plan: According to Yakima County Comprehensive Plan, *Horizon 2040*, the subject property and nearby properties have been designated as Agricultural Resource and Rural Remote/ELDP future land use areas, with the Remote/ELDP designation assigned to the long ridgeline discussed above. Agricultural Resource Lands are those lands primarily devoted to or important for the long-term commercial production of horticulture, viticulture, floriculture, dairy, apiary, vegetable, or animal products, not subject to the excise tax imposed by state law, or livestock. Rural Remote/ELDP is designated as having 1 dwelling unit per 40 acres. *Horizon 2040* recognizes and maintains remote rural and extremely limited development potential area development at a level consistent with environmental constraints, carrying capacity of the land and service availability.

6. PUBLIC NOTICE.

The application was submitted on September 7, 2017 and was deemed complete for processing on September 21, 2017. A Notice of Application, Notice of Completeness, and Notice of Future Public Hearings was mailed to the applicant, agencies with jurisdiction, and adjoining property owners on September 26, 2017, with the comment period ending October 10, 2017.

Notice of the January 18, 2018 public hearing was provided in the following manner:

- Notice of Public Hearing was mailed to adjoining property owners on December 7, 2017.
- Publishing of a legal notice of the open record public hearing notice in the Yakima Herald-Republic: December 7, 2017
- Posting of hearing notice on the property: January 3, 2018

7. ENVIRONMENTAL REVIEW.

A State Environmental Policy Act review was conducted for the proposed land use action under Yakima County File No. SEP2017-00038. A Determination of Non-Significance was issued on December 7, 2017. No appeals of the threshold determination were reported.

8. REZONE ANALYSIS

There are eight considerations that must be included in a Hearing Examiner recommendation according to ULDC 19.36.030(5). The considerations are set out and addressed in turn below.

(a) *The testimony at the public hearing:* No public comment was offered on the applications either orally or in writing.

(b) *The suitability of the property in question for uses permitted under the proposed zoning:* The purpose of the AG district is to preserve and maintain areas for the continued practice of agriculture by permitting only those new uses that are compatible with agricultural activities and protect agricultural lands of long-term commercial significance. ULDC 19.11.010(1)(b). Type 1 land uses in the AG zoning district include: wineries, breweries, distilleries, farm labor shelter, dwellings, bed & breakfast inns, and any agricultural use to include silviculture, and animal feeding operations. Type 2 land uses in the AG zoning district include, for example: Retail level AG Tourist Operations, agricultural service establishments (crop dusting and spraying, harvesting and plowing services, specialized farm equipment service and repair, large animal veterinary, agricultural fertilizer and chemical product application service), farm labor centers, churches, police/fire stations, etc. (all of which would be subject to a public comment period by neighboring property owners) which can influence the final land use decision. Type 3 uses (typically not compatible with the surrounding land uses) include, for example: fertilizer/chemical manufacturing, solid waste transfer station, retail nursery, power generating facilities, sewage treatment plants, etc. (all of which require a public comment period and the opportunity to make comment at an open record public hearing) before being approved by the Hearing Examiner.

Portions of the subject property are steep and rocky, but other parts have been put to uses that are Type 1 uses in the AG zone, thus demonstrating a level of suitability of the property for AG zone uses. The existing uses include orchard production and irrigated pasture. A single-family residence has also been established on property, notwithstanding its current existing "extremely limited development potential" zoning designation. The house and other portions of the subject property are served by an existing driveway that is readily accessed from the county road; the developed areas are not "remote" in any common sense of the term. Accordingly, there is no evidence that the property as a whole is physically unsuitable for an AG designation.

(c) *The recommendation from interested agencies and departments:* No recommendations were provided.

(d) *The extent to which the proposed amendments are in compliance with and/or deviate from the goals and policies as adopted in the Comprehensive Plans, adopted neighborhood plans and the intent of Title 19 YCC:*

(1). *R/EDLP Policies:* The Remote Rural/Extremely Limited Development Potential land use category is intended to be applied in areas which are suitable for low development densities, due to a combination of physical or locational factors, including the prohibitive cost of extending or maintaining roads and services to these areas. See *Horizon 2040*, p.5|47. In these areas, agricultural uses are generally limited to grazing or other dryland farming, although soils and the land may become productive where irrigation water is available. *Id.* Lands may be mapped

into this land use category where excessively steep slopes or unstable soils are predominant features. *Id.* It is also noteworthy that the Natural Hazards policies in *Horizon 2040* at p. 319 include:

- NH 2.1 Ensure that land use practices in geologically hazardous areas do not cause or exacerbate natural processes which endanger lives, property, or resources.
- NH 2.2 Locate development within the most environmentally suitable and naturally stable portions of the site.
- NH 2.3 Classify and designate areas on which development should be prohibited, conditioned, or otherwise controlled because of danger from geological hazards.
- NH 2.4 Prevent the subdividing of ... slopes 40 percent or greater for development purposes.

The application materials indicate that a substantial portion of the subject property presents a “high risk” geologic hazard due to oversteep slopes. See Hearing Exhibit 10, p.78, and Hearing Exhibit 11. Pursuant to YCC 16C.08.02(3)(b), “High risk areas...have a high potential to fail, and include slopes greater than 40%, and consist of areas of rock fall, creep, and places underlain with unstable materials.” To change the zoning of the portions of the currently zoned R/ELDP-40 property that are not amenable to agricultural resource use reflects a deviation from the scheme of *Horizon 2040* for addressing geologic hazards, particularly to the extent that the change in zoning would technically allow subdivision of the steep slope portion of the property.

(2) *Agricultural Resources policies:* The purpose of designating agricultural lands is to protect agricultural production until such time as it is reasonably converted to other uses. See *Horizon 2040 Purpose Statement LU-R 2* and *GOAL LU-R 2*. While correspondence in the record indicates support for inclusion in the AG zoning district, (see the letter from W.F. Hendrix to Brad Englund included in Hearing Exhibit 11) the correspondence does not indicate how the rezone would serve to protect commercial agricultural production on or off the property, given that the current zoning does not prevent those uses that produce value for agricultural production on the property or at other locations. However, this review criterion does not require that the rezone advance those purposes. It only requires consideration of compliance with and deviation from *Horizon 2040*.

(3) *Compliance/Deviation:* According to Title 19 Table 19.36-1 ‘Zoning District Consistency with Comprehensive Plan Future Land Use Designations’ of Title 19, the requested AG zoning district is expressly consistent with the Rural Remote/Extremely Limited Development Potential future land use designation assigned to the property. There is no countervailing indication that the rezone would be inconsistent with the protection of commercial agricultural production in the area or other goals and policies of the Comprehensive Plan. As noted, despite the consistency reflected in Table 19.36-1, the proposed rezone of the oversteep sloped portions of the property would reflect a deviation from *Horizon 2040* natural hazard management policies.

(4) *Intent of Title 19.* Neither is there evidence that the rezone would conflict with the intent of Title 19 YCC. The R/ELDP zoning district is described in YCC 19.11.030(1) as a district that does not have adequate services available. The property is easily accessed by a private

driveway from South Naches Road. Sanitary disposal is provided via septic system and the property has an individual well for domestic water. The parcel is within the Naches-Selah Irrigation District. On the other hand, "lands not suitable for agriculture" include oversteep slopes and rock outcrops. See ULDP 19.11.010(3)(c)(iii). But this code section implies that land could be zoned as AG even though it contains areas that are not "suitable for agriculture," and those unsuitable areas could be carved out as "special exception lots." Therefore, the fact that portions of a property are not suitable for agriculture does not render the rezone of the property as a whole inconsistent with the intent of Title 19.

(e) *The adequacy and availability of public facilities, such as roads, sewer, water and other required public services:* The property has ready access to the county road system and has electrical power and irrigation water rights. These services are adequate for the current uses that are permissible as Type 1 uses in the AG zoning district. There is no requirement that there be a scale of service availability to support all possible uses in the AG district.

(f) *The compatibility of the proposed zone change and associated uses with neighboring land uses:* The parcel to the west of the subject parcel is also owned by Mr. Long and portions of that parcel have been and are in agriculture production with orchards and pasture grazing. To the northeast, parcels are small (< 1 acre to 3.35 acres) and in residential use. Parcels to the east and southeast are larger in size, have houses on them and have portions of their parcels in agricultural production. The adjacent parcel to the east that is within the R/ELDP-40 zoning district has viable agriculture land planted in orchards. Adjacent parcels and portions of the subject parcel to the north are in agriculture production. Parcels to the south are within the AG zoning district, are smaller in area and are primarily house sites at the top of a ridgeline and are not in agriculture production. Based on the residential and agricultural uses on the adjacent parcels, there is no obvious likelihood of incompatibility from the likely uses of the subject property with neighboring uses following a rezone. No public comment raising compatibility concerns was offered at any point in the processing of the rezone application.

(g) *The public need for the proposed change:* The Remote/Extremely Limited Development Potential (R/ELDP-40) zoning district is intended to recognize areas and allow development consistent with service availability and environmental constraints in remote areas and other places with extremely limited development potential. There are portions of the subject property that demonstrably have been and could be put to Type 1 uses in the AG district. The areas that present the potential geologic hazards that were the apparent basis for the current zoning can be addressed through Critical Areas Ordinance review, so there is no reason to continue to constrain the uses of the property as whole to the limited uses allowed in the R/ELDP-40

(h) *Whether substantial changes in circumstances exist to warrant an amendment to the current designation or zone:* The principal relevant change in circumstances is that, as stated by the applicant, some portions of the property have been developed with a single-family residence and other uses that bely the limitations on development potential other than for the oversteep and rocky portions of the property. As noted, there is no evidence that the property as a whole is physically unsuitable for an AG designation.

9. CONSISTENCY WITH CHAPTER 16B.06 YCC CRITERIA.

As part of project review, the reviewing official is charged with determining whether a proposed project is consistent with Yakima County's applicable development regulations or, in the absence of applicable regulations, the adopted Yakima County Comprehensive Plan. Consistency should be determined in the project review process by considering four factors found in applicable plans and regulations (RCW 36.70B.040). These include

- (a) The type of land use;
- (b) The level of development, such as units per acre or other measures of density;
- (c) Infrastructure, including public facilities and services needed to serve the development; and
- (d) The characteristics of the development, such as development standards.

The purpose of minor rezone review under ULDC 19.36.030 is to address the first factor, and that consideration is included in III.8, above. Other listed factors are not relevant to this non-project rezone application.

From the foregoing findings, the Hearing Examiner makes the following

IV. CONCLUSIONS.

1. The Hearing Examiner has jurisdiction to conduct an open record hearing on the consolidated application for a minor rezone, and to make a recommendation to the Board of County Commissioners.
2. Portions of the subject property are suitable for some, if not all of, the uses permitted under the proposed zoning, following the appropriate level of administrative review. It is not necessary that every portion of a property zoned AG must be suitable for agricultural uses.
3. No governmental entities have recommended denial of the requested minor rezone.
4. The requested rezone generally complies with *Horizon 2040* policies related to agricultural resource protection, and where potential concerns regarding natural hazard policies are presented, those concerns may be addressed through Critical Areas Ordinance review, other development regulation reviews and review of new proposed development under appropriate provisions of Title 19 YCC.
5. Existing public services and facilities are adequate to support the feasible Type 1 uses that would be permitted under the proposed zoning.
6. The proposed zone change and associated Type 1 uses appear to be compatible with neighboring land uses that have been established in or remain viable in the same zoning district proposed in this application. The compatibility of specific new Type 2 or Type 3 uses can be determined in the future upon appropriate application for review of those specific uses.

7. The proposed rezone meets the public need for promoting valuable use of portions of the property for which the protections from geologic or related hazard are not necessary.

8. Any finding in this recommendation that should be more properly considered a conclusion should be construed as such, and any conclusion or other information in this recommendation that should properly be considered a finding should be construed as such.

Based on the foregoing Findings and Conclusions, the Hearing Examiner makes the following

V. RECOMMENDATION.

The application to rezone the subject property under Yakima County File No. ZON2017-00006 as proposed in the application materials request should be APPROVED.

DATED THIS 1ST DAY OF FEBRUARY 2018.



PATRICK D. SPURGIN
HEARING EXAMINER *PRO TEM*