

# BOARD OF YAKIMA COUNTY COMMISSIONERS

## ORDINANCE 7-2018

### IN THE MATTER OF AMENDING THE OFFICIAL ZONING MAP OF YAKIMA COUNTY ESTABLISHED BY YCC 19.10.20

**WHEREAS**, Monson LLC, Monson & Sons LLC, Monson Cattle Company Inc., and Monson & Sons Cattle Company Inc. submitted a minor rezone application (File Nos. ZON2018-00002 and SEP2018-00014) on March 27, 2018 to rezone six parcels that they own, totaling approximately 132 acres, located adjacent to and northeasterly of the City of Selah, west of the Yakima River, and north of South Rushmore Road, from R/ELDP-40 (Remote/Extremely Limited Development Potential) to AG (Agriculture); and,

**WHEREAS**, in accordance with YCC 16.04 (State Environmental Policy Act), the Yakima County SEPA Responsible Official issued a Determination of Non-Significance (DNS) on August 23, 2018 after conducting an environmental review on the proposed action to approve the application; and,

**WHEREAS**, in accordance with the procedural provisions in YCC 19 and YCC 16B, the Yakima County Administrative Official provided notices of the application and the open record public hearing, and requesting comments thereon; and,

**WHEREAS**, in further compliance with the provisions of YCC 19 and YCC 16B, the Yakima County Hearing Examiner conducted an open record public hearing on the application on September 6, 2018, followed by the issuance of his recommendation on September 20, 2018 to DENY the requested rezone; and,

**WHEREAS**, after providing public notices in accordance with YCC 16B, the Board conducted a closed record public hearing on October 23, 2018 to act on the Hearing Examiner's recommendation in accordance with YCC 16B.03.030(1)(d); and,

**WHEREAS**, after closing the hearing, the Board deliberated and determined that the requested rezone should be approved on only two of the requested six parcels and denied on the other four parcels; now, therefore,

**BE IT HEREBY ORDAINED** by the Board of Yakima County Commissioners:

**Section 1. Findings.** The Board hereby makes the following findings:

- A. The subject property is prone to floods and ice flows, and therefore rezoning all six parcels to AG would be inappropriate at this time.
- B. The applicant also has land to the north for expansion, and therefore rezoning all six parcels to AG would be inappropriate at this time.
- C. Yakima County wants to be supportive of the applicant's efforts to be able to expand their business and increase the economic activity in the area.

- D. The record does not include factual data demonstrating the harm that would result from rezoning only the subject property's two smallest parcels that are furthest away from the floodway.
- E. The Board adopts the Hearing Examiner's Findings, attached hereto in Attachment A, except to the extent that they are inconsistent with the Board's above findings.

**Section 2. Conclusions.** The Board hereby makes the following conclusions:

- A. Harm was not demonstrated by rezoning only the subject property's two smallest parcels that are furthest away from the floodway from R/ELDP-40 to AG.
- B. Rezoning only the subject property's two smallest parcels provides an appropriate public benefit of increasing economic activity in the area.
- C. The recent revision of YCC Title 19 to prohibit split zoning of parcels constitutes a substantial change in circumstances that warrants a rezone on the two smallest parcels from R/ELDP-40 to AG.
- D. Rezoning only the two smallest parcels that are furthest away from the floodway from R/ELDP-40 to AG constitutes an acceptable compromise between economic development and the area's environmental constraints.
- E. The Board adopts the Hearing Examiner's Conclusions, attached hereto in Attachment A, except to the extent that they are inconsistent with the Board's above conclusions.

**Section 3. Decision.** The Official Zoning Map established by YCC 19.10.20 is hereby amended by rezoning parcels 181436-43402 and 181436-43403, constituting 6.42 acres, from R/ELDP-40 to AG, as shown in Attachment B.

**Section 4. Severability.** The provisions of this ordinance are declared separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, sections, or portion of this ordinance, or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of the ordinance, or the validity of its application to any other persons or circumstances.

**Section 5. Effective Date.** This rezone shall be effective immediately.

DONE this 18<sup>th</sup> day of December 2018

  
Ron Anderson, Chairman

  
Michael D. Leita, Commissioner

  
Attest: Rachel Michael  
Clerk of the Board

  
J. Rand Elliott, Commissioner  
*Constituting the Board of County Commissioners  
for Yakima County, Washington*

Attachments to Ordinance:

Attachment A: *Hearing Examiner's Recommendation*, dated September 20, 2018.

Attachment B: *Map of Subject Property* (depicting the parcels hereby rezoned from R/ELDP-40 (Remote/Extremely Limited Development Potential) to AG (Agriculture).

**COUNTY OF YAKIMA, WASHINGTON  
HEARING EXAMINER'S RECOMMENDATION**

September 20, 2018

In the Matter of an Application )  
For a Rezone Submitted by: )  
 )  
**Monson, LLC; Monson & Sons, LLC; )**  
**Monson Cattle Company, Inc.; and )**  
**Monson & Sons Cattle Company, Inc. )** ZON2018-00002  
 ) SEP2018-00014  
To Rezone Six Parcels Totaling 132.44 )  
Acres Northeasterly of Selah, North of )  
The South Rushmore Road, and West of )  
The Yakima River from the R/ELDP-40 )  
Zoning District to the AG Zoning District )

**A. Introduction.** The preliminary background findings relative to the public hearing process conducted for this application are as follows:

- (1) The Hearing Examiner conducted an open record public hearing regarding this rezone application on September 6, 2018.
- (2) The staff report prepared and presented by Yakima County Project Planner Phil Hoge recommended denial of the application.

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(3) Thomas Durant of PLSA Engineering & Surveying testified in favor of the rezone as the agent for the applicants/property owners.

(4) Senior Washington State Department of Fish and Wildlife Biologist Eric Bartrand and Yakima County Water Resources Senior Fish and Wildlife Resources Biologist and Yakima County Flood Control District representative Joel Freudenthal both testified in opposition to the requested rezone.

(5) Since the hearing testimony consists of detailed arguments both for and against the proposed rezone, it would be difficult to fairly summarize the hearing testimony, and it may also be helpful to the members of the Board of Yakima County Commissioners for the testimony to be set forth in full in this Recommendation in order to dispense with the need to listen to the recording of the hearing. The testimony as determined from listening to a CD copy of the recording of the open record public hearing is set forth below in Section X of this Recommendation.

(6) No written comments were submitted by members of the public regarding the requested rezone.

(7) This recommendation has been issued within 10 business days of the open record public hearing.

**B. Summary of Recommendation.** The Hearing Examiner recommends that the Board of Yakima County Commissioners deny the requested rezone from the Remote/Extremely Limited Development Potential (R/ELDP-40) zoning district to the Agriculture (AG) zoning district as recommended by Project Planner Phil Hoge without ruling out the right to submit applications for contract rezone(s) or conditional use(s) under the existing zoning without any guarantee as to the outcome of the County's consideration of such applications.

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**C. Basis for Recommendation.** Based upon a view of the site without anyone else present on September 5, 2018; the information contained in the staff report, the application, the exhibits, the testimony and the other evidence presented at the open record public hearing on September 6, 2018; and a review of the Yakima County Comprehensive Plan (*Horizon 2040*), the Yakima County Unified Land Development Code which is Title 19 of the Yakima County Code (YCC), and the provisions of the Upper Yakima River Comprehensive Flood Hazard Management Plan (1998 and 2007 update), the Hearing Examiner makes and issues the following:

## **FINDINGS**

**I. Applicants/Property Owners/Agent.** The applicants/property owners are Monson, LLC; Monson & Sons, LLC; Monson Cattle Company, Inc.; and Monson & Sons Cattle Company, Inc., 252 North Rushmore Road, Selah, Washington 98942. The agent for the applicants/property owners for this rezone application is Thomas Durant of PLSA Engineering and Surveying, 521 North 20<sup>th</sup> Avenue, Suite 3, Yakima, Washington 98902.

**II. Location.** The six parcels involved in this rezone application total 132.44 acres. They are adjacent to the northeastern Selah city limits north of South Rushmore Road and west of the Yakima River. The County Assessor's parcel numbers are 181436-43402, 181436-43403, 181436-44006, 181436-44007, 191431-22001 and 191431-23002.

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**III. Application.** The main aspects of this rezone application may be summarized as follows:

(1) This rezone application was submitted on March 27, 2018. The application requests an amendment to the official zoning map established by the Yakima County Unified Land Development Code which is Yakima County Code (YCC) Title 19. Specifically, it requests a change from the Remote/Extremely Limited Development Potential (R/ELDP-40) zone to the Agriculture (AG) zone for six parcels consisting of 132.44 acres north of South Rushmore Road and west of the Yakima River bordering the northeast city limits of Selah.

(2) The parcels are contiguous to each of other and to other property owned by one or more of the applicants/property owners. The parcels are currently used for agricultural purposes as pastureland and raising livestock. A demolition permit has been issued for the removal of an existing manufactured home on parcel no. 181436-43403 which is the only structure presently located on the parcels.

(3) There is an existing fruit packing and storage facility on adjacent property zoned Agriculture and other neighboring parcels owned by the applicants/property owners that are in agricultural use or are used for bin storage. Other nearby properties owned by others are in agriculture, residential and industrial land uses including similar fruit packing, storage and processing plants to the west; surface mining to the east; industrial sprayfields to the north and a golf course to the south.

(4) The main purpose stated for the requested rezone is to facilitate the continued expansion of the Monson fruit packing and storage facility onto the parcels owned by Monson, LLC. Although agricultural related industry uses can be allowed in the R/ELDP-40 zone, split-zoning classifications interfere with expansion because of setbacks and recently adopted YCC Title 19 provisions that prevent merger of properties across zoning boundaries.

(5) During the public hearing, the applicants/property owners agreed to limit the requested rezone to Assessor's Parcel Nos. 181436-43402 and 43403 abutting South Rushmore Road which are each 3.21 acres in size and agreed to prohibit future residential

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development on the parcels by way of a contract rezone with the County. These parcels have been purchased recently with the desire to use them in the future for expansion of the existing fruit packing and storage facility as an agriculturally related industry.

(6) Since no new structures are proposed with this application, it is a non-project rezone application. Since the rezone request is site-specific and does not depend upon a Comprehensive Plan or Sub-Area Plan amendment, YCC §19.36.030 provides that it is a minor rezone which may be processed at any time under Type 4 review. The procedures for Type 4 review of minor rezones are prescribed by YCC §16B.03.030, YCC Table 3-1, YCC §16B.03.040, YCC Table 3-2 and YCC Chapter 19.36.

**IV. Description of the Property.** The nature and characteristics of the property involved in this rezone request may be described as follows:

(1) The six parcels involved in this rezone request total 132.44 acres and are basically flat. The entire site is within the FEMA-designated 100-year floodplain, with 82% of the property lying within the Floodway and the remaining 18% lying within the Flood Fringe. (*See Attachment B to the Findings and Recommendation of the Administrative Official*).

(2) The “Floodway/Channel Migration Zone Environment” established by Yakima County’s Shoreline Master Program (SMP, YCC Title 16D) is designated on roughly the same area as FEMA’s Floodway. (*See Attachment C to the Findings and Recommendation of the Administrative Official*). The SMP’s “Rural Environment” is designated on the entirety of three parcels and is designated on most of the fourth parcel lying closest to the Yakima River. (*See Attachment D to the Findings and Recommendation of the Administrative Official*).

(3) The potential wetlands that appear to exist on the two westernmost parcels are also under jurisdiction of the SMP to the extent that they are remnants of a side channel of the Yakima River. (*See Attachment B to the Findings and Recommendation of the Administrative Official*). To the extent that the wetlands result from irrigation seepage, they are not regulated wetlands. ((YCC §16D.07.02(1) and YCC §16C.07.02(1)). Any required buffers

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associated with SMP-designated wetlands would be regulated by the County Critical Areas Ordinance (YCC Title 16C) unless the land use adjacent to the remnant channel is agricultural such as growing crops or grazing, in which case the Yakima County Voluntary Stewardship Program would apply rather than YCC Title 16C buffers.

**V. Jurisdiction.** The jurisdictional aspects of this rezone application may be summarized as follows:

(1) YCC §19.36.030 entitled “Minor Rezone – Map Amendment” states that 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.03.030.

(2) According to YCC Table 19.36-1 entitled Zoning District Consistency with Comprehensive Plan Future Land Use Designations, the requested Agriculture (AG) zoning district is consistent with, and may implement, the Rural Remote/Extremely Limited Development Potential (RR/ELDP) land use designation of the Yakima County Comprehensive Plan. The review process will consider those sections of Title 19 that control the direction and requirements for considering approval of this application.

(3) The Yakima County Hearing Examiner has conducted an open record public hearing and has prepared this recommendation for consideration by the Board of Yakima County Commissioners at a closed record public hearing that will result in a decision by that Board. The record of both public hearings are open to public inspection per YCC Title 16B.

**VI. Notices.** Notices of the September 6, 2018, public hearing were provided as follows:

|  |                 |
|--|-----------------|
| Publishing of notice of public hearing in the newspaper: | August 6, 2018  |
| Mailing of notice of public hearing to property owners:  | August 6, 2018  |
| Posting of notice of public hearing on the property:     | August 16, 2018 |

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**VII. State Environmental Policy Act (SEPA).** A SEPA Final Determination of Non-Significance was issued for this non-project rezone on August 23, 2018. Mr. Hoge explained at the hearing that this determination was reached because significant adverse environmental impacts were only possible rather than probable in the absence of knowing what specific use would be proposed for the parcels.

**VIII. Comprehensive Plan, Zoning and Land Uses.** The Comprehensive Plan, Zoning and Land Use characteristics of the subject property and properties in the vicinity may be summarized as follows:

(1) The Comprehensive Plan (*Horizon 2040*) designation for the six parcels involved in this rezone request is Rural Remote/Extremely Limited Development Potential (RR/ELDP). Property north of some of the parcels is either within the RR/ELDP or Agricultural Resource (AR) designation. Property west of the larger parcels is designated AR and west of the smaller parcels is designated RR/ELDP. Property across the river to the east is designated RR/ELDP with a Mineral Resource Overlay. Some of the property to the south is designated RR/ELDP or RR/ELDP with a Mineral Resource Overlay and some of the property is within the Selah Urban Growth Area. (*See Attachment E to the Findings and Recommendation of the Administrative Official*).

(2) The zoning of the six parcels involved in this rezone request is Remote/Extremely Limited Development Potential (R/ELDP-40). Property north of the parcels is either within the R/ELDP-40 or Agriculture (AG) zone. Property west of the larger parcels is within AG zone and west of the smaller parcels is within the R/ELDP-40 zone. Property to the east of some of the parcels is within the R/ELDP-40 zone and property across the river is within the Mining zone. Property to the south is either within the R/ELDP-40 zone or within Selah's zoning. (*See Attachment F to the Findings and Recommendation of the Administrative Official*).

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**IX. Written Comments.** The only written comments were those submitted by the Washington State Department of Ecology and by several Yakima County Divisions (Multi-Disciplinary Team) which may be summarized as follows:

(1) Washington State Department of Ecology: Rezoning a piece of property is often the first step in a proposed development. Water availability is essential for development, and not every parcel has water rights under the proponent's name. If water will be used on all of the parcels referenced in the application, the proponent should consider submitting a change application to Ecology for their existing water rights or pursuing a different water supply to those parcels. During the construction phase, if you plan to use water for dust suppression at your site, be sure that you have a legal right. Temporary permits may be obtainable in a short time-period. The concern of Water Resources is for existing water rights. In some instances water may need to be obtained from a different area and hauled in or from an existing water right holder. Questions may be directed to Jolee Ramos at (509) 454-4173 or [jolee.ramos@ecy.wa.gov](mailto:jolee.ramos@ecy.wa.gov). *(See Attachment G to the Findings and Recommendation of the Administrative Official).*

(2) Water Resources/Flood Control Zone District: Relative to ZON2018-00002, Water Resources will research the connection between the Remote/Extremely Limited Development Potential zone and the Upper Yakima CFHMP (Comprehensive Flood Hazard Management Plan) recommendations. This zone may have fulfilled one of the CFHMP recommendations. Further comments will be received during the 14-day APO/agency comment period. Relative to SEP2018-00014, the Water Resources Division opposes the proposed rezone for the following reasons:

(i) No Adverse Impact (NAI) to adjacent properties should be the goal in floodplains. This would be difficult or impossible to accomplish due to increased flood depths and velocities as consequences of warehouses reducing flood storage.

(ii) This is already an area with a history of flooding. South Rushmore Rd. was damaged in previous floods and flood insurance claims were paid to property owners for floods in 1996 and 2009. Increasing flood risks through land use changes is not an appropriate response to risk.

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(iii) Development Recommendations were dropped from the 2007 Upper Yakima R. CFHMP due to their implementation through Comprehensive Plan 2015. Zone R/ELDP-40 was added in part for sensitive, frequently flooded areas of Yakima and Naches River floodplains. A rezone would “turn back the clock” on these CFHMP recommendations in this area and perhaps lead to challenges of other R/ELDP-40 floodplains.

(iv) Three of the parcels are mapped almost entirely within the FEMA Floodway. If no change is proposed to current agricultural activities in floodways there is no need to rezone these parcels.

(v) This rezone would create islands of AG zoning within R/ELDP-40.

(vi) These problems cannot be mitigated through SEPA conditions.

Stormwater conditions will be required for future construction projects and land use changes on these parcels.

(3) Transportation: Relative to ZON2018-00002 and SEP2018-00014, as proposed there are no effects to transportation with the rezoning of these parcels. At the time of future building, modifications of lot lines, etc, Transportation will review such projects for transportation requirements.

(4) Environmental: Relative to ZON2018-00002 and SEP2018-00014, 82% of the site is in the floodway; and the remaining 18% is in the floodplain fringe. At least some of the site is within the Shoreline Master Plan's Rural and CMZ environments. Potential wetlands are indicated on the site. Type 3 streams are also indicated.

(5) Building: Relative to ZON2018-00002 and SEP2018-00014, 7/5/2018 flood plains located on parcel. Building permit required for proposed structures in addition to fire code and supplemental permits as needed. No other issues or concerns.

**X. Testimony Presented at the Hearing**. The following testimony presented at the public hearing as determined by listening to a CD copy of the recording of the hearing and including the Hearing Examiner's questions or comments in italicized parentheses will

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dispense with the need to provide a fair summary of the respective positions and arguments presented and with the need for the members of the Board of Yakima County Commissioners to listen to the recording of the hearing:

(1) **Gary Cuillier:** Okay. Good morning, everybody. This is a rezone request filed by Monson L.L.C., Monson & Sons, LLC, Monson Cattle Co., Inc., Monson & Sons Cattle Co., Inc., six parcels, 132.44 acres, east of Selah. I viewed the site as much as I could. I didn't go through the private gate on South Rushmore Road. It was pretty well-marked not to. And I did see the sign there, on the south side by the golf course on this property. I saw the sign on the west side by the main entrance to the Monson facility. And I drove around and tried to see as much as I could from the freeway. And I've read all of the staff report and the exhibits, and kind of marked them up and highlighted them. This will be a recommendation on my part. It will go to the Board of Yakima County Commissioners for a final decision. No doubt you all have seen the staff report, and the application and the staff report are very informative and detailed and well-written. My recommendation in this will be ready 10 business days from today's date. Anyone who's testifying here today would come to the lectern and speak into the microphone – because it's being recorded so that the Commissioners could have a record of the hearing they could listen to – and state their name and mailing address. I don't think I had any preliminary questions on this as I read through the materials. It's very complete, as I mentioned. And all the notice requirements were satisfied in time in all the different ways of giving notice, so we have a valid hearing. We'll go ahead. Are you ready to get started? [Phil Hoge: Yeah.] Thank you. First, we'll have Mr. Phil Hoge, the County's Project Planner for this particular matter, either summarize or give his staff report and recommendation on the matter. Then we'll go to the applicant; the applicant's representative, Mr. Durant; anyone else who wants to testify in regard to the applicant's position. Then, anyone else who is here, either pro or against, can testify in the same manner I previously described. Okay?

(2) **Phil Hoge:** All right. Thank you. I am Phil Hoge, Project Planner for Yakima County Planning Division, and I'd like to also mention that here today is Joel Freudenthal

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with the Yakima County Water Resources Division and Yakima County Flood Control Zone District. He's here in case you have any questions in that area. (*Thank you.*) This is an application that's entitled Monson Minor Rezone. File numbers are ZON2018-00002 SEP2018-00014. And, as you mentioned, the applicant is four Monson companies. You've already named them. And you've already also mentioned that the property consists of six parcels, 132 acres, and the location adjacent and northeast of the City of Selah, north of South Rushmore Road and west of the Yakima River. The application is to rezone this property from Remote / Extremely Limited Development Potential to Agriculture. It was submitted on March 27 of this year, determined complete on April 24, submitted by Thomas Durant of PLSA Engineering and Surveying. State Environmental Policy Act review was conducted on this application, and on April 27, the Notice of Application and Environmental Review was mailed to agencies and adjacent property owners, and a notice was placed in the Yakima Herald-Republic calling for comments on the application. We did receive one letter from the Department of Ecology. That's Attachment G in the staff report. And we also received comments from several Yakima County divisions, which are in Attachment H to the staff report, and I'll describe those comments later. On August 6, we issued the Determination of Non-Significance for comments to agencies and adjacent property owners, and we received no additional comments. Then, on August 23, we issued the final Determination of Non-Significance, DNS, and since there is no administrative appeal provided for under the Yakima County Code for Type 4 applications, which includes minor rezones, that is considered final for administrative purposes. Any appeals, we understand, would be to the court system, and we haven't heard of any. Public notice of the application, as you mentioned, were made in accordance with the Yakima County Code, which consisted of a legal notice in the Herald-Republic and mailing to agencies and adjacent property owners, the applicant, and the agent on April 27. The same thing, the same mailing and legal notice on May 6, and then, in addition, on August 16, two signs were posted on the property by the applicant's agent. The comments that we received include the following: the Department of Ecology mentioned water rights and that not every parcel has a water right, and if water will be used, they suggested submitting a Change of Application to Ecology or pursuing a different water supply. That will be up to the applicant to follow that if needed. They also commented to make sure that any water to be used for dust suppression have a

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legal right. Yakima County Transportation Division submitted comments indicating that there were no effects to transportation with rezoning, and at the time of future development, they would review for any transportation requirements. The Building and Fire Division similarly noted that there would be building permits required for any future structures, and fire code and supplemental permits, and they also noted floodplains existing on the property. The Environmental Section of the County noted that 82% of the site is in FEMA floodway and the remaining 18% is in the floodplain fringe, the hundred-year floodplain, that, also, part of the site is designated by the Yakima County Shoreline Master Program as Rural Environment and Channel Migration Zone Environment. They also noted that there are potential wetlands and potential Type 3 streams indicated by the County mapping systems. Finally, the Water Resources Division/Flood Control Zone District provided comments. They oppose this rezone, and I'll summarize their comments here, briefly. The first comment was, it's difficult to accomplish no adverse impact to adjacent properties during a flood as a consequence of warehouses reducing flood storage, and that refers to the rezone that will allow warehouses as Type 1 uses rather than as current Type 3 uses. So they're concerned about intensifying the floodplain. Second comment. This area has a history of flooding. South Rushmore Road was damaged in previous floods, and flood insurance claims were paid to property owners in the 1996 and the 2009 floods. Number Three. The upper Yakima River Comprehensive Flood Hazard Management Plan that was developed and issued in 1996, and it was being developed at the same time that Plan 2015, the County Comprehensive Plan, was being developed, but it was issued prior to the County Comprehensive Plan being issued, but it was recommending changes in zoning by the County to address flooding issues. And this comment goes on to say that this recommendation was implemented through adoption of the Rural Remote/Extremely Limited Development Potential designation in the Comprehensive Plan (*Plan 2015*), and then ultimately implemented through the Remote / Extremely Limited Development Potential zone. This recommendation was implemented, and as a result, it was dropped from the 2007 update of the Upper Yakima River Comprehensive Flood Hazard Management Plan. Their final comment on this subject was that a rezone would turn back the clock on these Comprehensive Flood Hazard Management Plan recommendations. And then, finally, they noted that six of the parcels are almost entirely within FEMA floodway, three of the six, and

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then the other three are in the floodway, the hundred-year floodplain. The Yakima County Code provides that there are eight considerations that must be included in the Hearing Examiner's written Recommendation, so I'll go through those briefly, and they're described in more detail in the staff report. The first consideration is the testimony at public hearing, so we're here to hear that testimony. They're actually lettered, so I'll read them by their letter. Consideration B is the suitability of the property in question for uses permitted under the proposed zoning, and the staff's finding on this was that the subject property is more suitable for the uses permitted under the current R/ELDP zone than the proposed Agriculture zone due to the property being periodically flooded, and they provided an aerial photo in Attachment I that shows the area inundated, in fact, the whole rezone area was inundated during the 1996 flood, and so it does give a graphic illustration of the flooding that does occur from time to time in that area. In terms of the appropriateness of the uses that are permitted in the existing and proposed zones, we've attached a two-page analysis called Attachment J to the staff report. It's called Analysis of Changing the Zoning from R/ELDP to AG. And what we've found is that there are 35 different land uses that are listed on Table 19.14-1, the Allowable Land Use Table, that have different Application Types depending on what zone you're in, whether it be the current and proposed zone. All the other land uses are the same, so we didn't bother to analyze the ones that are the same, because the rezone doesn't have any effect on those, so we've focused on these 35 land uses of different levels of review. And our conclusion is that it's more appropriate, the uses that are permitted in the existing zone is more suitable, primarily related to the flooding issues. Consideration C is the recommendation from interested agencies and departments, and, as I just noted, the Yakima County Water Resources Division / Flood Control Zone District recommends that the rezone be denied due to flooding issues and Yakima County's adopted planning policies related to the flooding as described in 11-B. Consideration D is the extent to which proposed amendments are in compliance with and/or deviate from the goals and policies as adopted in the Yakima County Comprehensive Plan. The staff finding on this is that, in general, the staff believes that the proposed rezone deviates unacceptably from the goals and policies of the Comprehensive Plan, and then we list several of those goals and explain why we think that. In general, the Plan designation of RR/ELDP is currently on the property, and because of the flooding, we believe that the current zone, R/ELDP-40, better implements that Plan

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designation because, as you see, the mapping criteria and the policies to protect adjacent lands from flood damage. It's really based on the flood damage. And then, also, the Upper Yakima River Comprehensive Flood Hazard Management Plan adopted by reference by the Yakima County Comprehensive Plan, and that also has policies, as explained, this rezone we believe would deviate from. Consideration E is the adequacy and availability of public services such as roads, sewer, water and other required public services, and in this one, staff mostly concurs with the application's narrative that the public facilities are mostly adequate. We did, however, note the concern about the adequacy of South Rushmore Road during the flood. That would be overtopped in a flood, it has been before. People have been rescued with boats that were back there, living back there. That could be an inadequacy during a flood or after a flood that would result in public expenses or repairs. Consideration F is the compatibility of the proposed zone change and associated land uses with neighboring land uses. The staff finding is that we believe that the uses likely allowed in the proposed AG zone are relatively incompatible with neighboring land uses due to the possibility that they would exacerbate damages to neighboring land uses in flood events compared to the uses likely allowed in the current R/ELDP-40 zone. Consideration G is the public need for the proposed change, and staff feels that the public need really is related to flooding and the need to protect adjacent property owners from increasing flood damage. And so we don't think that there is a public need, or at least a need that outbalances that public need for ameliorating that flood damage or preventing that flood damage. And, also, part of this consideration is that we're supposed to look at other AG zoned land that's already in the area that might be already adequate and, therefore, you don't need more AG land, and staff noted that there was 150 acres adjacent of open AG zoned land currently existing. So the timing is not appropriate to provide additional AG zoned land in the area due to these flooding issues. Consideration H is whether a substantial change in circumstances exists to warrant an amendment to the current designation or zone, in this case the zone. The staff finding is that adoption of the development regulations in 2015 that prevent or make difficult the expansion of plant facilities into neighboring properties when they have different zoning classifications, and this was what the application suggested, was they change the circumstances. We don't feel that that's a valid change in circumstances that warrants the proposed rezone to AG. And this is especially true of the 82% of the property that lies within the Floodway or the

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Channel Migration Zone, because these areas particularly should have zoning that limits the density of development allowable. The remaining 18% of the site lies in the 100-year floodplain and is known to periodically flood, so should also have the R/ELDP-40 zoning that limits development and density. We do provide 10 conclusions based on the findings that I just went through, and those conclusions all lead to our recommendation that Yakima County Planning Division recommends denial of the proposal to rezone the subject property from Remote / Extremely Limited Development Potential to Agriculture, subject to consideration of testimony from interested parties at this public hearing. That concludes my report. (*Thank you, Mr. Hoge. Mr. Freudenthal, would you like to say anything at this point, or are you just here to answer questions?*) [Joel Freudenthal: I'm just here to answer questions.] (*Okay. Thank you. Mr. Durant, would you like to make your presentation on this?*)

(3) **Thomas Durant:** Yes, I would. Thank you, Mr. Examiner. My name's Tom Durant. Today, I'm here as Planning Manager for PLSA Engineering and Surveying, 521 North 20<sup>th</sup> Avenue, Suite 3. I'll inform you, as I have others, Durant Development Services is still in business, although I'm pretty much winding things down. But I will promise that I will make it clear, when I'm up in front of you, who I'm representing. And today I'm representing PLSA, and I am actually representing the various entities that involve the Monson agricultural and fruit-packing/storage facilities on this property who requested this rezone. I need to elaborate a little more on public need, public benefit and what it is that they're trying to accomplish, because I probably constrained myself a little bit too much in the written application. The Monson entities own about 368 acres, continuous acres that are mostly in agricultural use but also includes ag-related industry. This is a large, continuous piece of property, and it's in, as pointed out by staff, in a location that has got some significant environmental constraints. (*That was 360?*) 368 is what I calculated. The rezone itself consists of 132 acres. The remaining property is the remaining 235 acres or so. It's already zoned AG, and I guess that's part of the point. They're using this for agricultural purposes. Their intent, the purpose of doing this, is, from the standpoint of managing a large landholding, is to provide some consistency with the zoning so that the property has the same zoning, and also to address some of the issues that you can have when you've got a zoning

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boundary and property lines that are coterminous running through your property, and that creates potential constraints for what you want to try to do with your property. So the main objective is to bring in some consistency, and since this is an agricultural use, agricultural zoning is felt to be the most appropriate. Some of the constraints – and I mentioned this in the application; we've run into it also with the City of Yakima – both the County and Yakima have recently adopted amendments to the Code that, let's say, restricts the ability to adjust property lines across zoning boundaries, and I'm dealing with a similar situation in the City, although the circumstances are quite different. The issues that you run into, first of all, is you have to deal with setbacks even though it's your own property. If you're trying to put a building up, you have fire-rating requirements if you're on or near a property line. You run into where you need to have separate water and fire suppression systems. In this case, with the R/ELDP zoning, we've got a potential concern with the fact that most of these properties, not all of them, but a lot of these properties have nonconforming lot sizes. There's also the additional time, expense and uncertainty associated with Type 3 review, especially in terms of expanding an existing, what is a Class I use in the AG zone. (*They have nonconforming what, Mr. Durant?*) The concern is, some of the lots are nonconforming, have nonconforming lot sizes. There are lot sizes in the R/ELDP zone of 40 acres, period. In the AG zone, you can actually do smaller lots for ag-related industry, for example, and so they tend to be more conforming. From the standpoint of the public benefit, I think there is a public benefit. This property is – I think the County is used to people coming in and wanting rezoning for the purpose of getting more houses. That's a common issue, and I think that's a common problem. That's not what the Monsons are trying to do. They are trying to continue operating their agricultural businesses in what is a very environmentally-constrained area. From the standpoint of the public, I can't think of really a better purpose, if they're going to use this property at all, than what they're doing with it. It's also AG use, AG production. I think it's to the benefit of the economy and the purpose of the Comprehensive Plan. I have to chuckle at staff's statement that we don't need any more AG land. I'm going to have an opportunity to call him on that someday in the future. I think I know what you meant, but I think that the use of the property, the agricultural use of the property, is what would be the best use of the property, and it is in the public benefit. It is within the purposes of the Comprehensive Plan in this area. I want to leave you with a couple of important points. I

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think it's already been met, but I want to really emphasize these. One is that, under the Title 19, under the Comprehensive Plan, AG zoning is consistent with the Rural Remote Comprehensive Plan Future Land Use designation – is considered to be consistent with the underlying Plan designation. That's why we're here. It's why we're not having to go through a Comprehensive Plan Amendment and doing this in front of the Planning Commission. The requirements and standards for development in the Flood Hazard Critical Areas are the same whether the zoning is AG or R/ELDP. I keep hearing this talk about we're setting back the clock, and I disagree with that, because those requirements don't change. They're subject to the same flood hazard standards if the zone is zoned AG, and the same critical areas requirements, the same buffers, the same permitting requirements on the Shoreline Management Act whether this is zoned AG or R/ELDP. Those standards don't change. And the third point is that, provided that you can meet all those standards, the land uses that are being considered by the applicants are permitted land uses under the current regulations regardless of zoning. So I want to get into the issue with the flood hazard because the staff report puts a great deal of emphasis on concerns about flooding and, you know, the environmental constraints. Let me back up. I also want to point out that my clients have advised me that – I think the rezone is approvable, but that they are most concerned about two parcels that total about six acres that are on the north side of South Rushmore Road. You mentioned the gate on South Rushmore Road. They are willing to concede to not rezoning the rest of the property if that's what it takes. They're mostly concerned about those six acres because that's where the ag-related industry expansion is likely to take place. A couple of things that that would do. One is that it would eliminate the 82% of the property that's in the floodway, even though the floodway regulations are going to basically prevent them from doing most of the kinds of things that staff would be concerned about. I also want to point out that that would also – and we have to deal with, of course, the concern that the rezone might permit things that they don't have any plans of doing, and I know that you have to consider that when you're doing a rezone, so if we just limit it to six acres, another concern that does kind of mostly go away is that most of the potential residential development, even though the Monsons don't plan on doing any residential development in this area and it would be hard to do anyway because of the floodplain and so on, but most of the potential residential development will go away because

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most of the land area would substantially limit what you could do on most of what's left over on the six acres, if you limited the rezone to that. I want to refer you to Page 8 of the staff report. I'm going to give you a minute to – on the top of Page 8. (Yes.) Okay. There's a couple of statements that I want to emphasize, and this is where the staff is pointing out the differences between the number of land uses that are Class I uses in the AG zone but are Class 3 uses in the R/ELDP zone. One of the statements – I'm going to paraphrase a little bit – one of the statements that was made is that Type 1 Application Types would be approved if they meet Title 19 standards. I think that's a little misleading, because they wouldn't be approved just if they meet Title 19 standards, and I'm going to jump over and refer you to the DNS, the SEPA determination, because I want to put this in the County's own words. Under Item 7 in the DNS, under "Identified Environmental Impacts," it says, "Approval of the rezone would enable 27 land uses listed in YCC 19.14 ... to be approved with a lower level of review compared to the current zoning of the site. Such uses include..." and they list several different land uses. "The probable significant adverse environmental impacts of locating such uses on the site are: 1) flood damage to public and private properties, 2) increased storm water runoff, and 3) inadequate legal water supply for future uses." But then they say, because they just said that there were probable significant adverse environmental impacts, then they say: "Any such impacts are identified and adequately addressed by YCC 16D.05 (Flood Hazard Areas) and YCC 16C.05." Again, it says Flood Hazard Areas, and then they list two other codes "to avoid or otherwise mitigate the impacts." Basically, in the SEPA determination staff acknowledged what they did not in the staff report, and that is that YCC 16D.05, which is the Shoreline Management Regulations, and YCC 16C.05, which is the Flood Hazard – actually, YCC 16C is the Critical Areas Ordinance and 05 is the Flood Hazard Regulations. Those two codes, the language is almost virtually identical. The only difference is that 16D.05 includes the regulations for shoreline permits and shoreline management, but staff has basically acknowledged in the SEPA determination that the impacts related to flood damage to public and private properties are identified and adequately being addressed by those two codes. And then, on Page 8 of the staff report, it says, "Type 1 Application Types ... would be approved if they meet Title 19 standards." They would also only be approved if they meet the standards of Title 16C and 16D. In other words, we're going to have to mitigate the flood hazard issues that they're being concerned with. (Where

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*(are you referring to there?) I'm back on Page 8. Am I jumping around too much for you? (No. Where does it talk about Title 16C and D on Page 8?) It doesn't. That's my point. It says, about the second line down, it says: "Of the 35 land uses listed in Attachment J, nine (9) are Type 1 Application Types under AG zoning, which means they would be approved if they meet Title 19 standards." My point is that, yes, but that also includes having to meet the standards of Title 16C and 16D, whichever one's applicable. (I wonder about the DNS. I kind of took it to say that – doesn't it mention that the Comp Plan adequately takes care of the situation? I thought maybe they meant because the Comp Plan might require denial of the rezone. Doesn't it mention something about the Comp Plan? Let's see. It says the lead agency has determined that the requirements for environmental analysis, etc. have been adequately addressed in the development regulations and comprehensive plan. So I was thinking maybe they meant there was no significant effect if it were denied because of the Comp Plan, but as far as saying there are no significant environmental effects if it's approved, because these other regulations adequately protect the environment, that part I don't understand.) Well, I think the part that you're reading that references the Comp Plan is pretty much boilerplate, standard language for a DNS, and they do consider the Comp Plan to be part of the substantive authority for making environmental determinations. To issue a Determination of Non-Significance, the County, the lead agency, has to find that there are no significant adverse environmental impacts. And my point is, when you get down to 7, where it says, "Identified Environmental Impacts," they identify Flood Hazard Damage to be a significant adverse environmental impact, but they can under – and I can't remember the WAC, the SEPA WAC – but you can, in making the SEPA determination, consider the implementation and enforcement of existing regulations as part of addressing adverse environmental impacts. And that's what they're saying here, is that these are adverse environmental impacts, flood damage to public and private properties which I think is the key one we're dealing with here, but then it goes on to say that they are identified and adequately addressed by the flood hazard regulations of Title 16D and 16C, Flood Management Regulations and the Critical Areas Ordinance. The point I'm making is, it's been recognized through SEPA that those titles, those regulations, will address flooding impacts, but the staff report makes the broad statement that all we have to do is meet Title 19 standards and a Type 1 application is approved. And my point is, no, you've got to meet Title 16C and 16D,*

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whichever's applicable. You have to comply with those standards. These are permitted uses in the floodplain and under both zoning districts, provided that you meet all of the requirements. And the requirements in the floodplain are stringent. Does that help? (*Yeah. I still am going to ask why the DNS is issued.*) Okay. Also, there's another statement on the top of Page 8 that I want to address that goes, "But none of the 35 land uses are Type 1 Application Types under R/ELDP-40 zoning, which means that they could all be conditioned or prohibited due to incompatibility or inappropriateness with flooding. ..." What they're saying is that – they're implying that, as Type 1 uses, they cannot be conditioned or prohibited due to incompatibility or inappropriateness with flooding, and I again want to refer you to YCC 19.30.090 subparagraph (1)(D), and particularly, under (1)(D) is lowercase Roman numeral iv. So YCC 19.30.090(1)(D)(iv). Basically, what that section of the Code says in YCC 19.30.090 is the regulations for reviewing and approving Class I uses. What that says is, "Under Type 1 review, conditions may be imposed relating to flood hazard mitigation." So what they're saying is that, in a flood hazard area, the reviewing official has the authority to condition a Type 1 use for specific purposes that include flood hazard mitigation. And then YCC 19.30.090 subparagraph 2 says, "The Type 1 review that cannot be adequately conditioned shall be denied." (*I'm with you.*) Okay. Okay. So, my point is that the statement that, if it's a Type 1 application, it cannot be conditioned or prohibited due to incompatibility or inappropriateness with the flooding is not true because under those provisions of the Code, they can be conditioned, and if they can't be conditioned adequately, they can be denied as part of Type 1 review. So, I guess, the point I'm trying to make is that, you know, go back. AG zoning is considered to be consistent with the Rural Remote Plan designation. The use of this property, the concern that this rezone is somehow going to create problems that don't already exist due to the fact that it's in a floodplain is not the case, because the regulations don't change. We're subject to the City requirements. The only things that we might avoid is going through a Class 3 review process, a public hearing process, which would deal, I would think, would deal more with land use compatibility than with critical areas or floodplain issues because of the fact that the floodplain issues are covered by the existing regulations. And so, the concern that this rezone should be denied because of it being in the floodplain or that it somehow turns the clock back, I don't think is warranted. And if we do end up not getting the portion of the property in the floodway –

which they can't do much with anyway, that's the reality – that actually substantially reduces the concern you might have about having a few additional residences which could potentially be allowed but is not real likely because it's kind of hard to get them approved in the first place and the Monsons don't want – they're not doing this for residential development anyway. They're trying to make use of a very difficult piece of property in a way that's best suited. And the zoning allows them to eliminate some of the issues they have with trying to manage a large piece of property and use it appropriately. A couple of other minor points I want to just briefly touch on – the concern about the adequacy of South Rushmore Road. We said in the application that this property can be accessed internally. I think the concern about whether South Rushmore Road is adequate transportation facilities is something that can be dealt with on a project-level basis. If it's not appropriate, I think there are other ways of getting into the property. Depending on what they actually use the property for, it may not be that much additional transportation capacity anyway. And then I just want to point out one more thing – the mapping criteria for Remote Rural. And I guess this would be particularly important if we end up with only six acres zoned ag, and that's the mapping criteria. One of the mapping criteria, Number 3, says lands which have been mapped as floodway or which have excessively steep slopes, unstable soils or other mapped critical area feature is predominant. If the portions of the property that are not in the floodway are taken out of this rezone, then it doesn't really fit under this criteria because it specifically says, "Lands which have been mapped as floodway." It doesn't say, "Lands which have been mapped as a 100-year flood plain." (*Where are you on that?*) That's in – I'm jumping around. This is in the Comprehensive Plan. Mapping criteria from the Comprehensive Plan for Remote Rural/Extremely Limited Development Potential areas, and it's on Page 47 of Chapter 5, if you want to look it up. (*Page 47 of Chapter 5 of 2040?*) Correct. Number 3 under the mapping criteria. (*And it's "Lands which are mapped as floodway"?*) Yes, it's specific. "Lands which are mapped as floodway or which have excessively steep slopes, unstable soils or other mapped critical area feature is predominant." And I can see staff saying, "Well, the floodplain is a critical area. It's predominant, so it applies." But I raise the question, if that's the case, why doesn't this just say, "Lands which have been mapped as 100-year floodplain"? So I think that's all I need to say at this point, unless you have – (*Say that again. "Lands which have been mapped as floodway."*) *What does it say after that?* "Or have excessively

steep slopes, unstable soils, or other mapped critical area feature is predominant.” I’m not sure that the grammar is that good on that, but that’s what it says. (“*Is predominant*”?) Basically, it says that “Lands which have been mapped as floodway or steep slopes, unstable soils or other mapped critical area feature is predominant.” On the property, is what it’s trying to say. (*What about it, if it’s predominant on the property?*) Well, I think what I said was that Staff would say, “Well, if a 100-year floodplain is a mapped critical area, then it’s predominant,” and that’s technically true, but then, if that’s the case, why doesn’t it just say, “Lands which have been mapped as 100-year floodplain”? Why does it specify, “Lands which have been mapped as floodway”? (*So, that’s Criterion Number 3 for including lands in the Remote – ?*) Yeah, for mapping lands in a Remote Rural. (*I see.*) And I didn’t go into it today. In the application, we went through the mapping criteria for both AG and Rural, and it kind of fits both because I think that’s probably why the two Plan designations are considered to be consistent. (*Now, let me ask you this. If the rezone is limited to the two – what, about three-acre parcels down by South Rushmore Road?*) Right. (*Why – isn’t it easier and more certain and more comfortable for the County to just apply for a Class 3 review permit, or either that or a contract rezone that specifies exactly – it might be the characteristics of this structure that might be of concern as opposed to the fact of the structure being there. Maybe there would be things that could be done to alleviate the concerns that floodwater might be over that area again, someday, maybe. And maybe a contract rezone with a specific design and so on, or a Class 3 application with a specific design that could be tweaked, or whatever, or conditioned. Wouldn’t that be easier than just a blanket rezone that would kind of throw it into a little vaguer area of starting to apply these criteria in 16C and D and so on? Or, what do you think? I mean, maybe initially this didn’t start out with just the idea of two three-acre parcels being rezoned, but that does kind of narrow down the complexity of applying for a use you want.*) Well, a couple things. One, 16C and 16D are going to apply, period. We can’t avoid those. So I think it adds to the complexity to do a contract rezone when those regulations are going to come into play anyway. (*But they don’t specify, like, you have to put structures up three feet off the ground if floodwater’s been there in 1996. I mean, they surely don’t have the specificity that –*) Well, we have to determine – we have to floodproof, or elevate, if it’s a building. We have to floodproof or elevate. We also have to account for displacement of flood waters. That’s

all in those Code requirements. (*But what if they're concerned about – See, floodproofing doesn't help the neighbors. That throws the water somewhere else.*) That's why I say we also have to account for displacement of flood waters. (*But how can you do that if you put a big building down there and there's floodwaters coming in that are being diverted somewhere else, on some other neighbor? How can you change that?*) I probably don't have the technical expertise it takes to say, specifically, what you need to do, but it's something we have to do. (*It would be hard to do with big packing/storage facilities like that, I would think. But if that's the concern, that's my only question, my only thought on the whole situation.*) We still have to deal with the property line. The property line becomes fixed with the two different zoning classifications because you can't use a boundary line adjustment to – (*So, you have to have two buildings, one on each parcel.*) Potentially, yes, or something like that. We'd have to deal with setbacks. We'd have to deal with – you know, there's some other – I run into more and more things with that issue because I'm not familiar with the Building Code, but we run into these other scenarios where, because you can't move the lot line, you have to design your project in such a way that accounts for it being there. (*But those two parcels aren't restricted because of being split-zoned. They're all in the R/ELPD, entirely in the same zone, I believe.*) Well, those two parcels, but the property to the north is zoned AG. (*Right, but, I mean, you can't put a building over the parcel to the north and these two parcels.*) If they're zoned the same, we could do a boundary line adjustment. Potentially, you could. Just reviewing the Code, it might be possible to do a merger without changing the zoning, but I'm not certain about that, if the County staff would accept that. But that's what we're trying to accomplish. (*So, what you're saying is, you might want to put a building over the north line of these two parcels, is why you need the same zone.*) That would be one scenario. Or, it might be located closer to the line. You know, again, I'm trying to emphasize that I don't see that the two zoning classifications are that different. (*Well, all I'm saying is the converse of that; it's that I don't see where an application for Class 3 use is that different from what you're asking. I mean, it could be different if you're really wanting to put a single building over the north property line of those two three-acre lots, because that couldn't be done; they're zoned differently, and I don't think you could merge a lot that's zoned one zone into a lot that's zoned a different zone. I don't think you could. Maybe you could. You'd have to have it all AG zone, probably, to do that.*) It would

be better. (*Well, you've got quite a facility out there, and I can see the need to expand. Anything else you have?*) Not unless you have more questions for me. (*It's pretty thorough paperwork and presentation. Thank you. Anyone in the audience want to say something?*)

(4) **Eric Bartrand:** Hi. Good morning, Mr. Cuillier. I'm Eric Bartrand. I'm representing Washington Department of Fish and Wildlife. I'm a Senior Fish and Wildlife Biologist. I've been doing this particular job for 16 years. I'm going to speak a little bit, also, in the discipline of fluvial geomorphology. I finished graduate courses at Central Washington University with special emphasis in that field. So I'm going to speak to things a little more of a landscape scale, but this reach of the Yakima River is functionally-impaired for anadromous cell modates, which Yakima County does have a responsibility to protect. (*Are those – you mean, trout?*) Salmon, steelhead, uh-huh. (*And trout?*) Only seagoing trout. Those would be anadromous, yes. The County doesn't have the same dedication to resident cell modates as it does to anadromous or seagoing cell modates, so that's the distinction I'm trying to make. (*So, the ones that go to salt water, the salmon, not the landlocked salmon, but the ones that go to salt water, are the ones that are protected?*) Yeah. And the County hasn't had, has obligations, special obligations to protect, help protect those. And just in general, so, that area of floodplain or former floodplain is impaired, generally, compared to historic conditions, for fish and wildlife habitat. A lot of that has been really, over the years, pushing and pushing and pushing the river into a single channel as much as possible and just getting everything to drain through there as fast as possible. Obviously, there's big advantages in that if you're trying to develop something, so we're starting really in the hole from a natural resources standpoint in this location. I would also like to point out that across the river is the Granite gravel mine operation, which is very protected by levees right next to the river, so basically all that floodplain on the adjacent side of the river is really gone across from where this proposal is, and so, functionally, this floodplain floodway is very important. Water should be – historically, water would be accessing the floodplain much more often than it is now. But because of this incised, impaired condition, it doesn't. But it is going to make things worse for anything that may impair floodplain flow during one of those large floods like we had in 1996. There are other aspects to this proposal. I'm also on the Yakima County Voluntary Stewardship Program

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work group, and I don't know what your familiarity with the Voluntary Stewardship Program is. It's a voluntary program for agriculture where there are critical areas located for them to voluntarily protect critical areas, and so right now there's no real regulation of those unless they are in shorelines. Then, shoreline regulations will influence things. I am concerned of critical areas that may be on these subject properties and, also, critical areas on adjacent properties, and the reason for that is that encouragement of development in these critical areas outside of shorelines, particularly, for instance, an orchard could potentially go in with no County review under an Agricultural designation. I think under the current zoning, there probably would be a required review for an orchard to go in. Now, an orchard isn't the worst outcome on a floodplain or floodway, but it certainly does impair function relative to what's out there now, and I'm concerned. We're early in the Voluntary Stewardship Program process, and because of the difficulty in monitoring the amount and function of critical areas compared to the baseline condition, which is taken in 2011. There's, like, a 10% fudge factor, and so, if 10% of the critical areas in the County, of one type of critical area, go away, everything's still fine. But it's when things exceed that 10% loss, the County is on the hook for those losses. In whatever time it's shown that, hey, we've lost way more critical areas than what our threshold was, we can show that, you know, here's our work, and County, you are responsible for replacing those or mitigating those. Well, that's the taxpayers of the County, and so the County does need to be cognizant of actions that may help facilitate taking away or altering functional critical areas, you know, during this early time in the Voluntary Stewardship Program process. (*I did see quite a few cattails. I don't remember if they're on these lots or not, but are you speaking of wetlands, or are you speaking of floodways and floodplains?*) Wetlands, springs, yes. It is in a location on the floodplain where there tends to be upwelling, and so there will be critical areas. (*But are you concerned more about the critical areas, or about the fact that the two lots now under consideration would be in the floodplain?*) The two lots under consideration for rezone? (*I think they're in the floodplain, not the floodway, I don't believe.*) Right. Yeah. As I said, any further impairment of flood conveyance across the floodplain in that area only compounds an already very impaired situation. (*I think there was mention of taking steps to make sure that the structure on those lots would not force more water onto other properties. Is that something you know anything about?*) Well, if they want to build something up on pilings, they might

get close to not impairing flood flow. That's an expensive way to construct, so I'm guessing that's not what they would have in mind, but that's speculation. But an orchard – if they get it into Agriculture, they could plant orchard out there without any review. And if they plant orchard out there, as I said, while it's not the worst outcome, for a flood plain to have an orchard on it, it still does further impair function. (*But if they didn't put a structure up on stilts or whatever, pilings or whatever, and it was on the ground, do you know anything about diverting the increased flows so it wouldn't damage anything?*) Well, I believe the only way they could accomplish that would be to either excavate away part of the terrace that is already very developed, which would be, I guess west. That would be towards the town of Selah. They would have to actually excavate out some of the natural landforms to create extra conveyance to compensate for that shadow that a big building would create. Do you follow me? The shadow? (*But put the water into a deeper channel somewhere?*) Well, not necessarily deeper, but just provide more space on a lateral basis. We don't want to channelize flows. Those are the ones that do cause the most damage. We want the spread-out flows. (*So, spread-out? Now –*) The only other thing they could do is work with Granite and get Granite to pull back some of their levees, and then that would be a legitimate mitigation for any shadow effects of their buildings. I don't see that happening, because Granite reinforced their levees back in 2011 pretty thoroughly. (*Right now, there are some kind of lakes there. Is that what you want, or do you want more of a channel? Is a spread-out lake what is preferable for preservation of the salmon?*) No. The best outcome for that would be to have all that regraded into a floodplain-like landform, and allow the river to overtop the banks and flow across the floodplain. That would be desirable for fish and wildlife. (*That's almost impossible, isn't it?*) Yes. So we're stuck, really, with this particular side of the Yakima River and the functional floodplain there. (*Okay. Thank you.*) Thank you. (*Is it B-a-r-t-r-a-n-d?*) That's correct. (*Thank you. E-r-i-c?*) Yes. (*Got it. Okay. Mr. Freudenthal, did you want to add anything?*)

**(5) Joel Freudenthal:** Joel Freudenthal with the Flood Control Zone District. I think your comments regarding the mitigation of effects are thoroughly accurate. It's possible to mitigate, but I don't believe the regulations have caught up with our available technology. So, in a standard world, you build a warehouse in a floodplain, for example, and that takes up

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a certain volume of area or flood storage. It is possible to mitigate for that, just in terms of the quantity of area that's been lost. You can dig a hole. You can create a side channel. You can do those kinds of things, so that you mitigate at a kind of a large scale. Okay? Here, though, you have kind of pre-existing residential structures on South Rushmore Road and even around the corner with golf courses and all those kinds of things. So when you lose a specific storage location, you're kind of changing the velocities. So if you can imagine new warehouses on South Rushmore Road, that velocity that used to be over against the terrace that Eric is talking about now is going to be over running in front of or adjacent to those warehouse structures. Adjacent to the residential structures, as well, that currently exist. We can model that today, and we can examine the effects of the loss of that conveyance, that flood conveyance, but the regulations actually don't require mitigation for that effect. Okay? In this location, it's a little bit more sensitive, if you will, in that one of the things that happens, or has happened in the last couple major flood events is, if it's a cold winter, you'll get a buildup of ice – large ice blocks – above Rosa Dam, and that first flush of flood water will send those ice blocks downstream, and this reach of the river is severely affected by those blocks of ice. And if you read the newspaper reports from 2009 and 1996, and I think 2011 as well, you'll find that these ice blocks romping around on the floodplain cause damage as well. That kind of hazard is not addressed in any way, shape or form by the current regulations. (*You're saying that a structure on these two parcels, or either of the parcels, would increase the depth of the water against the residences that are there?*) If you're talking about damage to structures, FEMA has constructed depth velocity curves, okay? So you can increase the damage to structures if you increase the depth. You can increase the damage to structures if you increase the velocity. Right? What I'm saying is the velocity and the depth will likely be changed, but what I'm concerned about is the velocity as well. If it was just a flat lake and there was no flow to it, you could dig a hole and make up for the depth change. See what I'm saying? But the velocity is about a specific location in the floodplain and how the water flows through there. When these regulations were first developed, you know, in the late '60s, early '70s, they didn't have the technology to model those kinds of two-dimensional hydraulic effects. They just modeled them across the whole floodplain and everything kind of just gets evened out and makes it easier to mitigate. (*Are we talking about the County regs in 16D and 16C?*) And even the FEMA standards that

they're based on. All the federal, state and local regulations. We're talking about all of those. Yes. (*Do you know why the County found that those regs adequately take care of all the significant environmental effects, or is a DNS issued on this?*) Yes, and I never could understand that, and I understand where you and they are at in terms of the difference between the rezone and what you're talking about of kind of a specific development proposal that could deal with these kinds of issues. Are there regulations in place? Yes. Do they, in application in the broadest sense, always, especially under Type 1 review, result in meeting the objectives of the Code? In some cases, yes. In some cases, no. It's hard to say in this location because, again, it's not a specific development proposal in front of us, and especially given the setback issues he's talking about and the actual site design issues, it's very hard for me to speak to what's the effect of this or that going to be. What I'm speaking to is, this site is in this position on the landscape. It's next to this terrace. It floods very frequently. It has additional constraints in terms of these ice jams and ice debris. It's not just adjacent land uses. There are very close residential adjacent land uses at this site, in this location. (*There's a City shop not too far away.*) That's right. Around the corner. Yeah. (*Well, say the rezone were approved and, instead of bringing in a specific contract rezone or a specific class reapplication, they brought in a specific proposal in the AG zone for a fruit packing/storage plant. Do the regs in 16D and 16C allow the County to say, you know, it's got to be opened up, there's got to be a channel here for the water to go through if it floods, this design's got to be changed, blah-blah-blah, like could be done in Class 3 or the contract rezone, are those provisions specific enough to grant the County authority to mitigate all the flood hazard and damage possibilities there?*) Yes and no, I guess. If you're in the AG zone, and this is where Eric's reference to the VSP goes, if they, so, I guess, again, what I'm saying is that I don't have a single and complete development proposal in front of me. If you're in the AG zone and you're doing things, moving materials around, changing the location of drainages, roads, levees, for agricultural purposes, okay, that's pretty much exempt. Okay? So, I can't tell you what's the topographical, physical, hydraulic conditions of any piece of AG ground in this County going to be at some point in the future. See what I'm saying? Because that's all exempt. So can you have, again, due to this lack of a single development proposal, can you have these ongoing ag activities that change the topography and at some later date, then you put your new apple-packing controlled-air facility on top of those. See what I'm saying?

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You can't then go turn the clock backwards and say, "Well, no, you have to undo these things that were exempt." See what I'm saying? It gets messy. (*Okay. Thank you. Do you have anything, Phil, especially on why a DNS was issued?*)

**(6) Phil Hoge:** I could address that, and maybe a couple other points. Doing an environmental review on a non-project rezone is kind of difficult because you don't really know what's probable there. It's all kind of possible, and I guess that would be the distinction that we've made, is there's lots of things that are possible, but they're not probable at this stage because it's non-project. So, the standard of finding something significant – the standard is "probable significant adverse environmental impact," and in this case, because there's no project, we didn't think it was probable, but we do agree it's possible, and if a project were to come in, an application for a development such as an agricultural building, we hope that we'd get a chance to review that under SEPA, that it wouldn't fall below the exclusion limits on square footage and whatnot, because this area is a flood area, and we have seen it flood, and we know icebergs floating down the river caused lots of problems in 1996, so, like I said, people had to be rescued in boats from that area. So, flooding is a significant issue, and that's what we're trying to – I guess that's why the overall big picture is, we want to hold the line, literally, hold these parcel lines, because you can't do split-zoning, and by not permitting split-zoning, which is already policy, and by not allowing the zones to change, we will maintain that line in this area between the Remote / Extremely Limited Development Potential Plan designation that is currently designated. And so, really, we wouldn't want to see a lot of building in there. Not much of anything, in fact, because it is a flood area, and that's kind of the, to cut to the chase, that's what we intend to do in not allowing the rezone. If I could address the consistency, the issue that AG zoning is consistent with the current Remote Plan designation, it's kind of a misnomer, I think, because in this sense, the word "consistent" just means it doesn't have to go through a Comprehensive Plan amendment. There's more that has – it's not totally consistent, I mean, the AG zone, the proposed AG zone is not totally consistent with the underlying Remote Plan designation. We also have to look at the policies in the Plan, and that's why we have this minor rezone process, to have you take a look at that, and have the Board take a look at it, but the things that jump out at me is why the AG zone is not consistent with the current plan

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designation. It comes out of the Upper Yakima River Comprehensive Flood Hazard Management Plan, which has been adopted into ***Horizon 2040*** by reference. There's four statements here in the Comprehensive Flood Hazard Management Plan, which says "revise zoning," and these are on Page 11 of my staff report, and they're mostly underlined at the top, if you want to look at them: "revise zoning to reduce the density of development in floodplains." That was a high-priority recommendation in '98 or '90. Maybe it was '98. I wrote '98, but maybe I thought it was '96. And then, they note that it was largely accomplished in ***Plan 2015***, and therefore, they dropped the recommendation, but the underlying intent of this was to limit density of development, which the current zoning does and the proposed AG zoning would not do. Another statement in this Flood Hazard Management Plan is, it says "Discourage land uses in the floodplain that are incompatible with periodic flooding." We believe AG zoning would allow uses that are incompatible, and that refers back to all those 35 uses analysis. The next one, which is the second bullet on Page 11, "Adopt regulations to prevent new development from causing or being susceptible to flood damage." We think the current zone does that, but the proposed Ag zone would not fulfill that. And, lastly, we have the third bullet there, the recommendation was "Preserving and promoting open space within the floodplain is consistent with the long-term Comprehensive Flood Hazard Management Plan [CFHMP] objective of promoting floodplain uses compatible with periodic flooding." And so, this is all geared toward uses that would be allowed, and we think that the current zoning implements these policies and the underlying reason for these policies are in the proposed zone. (*Now, those statements are in the Horizon 2040 Comp Plan, and in those footnotes, those are references to the Comp Plan and not to the Upper Yakima River Comprehensive Flood ... that plan has been dissolved?*) No, that plan still exists. The one I was quoting from is the update that was adopted in 2007, but the Comprehensive Flood Hazard Management Plan Policies were adopted by reference into ***Horizon 2040***. (*Which of these footnotes are you – are those Footnotes 7, 8, 9 and 10 referring to the Comp Plan, or the – ?*) To the document listed in Footnote 6. (*Oh, they're referring to the Comprehensive Flood Hazard Management Plan?*) Yes. (*Okay. But you said those same items are in the Comp Plan somewhere?*) Well, they're in the Comp Plan by reference. They were adopted by reference into the Comp Plan. So, you won't find the language in the Comp Plan, but you'll find that they refer you to the Comprehensive Flood

Hazard Management Plan by reference. (*It just says we adopt this Flood Hazard Management Plan by reference, like that?*) Yeah. The policies – it says the policies are adopted by reference. And if you need a citation, I could try to hustle that up for you. (*No, I was just trying to understand*) And if I could – a couple other points under this whole issue of consistency of the zoning designation and why we have to look at the policies. The policies for the current plan designation are R/ELDP and really call for 40-acre minimum lot sizes, yet in the AG zone, as was mentioned, you can have smaller lots for agricultural industries or for residential uses, and so, that's another reason why we think the current zoning better implements the Plan designation than the proposed zone. And they've said they don't intend to do the small lots for agriculture – for residential, but it is possible. We're trying to make sure it doesn't happen. And then, I see a danger of Agricultural zoning creep along the north side of South Rushmore Road if those two small parcels are rezoned. Monson just recently bought those and removed the homes. It's possible they could be, in the future, buying adjacent lands to those, and then you would start to have an area where they could really develop some major industrial buildings, and we think that that is better left in open space. We think that these existing lines and existing zoning better prevent construction in that area that would adversely impact the floodplain, as Mr. Bartrand mentioned, and damage to adjacent properties in that area as well. (*With a SEPA review of a non-project rezone, I've always thought that you would look, maybe, at the most potentially significant adverse use that could be allowed, perhaps under Type 1, maybe Type 2 generally permissible category, and then say would that have a probable significant adverse effect? rather than saying basically what was said here which I guess is: everything is possible, nothing is probable is what's said here by the DNS, right, everything is possible, but nothing is probable?*) Yeah, well, we pointed out those existing regulations to say that a lot of what is probable was because they are mitigated by existing regulations, limits the types of things that could escape future environmental review. (*I see.*) In previous non-project rezones – I looked at a couple of those we did four years ago, and, basically, we mitigated the rezone, and they were both non-project rezones, but essentially, the mitigation was, "Follow existing law." In a sense, we didn't really accomplish anything. (*Plus, it's kind of hard to keep track of conditions on a rezone. I mean, it really has to be noted on the map that this is a conditional rezone, or it's going to get lost in the shuffle.*) That is a tracking problem that we have recognized, yeah. (*I*

*have one other question, if you don't mind. On Page 34 of my packet, which is PLSA's map of the site, in Parcel No. 23002 and a little bit on the south edge of 22001, there's a blank white area there. Is that a berm or something? It doesn't have the lines through it on the map.) I'd have to refer to Mr. Durant on that, as this is what he submitted. It might be able to line up with aerial photo, which is Attachment A of the staff report, but – (Well, I was just wondering. Do you know, Mr. Durant, on that, why the lines don't go through part of Parcel 23002 and the one above it, a little bit?) [Thomas Durant: I think the crosshatch you're looking at says, "Edge of Crop." If you look to the west, you'll see a note that says, "Edge of Crop." This is showing the cultivated areas on the site.] (Oh, okay. That would be the pasture area?) [Thomas Durant: Yes.] (Okay. So, these white areas must have rocks, or some reason. Maybe wetlands. Maybe they're damp and –) [Thomas Durant: [Indistinct].] Okay, so I understand, then. That answers my question. Yeah. Okay. Thank you. I wondered if it was just a problem with the copy or something. Thank you.) If you'll look at the aerial photo in Attachment A to my staff report, it coincides with the non-crop areas. It looks like they're excavated areas that have water on them. (Or they might just be low areas with cattails, or something. Okay, great. Anybody have anything else? We kind of went into depth on this.)*

(7) **Thomas Durant:** Can I say something? (Sure.) I just want to repeat a couple of things. I still believe that we heard quite a bit of testimony about the floodplain and the issues and so forth, and I just want to reiterate that those issues and the means of addressing them don't change with this rezone, and the uses that are being planned are already permitted, maybe through Class 3 review. I do want to correct one statement, and I think I'm 95% sure I'm right, but the one statement that an orchard is not permitted in the R/ELDP zone – I think an orchard is permitted in the R/ELDP zone. I'll also tell you that the Monsons have no plans to put orchards in this property, and I don't think it would be suitable for that purpose. So, it's not going to happen. I did ask my client one question while you were discussing everything with the staff, because there was some discussion about the Comprehensive Flood Hazard Management Plan, and staff mentioned it. I remember it from reading the staff report, that the primary concern seemed to be the density, and that was discussed a little bit, too, that you can get more homes, smaller lots in an Agricultural zone.

My client is willing to – I asked if he's willing to – if you want to do a contract rezone, we would be willing to enter into a contract that this property would not be developed for residential use. That would eliminate that concern, anyway. So, I just wanted to bring that to your attention. (*Okay. Thank you. Anyone else?*)

(8) **Eric Bartrand:** Eric Bartrand, Department of Fish and Wildlife, and I'd just like to revisit this Voluntary Stewardship Program. So, for those areas, certainly in R/ELDP, orchard is allowed. I don't think I tried to infer that it wasn't, but the orchard would require review, and there would be conditions on how it was laid out to help maximize protection of floodplain functions, I'm sure. The County would be sure of that. However, any areas of the properties, either the subject properties or adjacent properties, that are outside shorelines jurisdiction that are now critical areas, they would fall under the VSP, which is, there's an exemption from County review. So that would open up implementation of an orchard that could have – they could create all kinds of impairments to floodplain function, to critical area functions. Critical areas, of course, are intricately tied to fish and wildlife habitat. And so, that's the tie-in with the Voluntary Stewardship Program, is that it does allow a lot more to potentially happen outside the shorelines jurisdiction. Thank you. (*Thank you, sir. Anyone else?*)

(9) **Gary Cuillier:** Okay. Thank you all for all that detail. Excellent presentations and materials here. I'll have a recommendation in 10 business days. We'll close this hearing. Thank you.

**XI. Rezone Review Criteria.** YCC §19.36.030(5) provides that the Hearing Examiner shall issue a written recommendation to approve, approve with conditions or deny proposed minor rezones based upon the following eight considerations:

(1) **The testimony at the public hearing:** As can be seen by the testimony at the open record public hearing set forth in Section X of this Recommendation, the testimony

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which favored the requested rezone from the R/ELDP-40 zone to the Agriculture (AG) zone was presented by the agent for the applicants/property owners, Thomas Durant of PLSA Engineering and Surveying. The testimony which opposed the requested rezone was presented by Project Planner Phil Hoge, by Senior Washington State Department of Fish and Wildlife Biologist Eric Bartrand and by Yakima County Water Resources Senior Fish and Wildlife Resources Biologist and Yakima County Flood Control District representative Joel Freudenthal.

**(2) The suitability of the property in question for uses permitted under the proposed zoning:** Factors that relate to the suitability of the property in question for Agriculture (AG) zoning include the following:

(a) The application and testimony of Mr. Durant primarily assert that both AG zoning and R/ELDP-40 zoning are categorized by YCC Table 19.36-1 as being consistent with the RR/ELDP Comprehensive Plan designation; that most of the same uses are permitted in both zones; that the standards and requirements of the Critical Areas Ordinance and the Shoreline Management Act would apply where applicable in both zones; and that it is expected that lands in the floodway would remain in their current agricultural use.

(b) The staff report and testimony of Mr. Hoge, Mr. Bartrand and Mr. Freudenthal on the other hand mainly assert that the parcels involved in this rezone request are nevertheless more suitable for uses permitted under the type of review prescribed for the R/ELDP-40 zone than for uses permitted under more relaxed standards of review prescribed for some of the same uses in the AG zone because of the periodic flooding of the parcels. An aerial photo in Attachment I shows that the property was inundated during the 1996 flood and the six parcels involved in this rezone application are expected to be periodically inundated by flooding in the future.

*(See Attachment I to the Findings and Recommendation of the Administrative Official).*

(c) Due to the likelihood that the parcels involved in this rezone request will be subject to serious flooding in the future, a comparison of the types of land uses that could be permitted under the current R/ELDP-40 zoning with the types of land uses that could be permitted under the proposed AG zoning is relevant in determining the suitability of the property for the requested rezone. Table 19.14-1 in YCC Chapter 19.14 entitled “Allowable Land Uses” lists the 35 land uses that have different Application Types in the existing R/ELDP-40 zone and the requested AG zone. The other land uses have the same Application Types in both zones. The differences are illustrated in a chart attached to the staff report which highlights in blue the 8 land uses that are more likely to be permitted in the existing R/ELDP-40 zone and highlights in green the 27 land uses that are more likely to be permitted in the proposed AG zone. *(See Attachment J to the Findings and Recommendation of the Administrative Official entitled “Analysis of Changing the Zoning from R/ELDP-40 to AG”)*. A lower Application Type indicates that the particular land use is more likely to be approved, based on the following:

- (i) Type 1 Applications are permitted if they meet Title 19 standards (YCC §19.30.090);
- (ii) Type 2 Applications are generally allowed but may be conditioned to achieve compatibility with the surrounding environment or be denied when determined to be incompatible (YCC §19.30.030(2)(b)(iv));
- (iii) Type 3 Applications are generally not appropriate to be approved, but can be approved when determined to be appropriate (YCC §19.30.030(3)(b)(vi)); and
- (iv) Land uses that lack an Application Type are specifically prohibited (YCC §19.14.010(2)).

(d) Compared to the proposed AG zone, the current R/ELDP-40 zone is more likely to permit land uses that have more open spaces and fewer structures and buildings. Of particular concern are buildings and uses that are more likely to be

permitted in the AG zone because they are classified as Type 1 Applications. Of the 35 land uses listed in Attachment J, nine (9) are Type 1 Application Types under AG zoning, which means they would be approved if they meet YCC Title 19 standards and critical areas and shoreline management conditions that could be imposed under YCC Titles 16C and 16(D). Mr. Freudenthal's testimony explains that those regulations are not effective in requiring mitigation for loss of conveyance of floodwaters or ice flows and in preventing damage by same. Since none of the 35 land uses are Type 1 Application Types under R/ELDP-40 zoning, they would all be subject to administrative or public hearing review after notice and an opportunity for public comments to be submitted. Mr. Hoge's testimony explained how rezoning only the two 3.21-acre lots could lead to additional agricultural or residential uses along South Rushmore Road if other nearby lots were to come under the same ownership.

(e) The concern for finding this property suitable for AG zoning is its location entirely in the FEMA-designated Floodway or Flood Fringe, especially the 82% of the property that is located in the Floodway/Channel Migration Zone. As was indicated above, the County's Water Resources Division/Flood Control Zone District opposes the requested rezone for the following reasons.

(i) No Adverse Impact (NAI) to adjacent properties should be the goal in floodplains. This would be difficult or impossible to accomplish due to increased flood depths and velocities as consequences of warehouses reducing flood storage.

(ii) This is already an area with a history of flooding. South Rushmore Rd. was damaged in previous floods and flood insurance claims were paid to property owners for floods in 1996 and 2009. Increasing flood risks through land use changes is not an appropriate response to risk.

(iii) Development Recommendations were dropped from the 2007 Upper Yakima R. CFHMP due to their implementation through Comprehensive Plan 2015. Zone R/ELDP-40 was added in part for sensitive, frequently flooded areas of Yakima and Naches River floodplains. A rezone would "turn back the clock" on these CFHMP recommendations in this area and perhaps lead to challenges of other R/ELDP-40 floodplains.

(f) The position of the applicants/property owners to the effect that the critical areas and shoreline management standards and conditions of YCC Titles 16C and 16D would apply to any proposed uses regardless of their application type does not make the parcels suitable for AG zoning where those regulations do not require effective mitigation for the loss of conveyance of flood waters or ice flows and do not require review after notice to and input from nearby property owners who could be damaged by increased depth and velocity of floodwaters and ice flows.

**(3) The recommendation from interested agencies and departments:** The recommendations expressing an opinion pro or con from interested agencies and departments consisted of the recommendations of the Yakima County Planning Division, Water Resources Division/Flood Control Zone District and Environmental Division to deny the requested rezone and the similar recommendation of the Washington State Senior Fish and Wildlife Biologist to deny the requested rezone.

**(4) The extent to which the proposed rezone is in compliance with and/or deviates from the goals and policies adopted in Comprehensive Plans and neighborhood plans and the intent of the zoning ordinance:** The requested rezone would comply with some of the goals and policies of the Yakima County Comprehensive Plan (*Horizon 2040*) that are set forth at length in the application and testimony submitted by the agent for the applicants/property owners, Thomas Durant of PLSA Engineering and Surveying, and would not comply with some of the goals and policies of the Yakima County Comprehensive Plan (*Horizon 2040*) which are set forth at length in Project Planner Phil Hoge's staff report. Mr. Durant pointed out that the parcels generally meet the mapping criteria for both the

Agricultural Resource (AR) and Rural Remote/Extremely Limited Development Potential (RR/ELDP) Comprehensive Plan ***Horizon 2040*** designations and that both the AG zone and the R/ELDP-40 zone are considered consistent with the RR/ELDP Comprehensive Plan designation per YCC Table 19.36-1. He indicated that the parcels involved in the rezone request more closely meet the mapping criteria for the Agricultural Resource Comprehensive Plan designation than the Rural Remote/Extremely Limited Development Potential designation in the following respects:

(a) In several respects, the property more closely meets the mapping criteria for Agricultural Resource rather than Remote Rural. While much of the property meets the Remote Rural criterion of being generally beyond the existing all-weather public road access network, it all has direct access to public roads via the main entrance to the packing plant. The provision of services is not cost-prohibitive for the use of the properties intended by the proponent because they are already being provided. The lands generally qualify for the Agricultural Resource land use designation and are in agricultural use. They are not outside of an existing fire district or more than five road-miles from a fire station. Pasture and grazing land, while outside of an irrigation district, is irrigated and served by an irrigation company.

(b) The mapping criteria from the comprehensive plan for Agricultural Resource designated areas that are being met include: The rezone area meets criteria for Agricultural Resource lands of long-term commercial significance as defined by State laws and regulations. Some of the soils are prime farmland according to the Natural Resource Conservation Service. The property has compatible uses, i.e., fruit packing and non-agricultural accessory uses that are consistent with the size, scale and intensity of existing agricultural uses. While the site is not in the boundaries of an irrigation district, it is irrigated and receiving water. It includes lands enrolled in current use assessment programs and is located outside of urban growth areas. Some of the property was previously zoned General Agricultural.

Mr. Durant also indicated that the following Comprehensive Plan goals and policies are supportive of the requested rezone:

- (a) Goal LU-R 1: Maintain the rural character of the County.
- (b) Policy LU-R 1.1: Ensure that only rural densities and uses are permitted.
- (c) Goal LU-R 3: Define the limits of services available to support a rural way of life.
- (d) Policy LU-R 3.4: Existing water systems should be used if available and capacity exists ...
- (e) Goal LU-R 11: Recognize and maintain Remote Rural/Extremely Limited Development Potential areas and allow development at a level consistent with environmental constraints and service availability in remote areas and other places with extremely limited development potential.
- (f) Policy LU-R 11.3: Yakima County should not extend County roads into those lands which fall under the Remote Rural/Extremely Limited Development Potential category.
- (g) Goal LU-ER-AG 1: Maintain and enhance productive agricultural lands and discourage uses that are incompatible with farming activities.
- (h) Policy LU-ER-AG 1.1: Encourage conservation of the County's high-quality agricultural lands for productive agricultural use and protect the opportunity for these lands to support the widest variety of agricultural crops.
- (i) Policy LU-ER-AG 1.3: Continue to allow agriculturally-related industry on agricultural resource lands where such use requires an agricultural location.
- (j) Policy LU-ER-AG 1.9: Establish a single agricultural zone with a minimum parcel size of one quarter-quarter section (i.e., forty (40) acres less rights-of-way), in order to allow reasonable and economic agricultural use and discourage the conversion of agricultural lands to residential use. Allow for the creation of parcels less than forty (40) acres in size where required to encompass agriculturally-related industrial uses.

On the other hand, Mr. Hoge indicated that the current R/ELDP-40 zoning of the six parcels involved in this rezone request which are within the Yakima River's 100-year Floodplain, Floodway/Channel Migration Zone and Rural Environment of Yakima County's Shoreline Master Program and which are within the Comprehensive Plan RR/ELDP designation is more compliant with the purposes of the RR/ELDP Plan designation than the requested AG zoning. Those purposes include protection of the environment and retention of open spaces due to the environmental constraint of flooding and protection of shorelines or critical areas features such as sensitive wildlife habitats. (*See Horizon 2040 Purpose Statement LU-R-11*). Mr. Hoge also indicated that the requested rezone to Agriculture (AG) deviates from following emphasized language of the mapping criteria, goals and policies of the County's Comprehensive Plan ***Horizon 2040***:

(a) Mapping Criterion No. 3: Lands which have been mapped as floodway, or which have excessively steep slopes, unstable soils or other mapped critical area feature is predominant.

(b) Goal LU-R 11: Recognize and maintain Remote Rural/Extremely Limited Development Potential areas, and allow development at a level consistent with environmental constraints and service availability in remote areas and other places with extremely limited development potential.

(c) Policy ED 3.13: Continue to allow agriculturally-related industries, such as cold storage plants, controlled atmosphere, produce packing facilities, processing facilities, and wineries and their accessory uses such as tasting and sales rooms, to locate in appropriate rural or agricultural resource areas, with appropriate siting and environmental considerations.

(d) Policy ED 4.2: Encourage farm practices which contribute to more efficient agricultural production, and do not impose restrictions on agriculturally-related activities unless they clearly relate to the public health, safety and welfare.

(e) Goal NS 7.1: Implement the general policy goals of the Shoreline Management Act as listed below (WAC 173-26-176(3)):

c) Protect and restore the ecological functions of shoreline natural resources. ...

g) Prevent and minimize flood damages.

(f) Policy NS 7.17: The Floodway/Channel Migration Zone environment should protect the water areas, associated vegetation, islands, associated overflow channels, and channel migration areas. This environment acknowledges the river's need to move within parts of its floodplain, and emphasizes the preservation of the natural hydraulic, geologic and biological functions of the county's shorelines that are constrained by severe biophysical limitations.

(g) Policy NS 7.19: Generally, commercial, industrial, mining, non-water oriented recreation, roads, utilities, parking areas, and residences should not be located in the Floodway/Channel Migration Zone Environment. Other uses (recreation, resource uses, etc.) should be carefully limited to protect shoreline functions. Restrict activities that may degrade the actual or potential value of this environment, and severely restrict development in hazardous areas. Modifications that harden or fix stream banks and channels should be discouraged.

(h) Policy NS 7.80: Limit commercial uses to those activities that are particularly dependent upon a shoreline location. Other commercial uses should be encouraged to locate upland. Give first preference to water-dependent commercial uses over non-water-dependent commercial uses; and give second preference to water-related and water-enjoyment commercial uses over non-water-oriented commercial uses. Allow non-water-oriented commercial uses in limited situations.

(i) Policy NS 16.2: Encourage and support the retention of natural open spaces or land uses which maintain hydrologic functions and are at low risk to property damage from floodwaters within frequently flooded areas.

(j) Policy NS 16.3: Protect public and private properties by limiting development within hazardous areas of the stream corridor.

(k) Policy NS 17.5: Plan for and facilitate returning Shoreline rivers to more natural hydrological conditions, and recognize that seasonal flooding is an essential natural process.

(l) The June 2007 Update of the Yakima River Comprehensive Flood Hazard Management Plan (CFHMP) adopted by reference as part of *Horizon 2040*: One of the high-priority recommendations in the prior CFHMP (dated 1998) was to revise zoning to reduce the density of development in floodplains. This was largely accomplished by the new RR/ELDP designation in the 1997 comprehensive plan (Plan 2015) and in the new R/ELDP-40 zone in the new zoning ordinance adopted in 2000. ((See *Upper Yakima River Comprehensive Flood Hazard Management Plan (CFHMP)*, June 2007 Update, page ES-5)). This plan designation and zone were applied to floodplains with the intention to implement the following objectives of the CFHMP:

(i) Preserve opportunities for floodplain uses that are compatible with periodic flooding. Discourage land uses in the floodplain that are incompatible with periodic flooding. (See 2007 CFHMP, page 8-53).

(ii) Adopt regulations to prevent new development from causing or being susceptible to flood damage. (See 2007 CFHMP, page ES-4).

(m) The following Preferred Alternative and Recommended Action from the CFHMP June 2007 Update emphasizes that the above objectives are still valid: Preserving and promoting open space within the floodplain is consistent with the long-term CFHMP objective of promoting floodplain uses compatible with periodic flooding. (See 2007 CFHMP, page 8-73).

On balance, the current R/ELDP-40 zoning is more compliant with the Comprehensive Plan mapping criteria, goals and policies than the requested AG zone and is more compliant with the intent of YCC Title 19 in this regard than would be the requested AG zoning.

**(5) The adequacy of public facilities such as roads, sewer, water and other required public services:** The narrative for the application correctly indicates that the primary accesses to the parcels involved in this rezone request are from the Monson Fruit packing and storage facility, from North Rushmore Road, and from South Rushmore Road; that the packing and storage facility has its own public water and industrial wastewater facilities; and that agricultural areas of the parcels do not have a need for these utilities, except for irrigation which is currently provided. Even though most public facilities are adequate, South Rushmore Road is susceptible to flood damage due to its location in the floodplain. Flood waters overtop this road in flood events, including documented damage during the 1996 flood. (*See 2007 CFHMP, page 8-73*). If, in the future, uses are proposed on the rezoned property for which the existing facilities would not be adequate, the uses would only be approved with permit conditions requiring the public facilities to be made adequate. North Rushmore Road is in the process of being vacated between 280 feet north of East Naches Avenue and the northern end of the road. The entirety of South Rushmore Road is under the jurisdiction of Selah. The north-south portion is paved, and the east-west portion is gravel.

**(6) The compatibility of the proposed zone change and associated uses with neighboring land uses:** The applicants/property owners contend that the requested rezone and associated uses would be compatible with neighboring land uses for the following reasons:

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Monson Cattle Company, Inc.; and  
Monson & Sons Cattle Company, Inc.  
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(a) The narrative for the application and testimony takes the position that most of the agricultural and ag related industry land uses that are allowed in the AG zone are also permitted in the R/ELDP-40 zone except with a higher level of zoning review required. Surrounding land uses include similar agricultural pasture and livestock raising with scattered residences and industrial and institutional land uses to the west in the Selah city limits. The Tree Top industrial sprayfields which is an agricultural/industrial land use is to the north of the parcels and surface mining is to the east of the parcels across the river.

(b) Mr. Durant concludes that most of these land uses would not substantially conflict with the use of the parcels involved in this rezone request. The possible exception would be residences that may have conflicts with both agriculture and agriculturally related industries, but there are currently few residences in the surrounding area and additional residences are discouraged by the floodplain designation of the parcels involved in this rezone request and surrounding properties. The golf course areas south of South Rushmore Road are separated from the parcels involved in this rezone request by distance and by their orientation away from the parcels.

On the other hand, the County Planning Division, Water Resources/Flood Control Zone District and Environmental Division, as well as the Washington State Department of Fish and Wildlife, contend that the requested rezone and associated uses would not be compatible with neighboring land uses for the following reasons:

(a) The uses likely allowed in the proposed AG zone are relatively incompatible with neighboring land uses due to the possibility that they would exacerbate damage to neighboring land uses in flood events, compared to the uses likely allowed in the current R/ELDP-40 zone. This would also be the case even if the applicants/property owners reduced their rezone request to the two 3.21-acre parcels north of South Rushmore Road and agreed not to construct residences on them. The testimony indicated without contradiction that an agriculturally related industry use such as an

extension of the existing fruit packing and storage facility onto the two parcels would likely increase the depth and velocity of floodwaters upon neighboring land uses to their damage.

(b) As previously noted, the 27 land uses that would be more likely to be permitted in the AG zone than in the R/ELDP zone, including 9 land uses that would become Type 1 land uses, would be mostly incompatible with nearby land uses because they would reduce the amount of open spaces needed during flooding events within the 100-year floodplain/floodway. For example, bin storage and permanent buildings constructed for agriculturally related industries are currently Type 3 applications in the R/ELDP-40 zone that would receive careful review after notice of the application and an opportunity for nearby property owners and others to provide comments. But they would become Type 1 applications in the requested AG zone that would not be subject to Type 2 administrative review or Type 3 public hearing review. The comments of the Yakima County's Water Resources Division/Flood Control Zone District are also relevant to this criterion:

(i) No Adverse Impact (NAI) to adjacent properties should be the goal in floodplains. This would be difficult or impossible to accomplish due to increased flood depths and velocities as consequences of warehouses reducing flood storage.

(ii) This area has a history of flooding. South Rushmore Rd. was damaged in previous floods and flood insurance claims were paid to property owners for floods in 1996 and 2009. Increasing flood risks through land use changes is not an appropriate response to risk.

On balance, the factors supporting a finding of compatibility of the requested rezone and associated uses with neighboring land uses are outweighed by the hazards and potential damages that certain Type 1 uses in the AG zone could cause neighboring land uses in the absence of specific regulations that address loss of conveyance of floodwaters and ice flows

that could damage nearby properties and in the absence of administrative or public hearing procedures for the consideration of such Type 1 uses.

**(7) The public need for the proposed change. Public need shall mean that a valid public purpose, for which the Comprehensive Plan and Title 19 YCC have been adopted, is served by the proposed application. Findings that address public need shall, at a minimum, document:**

- i. Whether additional land for a particular purpose is required in consideration of the amount already provided by the plan map designation or current zoning district within the area as appropriate; and,**
- ii. Whether the timing is appropriate to provide additional land for a particular use;**

The public need for the requested rezone is likewise a matter of disagreement as indicated by the following evidence presented for this application:

(a) The narrative for the application and Mr. Durant's testimony states that there is a public need for additional tree fruit packing and storage capacity and that providing the additional capacity by expanding an existing facility should be considered preferable to requiring the company to expand its facilities in separate locations. The proposed rezone also provides consistency with the existing agricultural use of these properties.

(b) Mr. Hoge, on the other hand, asserts the following reasons for concluding that there is not a public need for the requested AG zoning:

(i) The need described by the application is more a private need than a public need. The more valid public purpose at this site is to continue the

current R/ELDP-40 zoning because it serves ***Horizon 2040*** Goal LU-R 11 for the RR/ELDP Comprehensive Plan designation which is to recognize and maintain RR/ELDP areas, and allow development at a level consistent with environmental constraints and service availability in remote areas and other places with extremely limited development potential. (emphasis added).

(ii) ***Plan 2015*** recognized the environmental constraint posed by periodic flooding of this area. Accordingly, the entire site was designated RR/ELDP when ***Plan 2015*** was adopted in 1997, and this designation continues today. To implement the above goal the site was zoned R/ELDP-40 when the new zoning ordinance was adopted in 2000.

(iii) The 1998 Upper Yakima River Comprehensive Flood Hazard Management Plan (CFHMP), which was being developed at the same time as ***Plan 2015***, also undergirds the current R/ELDP-40 zoning. This CFHMP recognized a region-wide problem with the zoning ordinance that had existed prior to 2000 due to the fact that zoning was inconsistent with the policies to limit development in floodplains, and specifically at the area involved in this rezone request. The CFHMP recommended changes to zoning that were implemented at the site in 2000 by adoption of the R/ELDP-40 zone in the new 2000 zoning ordinance. The June 2007 Update of the CFHMP dropped this recommendation based on the issue being “largely solved by Plan 2015 and the zoning designation therein.” (See CFHMP, Appendix B, page 1 (Issue RW11)).

The following comments by the Yakima County Water Resources Division/Flood Control Zone District confirm this and that the R/ELDP-40 zoning for the parcels involved in this rezone request is critical to achieving this valid public purpose:

“Development Recommendations were dropped from the 2007 Upper Yakima R. CFHMP due to their implementation through ***Comprehensive Plan 2015***. Zone R/ELDP-40 was added in part for sensitive, frequently flooded areas of Yakima and Naches River floodplains. A rezone would ‘turn back the clock’ on these CFHMP recommendations in this area and perhaps lead to challenges of other R/ELDP-40

floodplains.”

(iv) Additional AG-zoned land is not required in the area due to approximately 150 acres of adjacent open AG-zoned land currently existing. The timing is not appropriate to provide additional AG-zoned land in the area due to flooding issues.

On balance, there appears to be a private need or desire for the rezone, but not a public need for the requested rezone.

**(8) Whether substantial changes in circumstances exist to warrant an amendment to the current zone:** The final disagreement as to the merits of this rezone application is whether there have been substantial changes in circumstances to warrant the rezone. The respective positions regarding this criterion are as follows:

(a) The narrative for the application and Mr. Durant’s testimony asserts that the requisite change in circumstances is the adoption, in 2015, of development regulations that either prevent or make difficult the expansion of plant facilities into neighboring properties under the same ownership when they have different zoning classifications or “split-zoning.” By combining all of the Monson Fruit holdings into a single zoning classification, expansion can be facilitated in a manner that is consistent with rural and agricultural land use policies.

(b) On the other hand, the Planning Division staff report and Mr. Hoge’s testimony asserts that the adoption of the development regulations in 2015 that prevent or make difficult the expansion of plant facilities into neighboring properties when they have different zoning classifications is not a valid substantial change of circumstances that warrants the proposed rezone to AG. This is especially true for the 82% of the property that lies within the Floodway or Channel Migration Zone because these areas particularly should have zoning that limits the density of allowable development. The remaining 18% of the property subject to this rezone request lies

within the 100-year Floodplain and is known to periodically be flooded, so should also have the R/ELDP-40 zoning that limits development and density. The two small parcels, for example, are each larger than three acres and therefore could each be short-platted to increase the current residential density if the proposed rezone to AG were to be approved absent a contract rezone prohibiting that result. Absent a contract rezone limitation, AG zoning would be inconsistent with the current RR/ELDP plan designation because it would allow small lots to be created in violation of the following *Horizon 2040* policy:

**Policy LU-R 11.1:** Minimum parcel size for new development within the RR/ELDP category should be one quarter quarter section (i.e., approximately 40 acres less rights of way).

On balance, the evidence does not establish a substantial change in circumstances that warrants a rezone of any of the six parcels involved in this request from the R/ELDP-40 zone to the AG zone.

**XII. The Consistency of the Rezone with Development Regulations and with the Comprehensive Plan under the Criteria set forth in YCC §16B.06.020** is to be determined by a consideration of the following factors:

**(1) The types of land uses permitted at the site** would include the types of uses allowed within the AG zoning district, including the expansion of the existing agriculturally related industry located near one or more of the subject parcels, subject to conditions required by YCC Title 16C and Title 16D.

**(2) The density of residential development or the level of development such as units per acre or other measures of density** cannot be determined relative to a non-project rezone without a specific proposal to evaluate.

**(3) The availability and adequacy of infrastructure and public facilities** cannot be evaluated since a specific use is not proposed for this non-project rezone request.

**(4) The characteristics of any future development** likewise cannot be determined without a specific proposal to evaluate as to consistency with applicable development standards.

## **CONCLUSIONS**

Based on the foregoing Findings, the Hearing Examiner reaches the following Conclusions:

(1) The Hearing Examiner has jurisdiction to make a recommendation to the Board of Yakima County Commissioners regarding this minor rezone application.

(2) The nine criteria prescribed by YCC §19.30.080(7) that the Reviewing Official must address in findings that state the specific reasons upon which the decision or recommendation for all Type 2, 3 and 4 reviews is based do not apply to this non-project rezone request which does not propose a specific use or development.

(3) The notice requirements for the open record public hearing regarding this application have been satisfied.

(4) The minor rezone to Agriculture (AG) would allow the property owner to apply for an expansion through a Type 1 review process of the Monson agriculturally related industry of a nearby fruit packing and storage facility onto the rezoned parcels subject to conditions required by YCC 16C and YCC 16D that would not address the lack of conveyance of floodwaters and ice flows that could damage nearby properties and do not provide for administrative or public hearing review with the input of nearby property owners.

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(5) Yakima County's Planning Division, Water Resources Division/Flood Control Zone District and Environmental Division all recommend denial of the proposed rezone to AG due to the area being subject to periodic flooding.

(6) Undisputed evidence submitted at the hearing was to the effect that federal, state and local governments have spent millions of public dollars within the Upper Reach of the Yakima River over the past two decades to set back levies, to move auto wrecking yards out of the floodplains, to restore fish and wildlife habitat and to reduce the costs of damage caused by periodic flood events and that the requested rezone to AG would "turn back the clock" on these efforts and on implementing the 2007 Update of the *Upper Yakima River Comprehensive Flood Hazard Management Plan*.

(7) Due to environmental constraints related to flooding, the current R/ELDP-40 zone better implements the goals and policies of ***Horizon 2040*** at the subject site than the proposed AG zone.

(8) Due to potential flooding issues, the parcels involved in this requested rezone are more suitable for uses likely to be permitted under the current R/ELDP-40 zone than for uses likely to be permitted under the proposed AG zone.

(9) Some Type 1 uses in the proposed AG zone would be incompatible with neighboring land uses if they include structures or uses that would increase the density of development in the floodplain/floodway which in turn would increase the depth and velocity of floodwater and exacerbate property damage during flooding events.

(10) Public services and facilities are generally adequate to support uses that could be permitted under the proposed zoning, but South Rushmore Road would suffer damage during flooding events, and require public expenditures for repairs afterwards to be able to serve the property.

(11) Any public purpose served by the requested rezone is outweighed by the public purpose to limit flood damage which is better served by the current R/ELDP-40 zone than the AG zone.

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(12) No substantial changes in circumstances exist to warrant a rezone from the current R/ELDP-40 zone to the requested AG zone.

(13) The proposed rezone from the Remote/Extremely Limited Development Potential (R/ELDP-40) zone to the Agriculture (AG) zone would not satisfy all of the requirements for a rezone set forth in YCC §19.36.030(5) or the consistency standards set forth in YCC §16B.06.020.

(14) A denial of the requested rezone would not rule out subsequent contract rezone applications or conditional use applications for uses allowed as such in the existing Remote/Extremely Limited Development Potential (R/ELDP-40) zone.

## **RECOMMENDATION**

The Hearing Examiner recommends that the Board of Yakima County Commissioners deny this application to rezone parcel numbers 181436-43402, 181436-43403, 181436-44006, 181436-44007, 191431-22001, 191431-23002 located adjacent to the northeastern Selah city limits north of South Rushmore Road and west of the Yakima River from the existing Remote/Extremely Limited Development Potential (R/ELDP-40) zone to the Agriculture (AG) zone.

**DATED** this 20<sup>th</sup> day of September, 2018.

  
Gary M. Cuillier  
**Gary M. Cuillier, Hearing Examiner**

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Attachment B

## Monson Rezone

ZON2018-000002  
SEP2018-00014

Parcels Hereby  
Rezoned from  
R/ELDP to AG

## Tax Lots

Parcel Lot lines are for visual display only. Do not use for legal purposes.



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Plot date: Dec 10, 2018; 2

