

# HALVERSON | NORTHWEST LAW GROUP

Public Services 

FEB 21 2023

February 21, 2023

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Tommy Carroll  
Yakima County Public Services Department  
Planning Division  
128 North 2<sup>nd</sup> Street  
4<sup>th</sup> Floor Courthouse  
Yakima, WA 98901

Re: Town of Naches' Request to Amend Naches' Urban Growth Area  
Case: LRN 2021-0001/SEP2021-0010

Dear Mr. Carroll:

On behalf of the Town of Naches, its staff, and its land use consultant, Bill Hordan, we request that this letter and its attachments become part of the record in the above-referenced matter in which the Town has asked Yakima County to consider expanding the Town's Urban Growth Area. For the sake of those who may not be familiar with the history of the Town's request, we have summarized below the steps taken to this point.

The Town of Naches applied on an emergency basis to expand its Urban Growth Area and the Yakima County Board of County Commissioners adopted Resolution 085-2021 on March 30, 2021, accepting the Town's application for processing on an emergency basis. That Resolution has never been repealed. The initial proposal was to add 8 parcels to the UGA and the Yakima County Planning Division's Staff Report dated December 7, 2021 recommended approving the addition of all 8 parcels, totaling 40.17 acres. Three of these parcels (Yakima County Assessor's Parcel Nos. 171403-42004, 171403-42005, and 171403-42023) comprising approximately 23.07 acres are owned by John R. Diener, 130 Kel-Lowry Road, Naches, WA, 98937, lying along the Old Naches Hwy, East of the Town, but adjacent to the western edge of the current UGA (hereinafter sometimes referred to as the "Diener Property"). These three parcels are currently designated agricultural resource, but have not been farmed in over 10 years and are within close proximity to the new school in Naches, the new wastewater treatment plant improvements and future roadway improvements planned for Kel-Lowry Road. Mr. Diener resides on parcel 171403-42005 and has promoted the addition of his property to the Naches UGA.

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In a letter to Yakima County Senior Project Planner Tua Vang dated September 2, 2021 (a copy of which is appended as Attachment "A"), the Department of Commerce which routinely comments on Urban Growth Area matters, wrote that the land quantity analysis from Yakima County Planning Staff appeared to demonstrate that the proposed UGA expansion exceeded the amount of land Naches needed to accommodate 20 years of projected growth.

While County Staff had recommended approval for all 8 parcels, given that 5 of the parcels seemed less apt to be utilized for development than the Diener Property in the next 20 years; less likely to have public utilities expanded to service them, the Town decided to pare down its request for UGA expansion to the Diener Property at the time of the public hearing before the Yakima County Board of County Commissioners on February 15, 2022. Testimony was taken that date by the Board of Yakima County Commissioners, and March 22, 2022, was suggested as a date for future deliberation and a decision on the UGA application. However, on that date no deliberations occurred nor was any motion made. There was in effect no resolution of the Town's application, yet the emergency Resolution 085-2021 still existed.

Another part of the Department of Commerce's September 2, 2021 letter, encouraged the Town of Naches to refine and revise its proposal so as to identify property within the current UGA not likely to develop over the next 20 years that could be removed in order to add land that was more suitable for development. In hopes of obtaining a favorable decision from the County Commissioners, the Town of Naches met with Staff and attempted to follow the path encouraged by the Department of Commerce. Naches modified its proposal to do what the Department had suggested, suggesting a 'land swap' by removing property the Town identified as not likely to develop over the next 20 years, in order to add land that it felt was. Therefore, in June of 2022, the Town again proposed adding the Diener Property (23.07 acres), while taking out 28.23 acres of land currently farmed which, in the Town's opinion, had little realistic possibility of being developed for residential purposes during the ensuing 20-year cycle. This 28.23 acres in question (Parcel 171403-22015) is owned by Dee Huck and has been continually farmed for decades (hereinafter this property shall sometimes be referred to as the "Huck Property").

The application revision, not just eliminating 5 parcels from the original application, but adding the feature of taking out property already in the current UGA (the Huck Property) was a material change requiring Planning authorities to start the whole process over again in terms of public hearings, planning commission recommendation, and future hearing before the Yakima County Board of County Commissioners. It also generated a new Staff Report dated September 14, 2022.

During Yakima County Staff's review of the revised application, Yakima County Planning Officials indicated there was new population data from the most recent census showing Naches with a higher population than earlier projections had revealed that would affect the County's land capacity analysis and ultimately the need for additional land to be added to the UGA. The data incorporated into the updated Yakima County Staff Report revealed

a deficit, rather than a surplus. The most recent land capacity analysis conducted by the Yakima County Department of Public Services – Planning Division, demonstrated a UGA deficit of 15 acres of vacant land for residential, commercial, community facilities and streets made worse over the next 20-year cycle by swapping the Huck Property for the Diener Property. The deficit would be eliminated solely with the addition of the Diener Property. A copy of the November 28, 2022, land capacity analysis is appended hereto as Attachment “B”. By virtue of this new census driven population data and the revised land capacity analysis there is no need to remove the Huck Property from the UGA, instead, just adding the Diener Property is required to accommodate the Urban Growth projected.

Leading up to public hearing before the Yakima County Planning Commission on October 19, 2022, the County Staff Report still approved the addition of the Diener Property to the UGA and the removal of the Huck Property as part of a ‘land swap’. However, on October 3, 2022, the Department of Commerce submitted another letter to Yakima County Senior Project Planner, Tua Vang, this time pointing out that new Washington State legislation amending RCW 36.70A.130 set forth new requirements governing UGA land swaps, such that UGA parcels designated Agricultural Resource Lands could not be included in a UGA swap. See Department of Commerce Letter dated October 3, 2022, appended hereto as Attachment “C”. On the day scheduled for public hearing before the Planning Commission, Yakima County Planning Staff citing this letter, decided to reverse its recommendation, recommending denial of the Naches application because the Diener Property is designated Agricultural Resource property. Based on the Department of Commerce’s letter and County Staff’s reversal of its recommendation on the date of the hearing, the Town of Naches requested and the Planning Commission granted a continuance of the public hearing.

With the benefit of this additional time to research the Department of Commerce’s conclusions, coupled with the newly analyzed census data, the Town has determined that the opinions offered by the Department of Commerce are now largely irrelevant. The statute cited by the Department contains a preliminary caveat, a predicate to its application found in RCW 36.70A.130(3)(c), before one gets to the 8 subsection restrictions which apply to ‘land swaps’. The caveat is that the County must first have determined that revising the Urban Growth Area “is not required to accommodate the urban growth projected to occur in the county for the succeeding 20-year period.” But given the new population census data, and the revised land capacity analysis performed by Yakima County Planning Staff, revising the Urban Growth Area is required to accommodate the urban growth projected. As a result, the restrictions from (i) to (viii) now found in RCW 36.70A.130(3)(c) do not affect the Naches application going forward. In fact, the new population census data and land quantity analysis render the need for a “land swap” not only moot, but adversely affecting the future growth needs of the Town. There is no longer any reason to remove the Huck Property unlikely to be developed to make room for the Diener Property proposed to be added. With the new data, merely adding the Diener Property would help facilitate elimination of the calculated deficit. The Department’s conclusion about not using agricultural resource land of long term

commercial significance in the equation for a 'land swap' (RCW 36.70A.130(3)(c)(ii)), no longer applies.

Even if the 8 requirements were somehow construed as relevant in this case, the one focused upon by the Department of Commerce, namely, RCW 36.70A.130(3)(c)(ii), is not prohibitive. That subsection appears to countenance land swaps as long as:

The areas added to the urban growth area are not or have not been designated as agricultural, forest or mineral resource lands of long-term commercial significance.

In the Staff Report of September 14, 2022, is an analysis as to whether the 3 parcels (23.07 acres) constituting the Diener Property to be added to the UGA are appropriately de-designated from agricultural resource land of long-term commercial significance. The de-designation process occurs simultaneously with the County's evaluation of whether the property is properly added to the Urban Growth Area. Appended hereto as Attachment "D" is Attachment 7 to the September 14, 2022, Staff Report, in which Yakima County Staff analyze the de-designation factors with its exhibit entitled, "Agricultural Resource De-Designation Analytical Process Naches Proposed Emergency UGA Amendment-Modification". As stated in that exhibit, the analytical process for de-designation of agricultural land considers 10 variables listed in WAC 365-190-150 and when the answer to whether or not a variable has an effect on commercial agriculture is "yes" the number of "yes" answers must reach a total of 8 before a determination can be made that the impacts are overwhelming and significant to the point where the property can no longer be considered agricultural land of long-term commercial significance. Of these 8 factors, with regard to the parcels proposed for addition by the Town of Naches (the Diener Property), the Planning Commission concluded that 7 of the 10 factors were met for parcel 171403-42004 and 171403-42005, and 6 of the factors were met for parcel 171403-42023. But there is a problem with this analysis.

First of all, the factor that parcels 171403-42004 and -42005 satisfy but the other did not, was the third factor called "predominant parcel size". That factor states that larger parcels are thought to be more suitable for agriculture and smaller parcels have a greater pressure to develop. Parcels are assigned points based upon the number of acres and if a parcel is over 10 acres, it is not deemed worthy of de-designation. Thus, Planning Staff concluded that the two other parcels of the Diener Property (both under 10 acres) qualified for de-designation. The factor heading, however, is "predominant parcel size". The average of the three Diener Property parcels is 7.69 acres. The 'predominant' parcel size is under 10 acres, and through boundary line adjustments, these parcels could all be under 10 acres. We posit that the 'predominant' parcel size is less than 10 acres and this should be a "yes" for all three parcels. That would make the score 7 "yes", 2 "no" and 1 "undecided". The undecided factor was the last one analyzed, called "land values under alternative uses".

This vague factor states that agricultural lands are generally valued at a rate significantly lower than other uses. If land values within the study area are being assessed at a higher rate than that normally associated with agriculture, then this higher rate can be considered a factor. At the time of the latest Staff Report, Staff indicated that there were 16 adjacent parcels to the Diener Property, and that of the 16 parcels, 3 adjacent parcels were designated as "current use agriculture" by the Yakima County Assessor. Staff remarked that the small parcels adjacent to the Diener Property equated to roughly 80% of the total of the adjacent parcels and were being assessed at a higher rate. However, an opposing view could consider the size of the larger adjacent parcels designated "current use-agriculture" parcels and since they added up to approximately 69.86 acres compared to 51.44 acres in the adjacent smaller parcels, the higher percentage of adjoining 'current use' acreage weighed against de-designation. In the end, because of these conflicting calculations, Staff decided to make "no decision for or against."

However, since the September 14, 2022 Staff Report, one of those three adjacent parcels designated as "current use agriculture" was taken out. Parcel number 171403-34008 was sold by its property owner to the Naches School District, that parcel being 21.09 acres, and was immediately taken out of "current use agriculture" for property tax purposes. Taking that away from the number of adjacent acres in current use, flips the percentages to 59.8% not in current use and 40.2% in current use. By flipping the percentages the variable can now unequivocally be answered "yes", making for a total of 8. And, in the words of the Staff Report, if 8 of the 10 are answered "yes", then "the impacts are overwhelming and significant to the point where the property can no longer be considered agricultural land of long-term commercial significance." As an aside, Staff also inserts the definition of "commercial agricultural purposes" in its Report which, according to the Washington Administrative Code, means "the use of farm and agricultural land on a continuous and regular basis, prior to and subsequent to application for classification or reclassification that demonstrates that the owner or lessee is engaged in and intends to obtain through lawful means, a monetary profit for cash income by producing an agricultural product." This definition does not apply to the Diener Property as the property owner has previously testified before the Yakima County Commissioners that he has not farmed his property for approximately 10 years and cannot do so profitably.

Finally, the October, 2022 Department of Commerce letter draws attention to a 2014 land use decision of the Eastern Washington Growth Management Hearings Board, case number 14-1-0003, *Futurewise v. Benton County and the City of Kennewick*. In that case, Benton County attempted to take 1,263 acres out of agricultural resource land and add it to the City of Kennewick's UGA for industrial purposes. The Growth Management Hearings Board was extremely critical of this decision based in no small measure on the fact that the land capacity analysis did not indicate this acreage was needed for future industrial development. But it was also strongly opposed to taking current farm land and adding it to the UGA for the following reasons:

The proposed UGA site is under agricultural use and is devoid of any urban development.

The proposed area does not have public facilities available, nor is it adjacent to existing service infrastructure.

The site is devoid of any urban or rural development, and fully engulfed in agricultural activity only.

The average lot size is greatly in excess of 10 acres, at an average of 260 acres per parcel.

The acreage proposed for inclusion within the UGA is in agricultural use and cannot be characterized as urban growth that has adequate public service and service capacity to serve development.

In short, the *Futurewise* case involved a large-scale removal of in production, agricultural property (1,263 acres) to make room for speculative industrial development. The case is so vastly different from the situation in Naches that it is more important in its distinguishing features than any analogous ones.

Because of the current deficit in acreage needed for future growth for the Town of Naches, and the fact that the 23.07 acres proposed to be added (the Diener Property) is not agricultural property of long-term commercial significance, the application should proceed on the merits of adding these three parcels, only. It is perfectly fitting under these circumstances for Yakima County to leave in the UGA the property previously identified for exclusion, the Huck Property, and to simply add the Diener Property to satisfy the 20-year future growth needs of the community. Based upon the updated population census numbers the Town wishes to proceed on this basis and has notified the owners of the Huck Property that the Town no longer wishes to remove their property from the UGA.

Sincerely,

**Halverson | Northwest Law Group P.C.**



Michael F. Shinn

MFS/jlf  
Enclosures

cc: Jeff Ranger  
Bill Hordan

# Attachment “A”



STATE OF WASHINGTON  
DEPARTMENT OF COMMERCE

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September 2, 2021

Mr. Tua Vang  
Senior Project Planner  
Yakima County  
129 North 2nd Street  
Yakima, Washington 98901

Sent Via Electronic Mail

Re: Proposed UGA Amendment – City of Naches

Dear Mr. Vang:

Thank you for the opportunity to comment on the proposed Urban Growth Area (UGA) expansion for the City of Naches. We appreciate your coordination with our agency as you work to achieve Yakima County's vision consistent with the goals and requirements of the Growth Management Act (GMA). Please consider the following comments as you present these amendments to your appointed and elected officials.

The land quantity analysis shows that Naches currently has 54 years of growth capacity within its UGA and 66 years under the proposed expansion.<sup>1</sup> The GMA requires UGA's to be sized to accommodate 20 years of growth based on the Office of Financial Management's (OFM) population projections.<sup>2</sup> According the staff analysis, the current and proposed UGA far exceeds the amount of land needed to accommodate 20 years of projected growth for Naches.

We encourage the County to work with the City of Naches to refine the proposal to ensure consistency with the GMA. One option is to identify property within the UGA not likely to develop over the next 20 years that could be removed in order to add land that is ready for development.

Thank you again for the opportunity to comment. If you have any questions or need technical assistance, please feel free to contact me at [scott.kuhta@commerce.wa.gov](mailto:scott.kuhta@commerce.wa.gov) or (509) 795-6884.

Sincerely,

Scott Kuhta  
Senior Planner  
Growth Management Services

cc: Jeff Ranger, Town Administrator  
David Andersen, AICP, Managing Director, Growth Management Services  
Ben Serr, AICP, Eastern Lead Planner, Growth Management Services  
Steve Roberge, Western Lead Planner, Growth Management Services

<sup>1</sup> Yakima County Staff Report, Table 3, Page 6 of 13

<sup>2</sup> RCW 36.70A.110



# Attachment “B”

			Naches Current w/ Env. Constraints 9-14-2022	Naches Proposed Modification (Land Swap) w/ Env. Constraints 9-14-2022	Naches Proposed Modification (No Swap) w/ Env. Constraints 11-28-2022
<b>UGA Land Capacity Analysis</b>		<b>Units</b>			
<b>1 - Population and Households Analysis</b>					
a	2040 population for City (Projection within medium range)	people	1,832	1,832	1,832
b	2020 Decennial Census population in City	people	1,084	1,084	1,084
c	City's projected population increase, 2020-2040 (a - b)	people	748	748	748
d	City's average household size (2020 Census)	people per household	2.42	2.42	2.42
e	Additional households projected for City, 2020-2040 (c ÷ d)	households	310	310	310
<b>2 - Future Residential Land Need</b>					
f	Desired average density of future housing, 2020-2040 (5.1 dwelling units per acre)	sq. ft. per dwelling unit	8,500	8,500	8,500
g	Land needed for future housing (e ÷ f ÷ 43,560 sq. ft. per acre)	acres	60	60	60
<b>3 - Future Commercial &amp; Retail Land Need</b>					
h	Current developed commercial & retail land in City (from GIS analysis)	acres	49	49	49
i	Current developed commercial & retail land in City per person (h ÷ b)	acres per person	0.0456	0.0456	0.0456
j	Land needed for future commercial & retail (i × c)	acres	34	34	34
<b>4 - Future Community Facilities* Land Need</b>					
k	Current developed community facilities land in City (from GIS analysis)	acres	104	104	104
m	Current developed community facilities land in City per person (k ÷ b)	acres per person	0.0962	0.0962	0.0962
n	Land needed for future community facilities (m × c)	acres	72	72	72
<b>5 - Future Streets Land Need</b>					
p	Subtotal of land needed for future residential, commercial & retail, and community facilities (g + j + n)	acres	166	166	166
q	Land needed for future streets (p × 15%)	acres	25	25	25
<b>6 - Land Capacity Analysis</b>					
<b>Residentially-zoned capacity</b>					
r	Current vacant residentially-zoned land in City (from GIS analysis)	acres	50	50	50
s	(minus) Land needed for future housing and associated streets (-g × 115%)	acres	(69)	(69)	(69)
t	= Surplus (Deficit) of vacant residentially-zoned land in City (r + s)	acres	(19)	(19)	(19)
u	Current vacant residentially-zoned land outside City (from GIS analysis)	acres	24	47	47
v	(plus) Surplus (Deficit) of vacant residentially-zoned land in City (t)	acres	(19)	(19)	(19)
w	= Surplus (Deficit) of vacant residentially-zoned land in UGA (u + v)	acres	5	28	28
<b>Commercially-zoned capacity</b>					
x	Current vacant commercially-zoned land in City (from GIS analysis)	acres	35	35	35
y	(minus) Land needed for future commercial & retail and associated streets (-j × 115%)	acres	(39)	(39)	(39)
z	= Surplus (Deficit) of vacant commercially-zoned land in City (x + y)	acres	(4)	(4)	(4)
aa	Current vacant commercially-zoned land outside City (from GIS analysis)	acres	21	21	21
bb	(plus) Surplus (Deficit) of vacant commercially-zoned land in City (z)	acres	(4)	(4)	(4)
cc	= Surplus (Deficit) of vacant commercially-zoned land in UGA (aa + bb)	acres	17	17	17
<b>Community Facilities capacity</b>					
dd	Current vacant community facilities land in City (from GIS analysis)	acres	19	19	19
ee	(minus) Land needed for future community facilities and associated streets (-n × 115%)	acres	(83)	(83)	(83)
ff	= Surplus (Deficit) of vacant community facilities in City (dd + ee)	acres	(64)	(64)	(64)
gg	Current vacant community facilities land outside City (from GIS analysis)	acres	27	0	27
hh	(plus) Surplus (Deficit) of vacant community facilities land in City (ff)	acres	(64)	(64)	(64)
ii	= Surplus (Deficit) of vacant community facilities land in UGA (gg + hh)	acres	(37)	(64)	(37)
<b>Capacity for growth in City (excluding Industrial growth)</b>					
jj	Surplus (Deficit) of vacant land for residential, commercial, community facilities, & streets (t + z + ff)	acres	(87)	(87)	(87)
kk	Computed Market Choice Factor in City (MCF)**	%	-46%	-46%	-46%
mm	Years of growth available in City ((kk + 1) × 20)	years	11	11	11
<b>Capacity for growth outside City (excluding Industrial growth)</b>					
nn	Years of growth available outside City ((rr - mm)	years	7	7	10
<b>Capacity for growth in UGA (excluding Industrial growth)</b>					
pp	Surplus (Deficit) of vacant land for residential, commercial, community facilities, & streets (w + cc + ii)	acres	(15)	(19)	8
qq	Computed Market Choice Factor in UGA (MCF)***	%	-8%	-10%	4%
rr	Years of growth available in UGA ((qq + 1) × 20)	years	18	18	21
<b>7 - Future Industrial Land Need</b>					
ss	Current developed industrially-zoned land in City (from GIS analysis)	acres	96	96	96
tt	Current developed industrially-zoned land outside City (from GIS analysis)	acres	32	32	32
uu	Current vacant industrially-zoned land in City (from GIS analysis)	acres	1	1	1
vv	Current vacant industrially-zoned land outside City (from GIS analysis)	acres	12	12	12
ww	Industrial acres to add to UGA (based on City's economic development strategy)	acres	0	0	0
xx	Industrial acres to remove from UGA (based on City's economic development strategy)	acres	0	0	0

\*Community Facilities such as parks, schools, libraries, city halls, fire stations, churches

\*\* (vacant acres in City ÷ needed acres) - 1 = (r + x + dd) ÷ (-s - y - ee) - 1

\*\*\* (vacant acres in UGA ÷ needed acres) - 1 = (r + u + x + aa + dd + gg) ÷ (-s - y - ee) - 1

Note: numbers in parentheses are negative

# Attachment “C”



STATE OF WASHINGTON  
DEPARTMENT OF COMMERCE

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October 3, 2022

Mr. Tua Vang  
Senior Project Planner  
Yakima County  
129 North 2nd Street  
Yakima, Washington 98901

Sent Via Electronic Mail

Re: Naches UGA Amendment - Case LRN2021-00001

Dear Mr. Vang:

Thank you for the opportunity to comment on the proposed amendment to the Town of Naches' Urban Growth Area (UGA). We appreciate your coordination with our agency as you work to achieve the community's vision consistent with the goals and requirements of the Growth Management Act (GMA). Please consider the following as you present this proposal to your appointed and elected officials.

During Yakima County's 2021 Comprehensive Plan Amendment process, we submitted a comment letter on a UGA expansion proposed by the Town of Naches, stating that UGA's must be sized to accommodate 20 years of population growth. At the time, the staff analysis showed that Naches had more than 20 years of land capacity. We suggested that the County work with the City to identify land outside the current UGA that could essentially be exchanged, or "swapped", with land inside the UGA if that land was not likely to develop.

Since that letter was submitted, the Washington State Legislature amended RCW 36.70A.130, setting new requirements governing UGA land swaps.<sup>1</sup> The requirements include the following:

1. The revised urban growth area may not result in an increase in the total surface areas of the urban growth area or areas;
2. The areas added to the urban growth area are not or have not been designated as agricultural, forest, or mineral resource lands of long-term commercial significance;
3. Less than 15 percent of the areas added to the urban growth area are critical areas;
4. The areas added to the urban growth areas are suitable for urban growth;
5. The transportation element and capital facility plan element have identified the transportation facilities, and public facilities and services needed to serve the urban growth area and the funding to provide the transportation facilities and public facilities and services;

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<sup>1</sup> ESSB 5593

6. The urban growth area is not larger than needed to accommodate the growth planned for the succeeding 20-year planning period and a reasonable land market supply factor;
7. The areas removed from the urban growth area do not include urban growth or urban densities;
8. The revised urban growth area is contiguous, does not include holes or gaps, and will not increase pressures to urbanize rural or natural resource lands.

We recommend that the County analyze the proposed land swap to ensure it meets the new criteria listed above. We understand that the proposed UGA parcels are designated agricultural resource lands. Under the new legislation (No. 2 above), these properties cannot be included in a UGA swap.

The Growth Management Act (GMA) requires counties to designate and conserve resource lands of long-term commercial significance. Many Yakima County cities and towns are surrounded by designated agricultural resource lands. Counties are discouraged from "reviewing resource lands designations solely on a parcel-by-parcel process". This was a central issue in *Futurewise vs. Benton County, et al.*, where the Growth Management Hearings Board ruled against Benton County in their attempt to expand their Urban Growth Area (UGA), de-designating 1,263 acres of commercial agricultural land in the process. The Hearings Board found that:

"Benton County's de-designating of agricultural lands for this small section of land, in isolation from a much larger County or area-wide study to be inappropriate and, by de-designating land that qualify as agricultural lands of long term commercial significance, the County violated WAC 365-190-050 and corresponding GMA sections RCW 36.70A.030, RCW 36.70A.050, and RCW 36.70A.170."<sup>2</sup>

Once the County establishes a willingness to "de-designate" productive resource lands, it will be increasingly difficult to resist future applications. Over time, cumulative loss of resource lands could impact agricultural production and Yakima County's economy.

We recommend that the County conduct a thorough assessment of commercial resource lands designations on a countywide basis, rather than a parcel-by-parcel basis during the annual amendment processes or, preferably, during the next GMA Periodic Update.

Thank you again for the opportunity to comment. If you have any questions or need technical assistance, please feel free to contact me at [scott.kuhta@commerce.wa.gov](mailto:scott.kuhta@commerce.wa.gov) or (509) 795-6884.

Sincerely,



Scott Kuhta, AICP  
Senior Planner  
Growth Management Services

cc: David Andersen, AICP, Managing Director, Growth Management Services  
Ben Serr, AICP, Eastern Regional Manager, Growth Management Services  
Valerie Smith, AICP, Deputy Managing Director, Growth Management Services  
Jeff Ranger, Town Administrator, Naches

---

<sup>2</sup> *Futurewise v. Benton County, et al.*, FDO Case No. 14-1-003

# Attachment “D”

## Attachment 7

### Agricultural Resource De-Designation Analytical Process Naches Proposed Emergency UGA Amendment - Modification

The "Quantitative Analytical Process" of the Agricultural (AG) Resource De-designation Analytical Process is found in the Land Use subchapter of *Horizon 2040*, Chapter 5.10.3, immediately following the mapping criteria for Agricultural Resource Areas. Adopted in 2017, Mapping Criterion #7 states the purpose of the De-designation Analytical Process as follows:

*"The agricultural resource de-designation criteria will be used for plan amendments and updates to change a land use from Agricultural Resource to another land use designation."*

The analytical process considers 10 variables listed in WAC 190-365-050 that could adversely impact commercial agriculture. These variables are considered in light of the state's Growth Management Act (GMA) goal to protect AG land of long-term commercial significance. When *"the answer to whether or not a variable has an effect on commercial agriculture is "yes," the number of "yes" answers must reach a total of eight before the determination can be made that the impacts are overwhelming and significant to the point where the property can no longer be considered agricultural land of long term commercial significance"* (*Horizon 2040*, Land Use Element Chapter 5, page 56).

"Commercial agricultural purposes" means the use of farm and agricultural land on a continuous and regular basis, prior to and subsequent to application for classification or reclassification, that demonstrates that the owner or lessee is engaged in and intends to obtain through lawful means, a monetary profit from cash income by producing an agricultural product. (WAC 458-30-200)

The 10 factors in *Horizon 2040* are quoted below *in italics*, followed by the Staff's Analysis.

#### QUANTITATIVE ANALYTICAL PROCESS

##### 1. Soils

*Soils considered to be an Agricultural Resource of Long Term Commercial Significance are primarily those soils listed as 'Prime' in the Soil Survey of Yakima County dated May 1985. This list of soils, however, does not include similar soils as those listed as Prime that are located on slopes with a gradient higher than 2 degrees. Slopes with a gradient up to and including 15 degrees are considered suitable for growing tree fruit and grapes based on good drainage and the ability for cold air to fall down gradient. The limiting factor for slopes is one of safety when operating machinery. Slopes above 15 degrees may not be suitable to the safe operation of equipment needed for commercial agriculture. As a result of these considerations, these additional soils on slopes are included based on their listing as suitable for the various crops grown in Yakima County. All selected soils are then rated by their anticipated crop yield into five equal breaks, based on the crop the soil is most suited for. For soils suitable for tree fruit, for example, these breaks are as follows:*

<i>464 to 330 bu/ac crop yield</i>	<i>0 points [Lowest]</i>
<i>598 to 465 bu/ac crop yield</i>	<i>1 point [Below Average]</i>
<i>732 to 599 bu/ac crop yield</i>	<i>2 points [Average]</i>
<i>866 to 733 bu/ac crop yield</i>	<i>3 points [Above Average]</i>
<i>1000 to 867 bu/ac crop yield</i>	<i>4 points [Highest]</i>

*Other crop types that have suitable soils within the Yakima County Soil Survey, such as various row crops and hay/alfalfa, are also rated by anticipated crop yield into five equal breaks and assigned the appropriate number of points.*

**Staff Analysis:** This first criterion only focuses on analyzing the productivity of soils in relation to the highest yielding crop (irrigated apples) measured by bushels per acre (bu/ac). If the soil results are between a “below average” to “highest” crop yield score, the answer to this criterion would be having “no” impact to agriculture because the soils are productive. If a “lowest” crop yield score is obtained, the answer would be a “yes,” an impact to agriculture because the soils are not in a productive class, yielding little to no crops, and in favor of de-designating from agriculture.

According to the U.S. Department of Agriculture’s *“Soil Survey of Yakima County Area Washington” (Soil Survey)*:

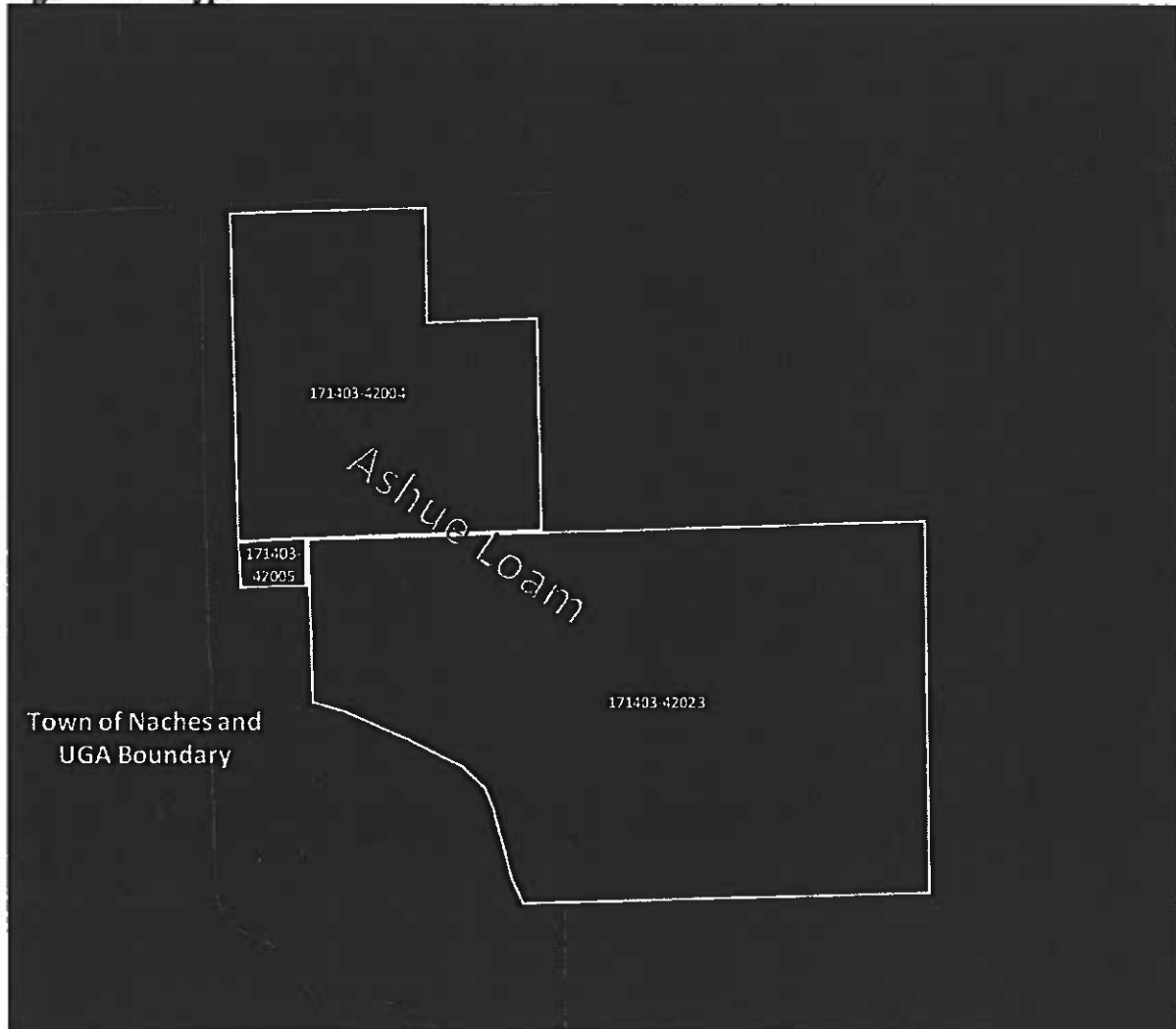
“Yields are those that can be expected under a high level of management. Absence of a yield indicates that the soil is not suited to the crop or the crop generally is not grown on the soil. Only the soils suited to crops are listed.”

Based on the statement above, every other crop listed in “Table 5 - - Yields Per Acre of Crops and Pasture” of the Soil Survey (such as winter wheat, alfalfa hay, corn, asparagus, and distillate mint) are not high yielding crops nor considered in this criterion due to reporting little to no bu/ac crop yields and would result with the lowest soil criterion score of zero (0) points.

The analysis steps for this criterion in obtaining a soil scoring point for AG de-designation are as follows. The classifications of soil types are first identified through the County’s GIS soil layer for each subject parcel. The soil is then identified on Table 5 of the Soil Survey that provides the number of “non-irrigated” or “irrigated” apple bu/ac crop yields. GIS reported that these parcels are not in an irrigation district, however, assuming that these sites have had irrigation due to Their historical agricultural use, the number of bu/ac for irrigated apple crop yield was used for a best case scenario. This number of bu/ac was then compared to the soil suitability scoring provided by this criterion. The results for each of the agricultural designated parcels are shown in the table below.



**Figure 1: Soil Type**



Parcel Nos. 171403-42004, 171403-42005, and 171403-42023 (AG Zoning District)		
Soil Type	bu/ac crop yield	Points
Ashue loam	Irrigated Apples, 735 bu/ac	2 points [Average]

Variable	Review Criteria	Impact to AG - Yes or No
1. Soil	Average crop yield per Soil Survey	No

As reported by Yakima County GIS, Ashue loam is considered "Prime Farmland if Irrigated." The soil on these parcels scored an "average" crop yield rating and therefore results in a "no" impact to commercial agriculture and "not in favor" of de-designation.

## **2. Proximity to the Urban Growth Area**

*Parcels are evaluated by their distance from an Urban Growth Area (UGA). The further away from the Urban Growth Area the less influence it has on a parcel to develop at some higher use. Thus, a higher numerical value for agriculture is assigned to parcels further away as follows:*

<i>Within ¼ mile of the UGA</i>	<i>0 points [Lowest]</i>
<i>Between ¼ and ½ mile</i>	<i>1 point [Below Average]</i>
<i>Between ½ mile and 1 mile</i>	<i>2 points [Average]</i>
<i>Between 1 mile and 2 miles</i>	<i>3 points [Above Average]</i>
<i>Greater than 2 miles from UGA</i>	<i>4 points [Highest]</i>

**Figure 2: Proximity to UGA**



Variable	Review Criteria	Impact to AG - Yes or No
2. Proximity to Urban Growth Area	Less than ½ mile	Yes

**Staff Analysis:** As shown in the image above, all of the subject parcels are adjacent to the Naches UGA and/or touching the town limits. Based on the scoring criteria, these parcels would result in 0 Points [lowest] and a “yes” impact to commercial agriculture “in favor” of de-designation due to their location.

### **3. Predominant Parcel Size**

*Larger parcels are thought to be more suitable for commercial agriculture. Smaller parcels have a greater pressure to develop as a residential lot or some other higher use. Parcels under contiguous ownership,*

while certainly having an effect on the probability for commercial agriculture, ought not be considered during the five-year update process due to the inherent fluidity of property ownership. Contiguous ownership, however, should be a consideration when evaluating property for possible removal from a resource area during the amendment review process. Parcels were assigned a numeric value, with higher values for agriculture given to larger parcels as follows:

Less than 5 acres	0 points [Lowest]
Between 5 and 10 acres	1 point [Below Average]
Between 10 and 20 acres	2 points [Average]
Between 20 and 40 acres	3 points [Above Average]
Greater than 40 acres	4 points [Highest]

Parcel No(s)	Acres	Points
171403-42004	7.4	1 [Below Average]
171403-42005	0.33	0 [Lowest]
171403-42023	15.34	2 [Average]

Variable	Review Criteria	Impact to AG - Yes or No
3. Predominant Parcel Size	Smaller than 10 acres (Parcels 171403-42004 and 171403-42005)	Yes
	Between 10 and 20 acres (Parcel 171403-42023)	No

**Staff Analysis:** Based on the results in the tables above, parcel 171403-42023 receives an “average” score and results in a “no” impact to commercial agriculture and “not in favor” of de-designation due to its large size. Parcels 171403-42004 and -42005 receives a “below average” and “lowest” scoring which results in a “yes” impact to commercial agriculture and “in favor” of de-designation due to their small sizes. Parcel 171403-42005 is also fully built out and contains a residence and garage.

#### **QUALITATIVE ANALYTICAL PROCESS**

Once the field evaluation has been conducted the remaining criteria to be considered under WAC 365-190-050 are considered individually.

#### **4. Availability of Public Facilities**

Of the list of various public facilities provided by the County and Cities, roads, sewer and water are the three whose presence could possibly add pressure to develop at a higher use. These facilities can be mapped and a study area evaluated for its proximity to them and a determination as to the effect they would have regarding pressure to develop. If facilities are within a reasonable distance to the majority of the parcels within the study area (1000'), then they are determined to have an effect. Water and sewer are normally confined to the city and its urban growth area.

Variable	Review Criteria	Impact to AG - Yes or No
4. Availability of Public Facilities	Within 1,000' of water, sewer, or paved road	Yes

**Staff Analysis:** The subject parcels are not served by public water or sewer utilities. However, all of the parcels are within a reasonable distance of 1,000 feet to these services and meet this criterion. The

availability of these public facilities indicates a “yes” impact to commercial agriculture and “in favor” of de-designation.

#### **5. Availability of Public Services**

*Public services include police, fire, and library services to the name the obvious. Police and Fire are the primary services considered for the purposes of this analysis. The County has established Level of Service standards for both the police and fire departments. These levels are calculated according to the number of calls for service, which in turn dictates the average response time throughout their service areas. New development accounts for additional calls for service at a predetermined rate per dwelling unit. Absent of any specific amplifying data to the contrary, any new development must be assumed to decrease the applicable levels of service. This decrease would then dictate that the public services are not available for any new development and therefore cannot be said to represent pressure for the area to develop and thus impact agriculture.*

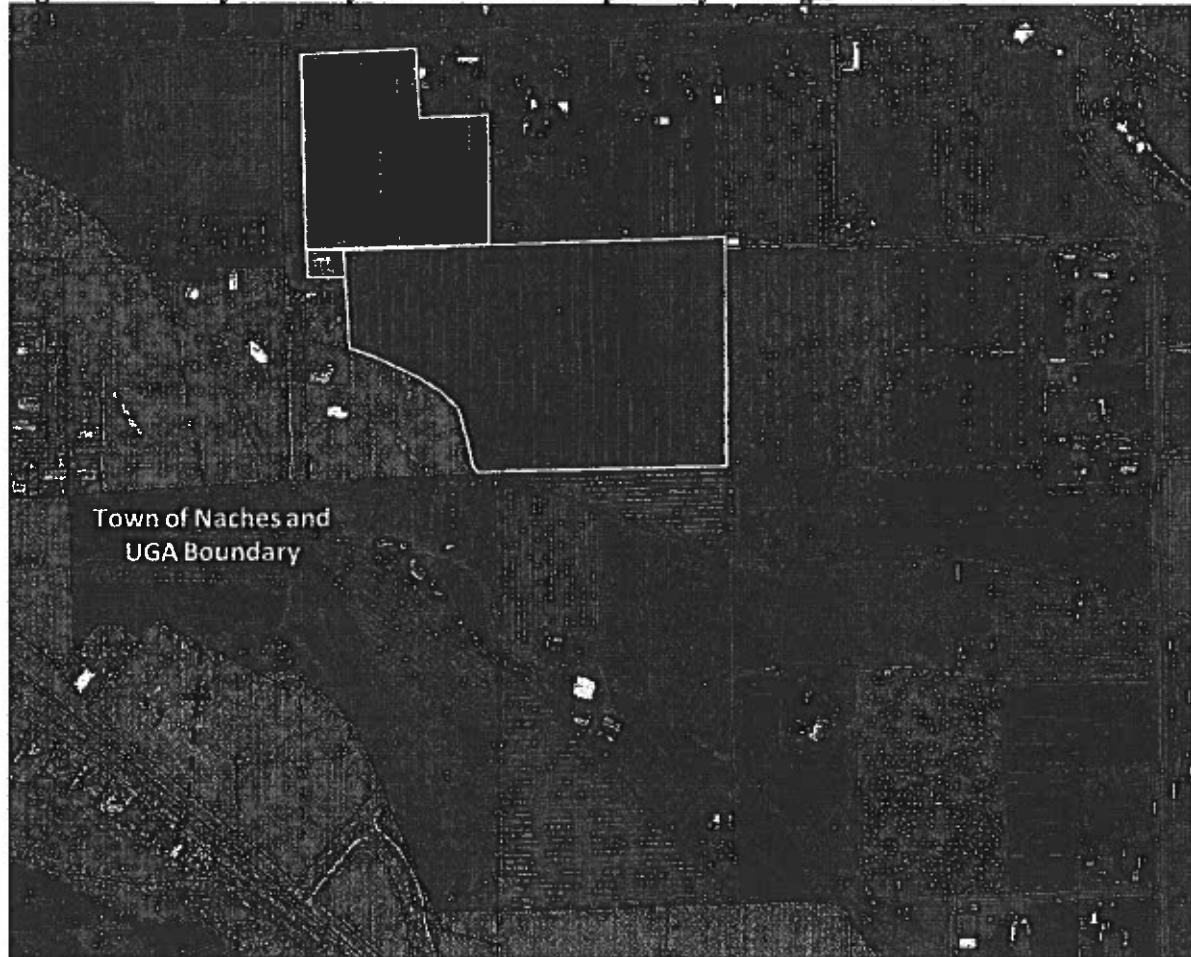
Variable	Review Criteria	Impact to AG - Yes or No
5. Availability of Public Services	Presents an adverse impact to AG	Yes

**Staff Analysis:** The subject parcels are located adjacent to the Town of Naches. The parcels are approximately less than one mile from Naches Fire Station 16, library (Naches Library - Yakima Valley Libraries), Naches Valley School District, and within Yakima County Fire District #3 and Sheriff jurisdiction. The availability of public services presents a “yes” impact to commercial agriculture and “in favor” of de-designation.

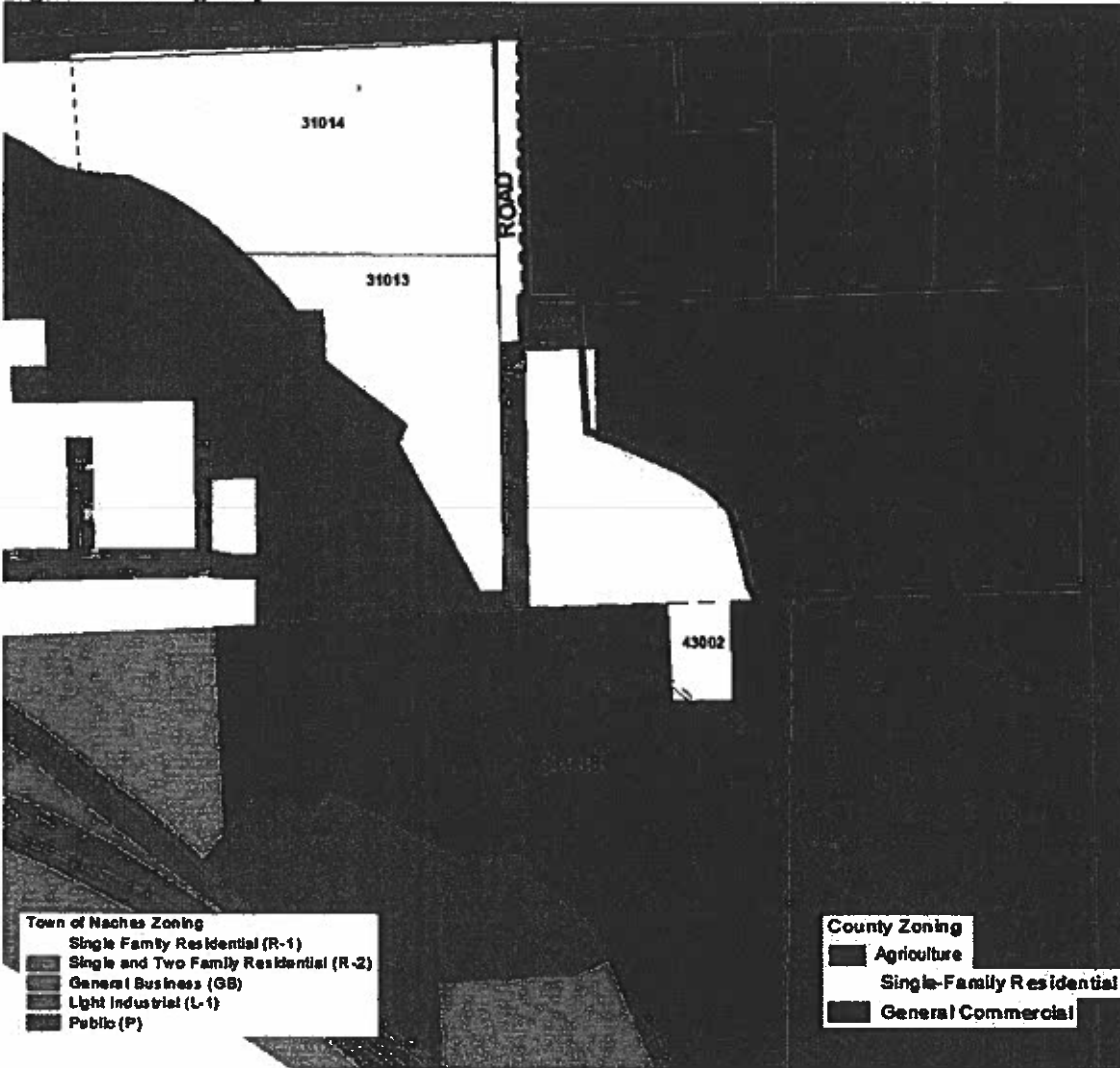
#### **6. & 7. Land Use Settlement Patterns and Their Compatibility with Agricultural Practices and Intensity of Nearby Uses**

*Land Use Settlement Patterns and the Intensity of Nearby Uses provide similar information as Proximity to Urbanized Areas in that they show residential or other development that may represent prohibitive impacts to commercial agriculture. However, there are development areas outside of the urban growth areas that require consideration for their potential impact to agriculture. In those areas, Land use settlement patterns and their compatibility with commercial agriculture deals with those uses adjacent to a study area that may represent a level of incompatibility and impact the ability to conduct agriculture. If this pattern is of such a significant amount, it may represent a factor. Intensity of nearby land uses in those areas explains the adjacent land use patterns that, due to their size, density and proximity, cause an overwhelming pressure for the study area to develop at some higher use above commercial agriculture. In these cases, that intensity may also be counted as a factor.*

**Figure 3: Intensity of Nearby Uses and their Compatibility with Agriculture Practices**



**Figure 4: Zoning Map**



Variable	Review Criteria	Impact to AG - Yes or No
6. Land Use Settlement Patterns	Impact on AG	Yes

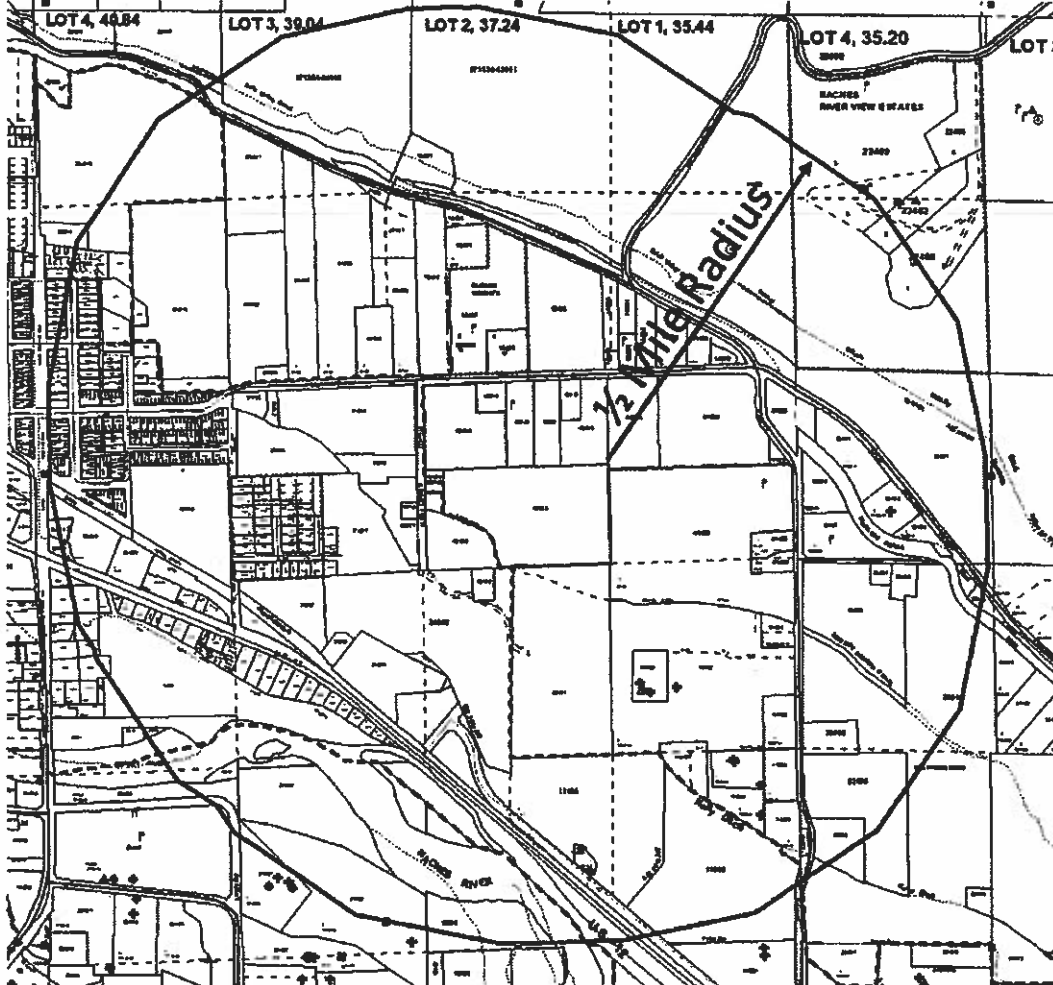
Variable	Review Criteria	Impact to AG - Yes or No
7. Intensity of Nearby Land Uses	Impact on AG	Yes

**Staff Analysis:** As shown in Figure 3: Intensity of Nearby Uses, there is a mixed-use of adjacent rural and town parcels that range in sizes between 1.78 to 27.10 acres and contain residences or are vacant. The larger residential and vacant lots are being used for either personal or commercial agricultural production. Figure 4 is a zoning map that shows the different types of nearby and adjacent land uses to the subject properties. Directly southwest of parcel 171403-42023 is a 21.09-acre parcel zoned General Commercial in the Naches UGA. This would indicate that both the current land use settlement patterns and intensity of land uses will increase and ultimately generate a “yes” impact to commercial agriculture and “in favor” of de-designation.

### 8. History of Land Development Permits Issued Nearby

The History of Development Permits Issued Nearby may also serve as evidence of pressure to develop at some higher use. A history of permitting activity is a way of looking at nearby permitting patterns, which may give an indication of things to come for the study area. Regardless, nearby permitting history requires individual scrutiny to determine if there may have been a significant surge in permitting, absent sufficient time for a significant development pattern to form. If there is a record of 15 or more subdivision permits within a half-mile radius, within the County's permit history database, it can be assumed that it is a sufficient number to be considered a factor.

**Figure 5: Subdivision Permits within ½ Mile**



Variable	Review Criteria	Impact to AG - Yes or No
8. History of Land Development	15 or more subdivisions within ½ mile	No

**Staff Analysis:** According to the County's GIS Planning History (Figure 5), there has not been more than 15 County subdivision permits within a half-mile radius of the subject parcels. Some of the cases in the table are duplicates (umbrella case numbers), associated preliminary decisions, and their recorded short plat maps.

#### 9. Tax Status

*Tax Status indicates the current land use and tax rate being claimed by the property owner and reported by the Assessor. An inference can be made by looking at the current tax status as to the property owners' intent for the land. This intent alone cannot be considered when determining the appropriateness of the land for designation as Agricultural Land of Long-term Commercial Significance, but may be another indicator of the possibility of a more intense use of the land. When the majority of the parcels within the study area have a tax status other than Agriculture, then it is considered one factor for possible removal of the area from resource designation.*

Parcel No(s)	Tax Status
171403-42004	91 Undeveloped Land
171403-42005	11 Household, Single Unit
171403-42023	91 Undeveloped Land

Variable	Review Criteria	Impact to AG - Yes or No
9. Tax Status	Predominance of a tax status other than AG	Yes

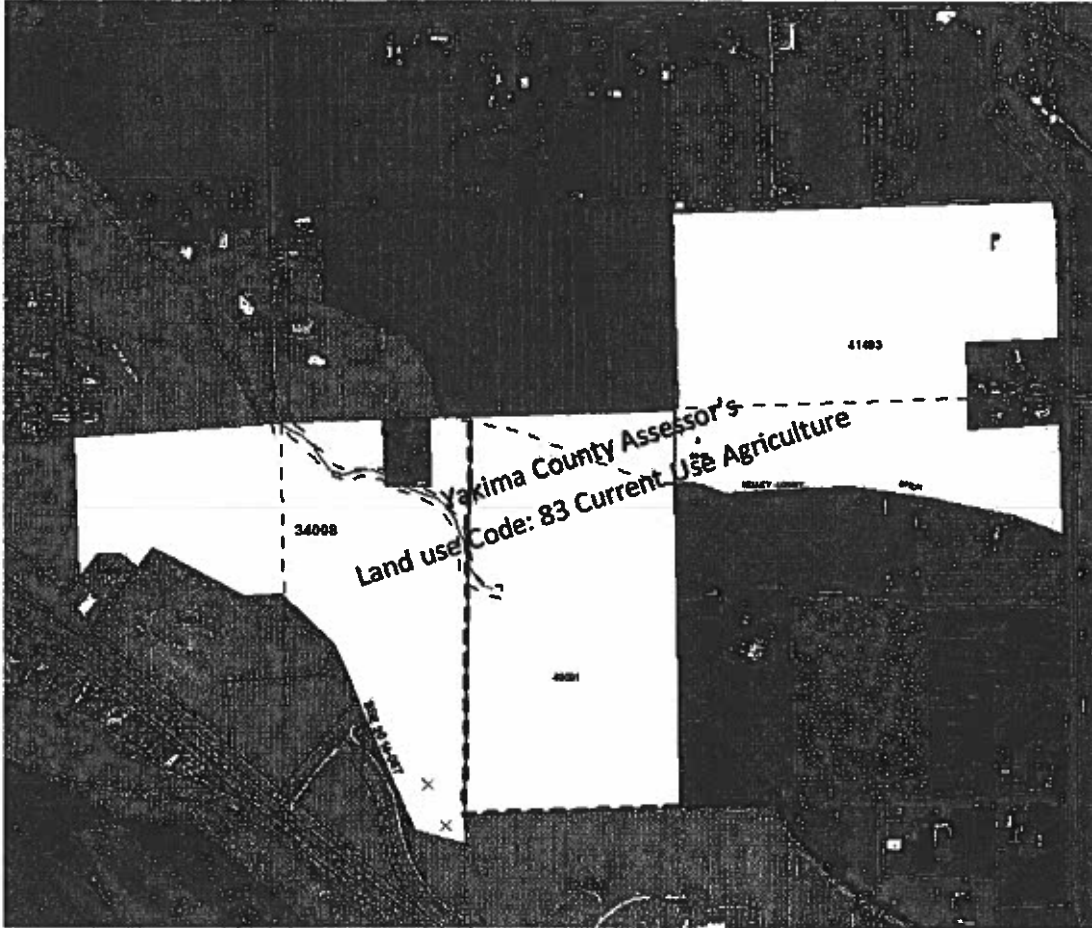
**Staff Analysis:** None of the parcels are assessed as Agricultural "current use." This indicates a "yes" impact to commercial agriculture and "in favor" of de-designation.

#### 10. Land Values Under Alternative Uses

*Agricultural lands are generally valued at a rate significantly lower than other uses. If land values within the study area are being assessed at a higher rate than that normally associated with agriculture, then this higher rate can be considered a factor. The prevailing agricultural rate is determined by similar properties outside of the study area that are known to be actively involved in agriculture.*



**Figure 6: Prevailing Agricultural Rate**



Variable	Review Criteria	Impact to AG - Yes or No
10. Land Values under Alternative Uses	Assessed value indicates non-AG use	No Decision for or against.

**Staff Analysis:** As stated above in de-designation criterion #9 “Tax Status,” the three subject parcels to be added are not being taxed as “Agriculture Current Use,” under the Washington State Open Space Taxation Act. However, the three parcels highlighted in yellow in Figure 6 out of the 16 adjacent parcels are designated as “current use” agriculture by the Yakima County Assessor. The smallest residential parcel is 0.68 acres in size. The largest residential parcel with minimal agriculture is 5.96 acres in size. A cemetery is on a 2.02-acre parcel. The smaller parcels equate to roughly 81% of all the parcels and are being assessed at a higher rate. However, the opposing view may consider the size of the larger parcels and designated “current use” agricultural parcels. They are approximately 69.86 acres compared to the 51.44 acres of the small lots. Even though parcel 171403-34008 is zoned General Commercial as discussed in criteria 6 & 7 above, there are minimal to no restrictions from using it for commercial agricultural production. Since this criterion has too many variables for and against de-designation, no decision can be made as to whether there will be an impact to commercial agriculture.

## 11. Final Assessment

*A final assessment of a particular area's relative value as Agricultural Land of Long Term Commercial Significance is based on a combined quantitative and qualitative analysis considering all allowable variables. The question must be answered, "Is there sufficient pressure due to nearby urban development, parcelization and the possibility of a more intense use of the land to affect a study area or parcel to the point that commercial agriculture is no longer practical?"*

*Those factors that can be evaluated through the quantitative process will provide a preliminary indication as to the possible current value of the land as an agricultural resource. It will also provide evidence of those specific areas within a general study area that require closer evaluation. However, a physical site evaluation as well as consideration of the remaining variables must be completed before any final assessment can be made.*

*Each area may offer unique circumstances that may be considered in the evaluation process and that cannot be evaluated quantitatively. As an example, proximity to an Urban Growth Area may appear to have provided pressure for an area to be removed from Agricultural Resource designation. However, a closer review may indicate that properties within the Urban Growth Area, and adjacent to the area being studied, have not begun to develop and thus represent no pressure for the study area to develop at some higher use.*

*Unique physical characteristics of a particular area may also provide additional evidence for possible removal from Agricultural Resource designation. This evidence may include information concerning topographical limitations, the physical availability of irrigation water (not water rights), or any other characteristic associated with the land that was not included in the basic analytical process. It may not be practical for this evidence to be considered in the broader context of an area wide update, but may be relevant when evaluating smaller areas during a Map Amendment process.*

*When using this basic analytical process for a county-wide or area-wide review, and the answer to whether or not a variable has an effect on commercial agriculture is "yes," the number of "yes" answers must reach a total of eight before the determination can be made that the impacts are overwhelming and significant to the point where the property can no longer be considered agricultural land of long term commercial significance.*

**Staff Analysis:** This proposal is not a county-wide or area-wide proposal to de-designate agricultural lands. It is only intended to de-designate three AG parcels, approximately 23.07 acres in size that are adjacent to the UGA and proposed for residential use.

As seen in the de-designation criteria summary below, all of the AG parcels proposed to be added have not obtained the required number of "yeses," (8 or higher) in favor of removing these parcels from AG land of long term commercial significance.

Variable	Review Criteria	Impact to AG - Yes or No
1. Soil	Average crop yield per USDA's Soil Survey	No
2. Proximity to Urban Growth Area	Less than ½ mile	Yes
3. Predominant Parcel Size	Smaller than 10 acres	Yes to 171403-42004 & 171403-42005 No to 171403-42023
4. Availability of Public Facilities	Within 1000' of water, sewer, or paved road	Yes
5. Availability of Public Services	Presents an adverse impact to AG	Yes
6. Land Use Settlement Patterns	Compatibility of land uses with AG	Yes

<b>7. Intensity of Nearby Land Uses</b>	<b>Impact on AG</b>	<b>Yes</b>
<b>8. History of Land Development</b>	15 or more subdivisions within ½ mile	<b>No</b>
<b>9. Tax Status</b>	Predominance of a tax status other than AG	<b>Yes</b>
<b>10. Land Values under Alternative Uses</b>	Assessed value indicates non-AG use	<b>No Decision</b>
<b>Parcels 171403-42004 &amp; 171403-42005</b>	<b>Total</b>	<b>7</b>
<b>Parcel 171403-4023</b>	<b>Total</b>	<b>6</b>

### **Change in Circumstances**

Mr. John Diener owns the three subject parcels proposed for de-designation. The change in circumstances since the previous UGA update are as follows:

Mr. Diener intends to develop his properties. He appeared at the Board of Yakima County Commissioners hearing on February 15, 2022 for the Town of Naches' original expansion request and provided such testimony.

The Town of Naches has stated that they are growing in an easterly/southeasterly direction and Mr. Diener's properties are in the path of growth and development. Both the town's original and modified UGA expansion requests have repeatedly stated that they are in need of residential land. In result, the town is showing support by approving a required Capital Facilities Addendum to their Capital Facilities Element of their comprehensive plan, and that they will provide and seek funding for public roads, water, and sewer to serve to these properties.

More importantly, it has only been seven years since the County issued their 2015 population projections and allocations to its cities and towns. When the Town of Naches' 2040 population projection is compared to the 2020 U.S. Census Decennial data, the town's projected population of 1,084 has already been obtained or increased by 254 people. A new population projection was conducted using the last three decennial baselines, and as calculated in the Land Capacity Analysis shows 18 years of growth with a deficit of 15 acres in the overall UGA, and below GMA's 20 years of growth requirement. The town's proposed land swap is only an overall difference of 5.16 acres (to be removed) and not changing or reducing the number of years of growth.

### **Final Determination**

The AG de-designation criteria outlined above were developed to ensure that lands primarily devoted to or important for the long-term commercial production of agriculture would not be converted to rural or non-resource uses without the proper consideration of the goals and requirements of the GMA. GMA requires counties to protect and designate agricultural lands and at the same also requires counties to designate UGAs. These two requirements can compete with each other if a city or town needs to add to its current UGA boundary and the only option is land designated for agriculture, which is exactly what the case is here with the Naches proposal.

In 2002, Yakima County developed the AG de-designation criteria to protect against the inappropriate conversion of designated agricultural land to rural or other non-resource land uses. The criteria were designed to protect agricultural lands that are producing high-value crops (orchards, vineyards, hops, specialty crops, dairies, lands with prime soils and irrigation, etc.). This meant that an agricultural parcel located adjacent to an existing UGA boundary would be treated the same as a parcel located far from a UGA boundary. However, the agricultural operation adjacent to the UGA has different levels of development pressure than the one located ten miles out. The de-designation criteria do provide a measure to consider the location of an agricultural parcel in relation to a UGA, but that measure is just one of ten

different criterion to consider and each has the same weight. The design of the de-designation's analytical process heavily favors agricultural land and limits the chances of de-designating agricultural land for UGA expansions.

Therefore, Yakima County Planning Staff is **recommending de-designation** recognizing the need of the community, in addition to the "circumstances" mentioned in the section above, and Town of Naches emergency UGA "modification" amendment staff report. Secondly, the town is complying with the Washington State Department of Commerce's request to work with the County to add and remove lands that are ready and not ready to be developed within the next 20 years. The Planning Commission will need to make their own recommendation using staff's analysis, findings, and public testimony on this issue during their deliberations.

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