




September 19, 2023

Public Services

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LISA H. FREUND – Director

TO: Kip Ramsey, Jaime Cuevas & Parties of Record

FROM: Karri Espinoza, Office Coordinator 

RE: Hearing Examiner Recommendation -- File Nos. ZON2023-00002_SEP2023-00012

On September 15, 2023, the Yakima County Hearing Examiner issued his recommendation on a Rezone of 33 acres. The Examiner's recommendation is enclosed.

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

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

**County of Yakima, Washington
Hearing Examiner’s Recommendation**

September 15, 2023

In the Matter of a Rezone)	
Application Submitted by:)	
)	ZON2023-00002
Kip Richard Ramsey, Sr.)	SEP2023-00012
By Jaime Cuevas, Jr.)	
)	
For Rezone of 33 Acres Southeast)	
Of the Community of Donald and)	
North of I-82 from the Rural-10/5)	
(R-10/5) to the Highway/Tourist)	
Commercial (HTC) Zoning District)	

A. Introduction. The Hearing Examiner conducted an open record public hearing on August 31, 2023. A thorough staff report prepared by Senior Project Coordinator Phil Hoge recommended approval of this Rezone application subject to the applicant providing sufficient evidence at the open record public hearing to enable the Hearing Examiner to find that substantial changes in circumstances exist to warrant an amendment of the current zone. Attorney Jaime Cuevas, the General Counsel and Chief Business Development Officer of Ramsey Companies, testified at length regarding several changes in conditions that warrant the approval of the requested Rezone. No other testimony and no written comments from the public were submitted regarding the

requested Rezone. This Recommendation is being issued within ten business days of the open record public hearing.

B. Summary of Recommendation. The Hearing Examiner agrees with the Planning Division’s reasons for recommending approval of this Rezone subject to a showing of changed circumstances and finds that a sufficient showing of changed circumstances was presented by the applicant’s representative at the open record public hearing to warrant a recommendation that the Board of Yakima County Commissioners approve the Rezone from the Rural-10/5 (R-10/5) to the Highway/Tourist Commercial (HTC) zoning district.

C. Basis for Recommendation. Based upon a view of the site without anyone else present on August 29, 2023; 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 August 31, 2023; and a review of both the Yakima County Comprehensive Plan (**Horizon 2040**) and the Yakima County Zoning Ordinance which is Title 19 of the Yakima County Code (YCC), the Hearing Examiner makes the following:

FINDINGS

I. Applicant/Property Owner/Agent. The applicant and property owner is Kip Richard Ramsey, Sr., 61 West Wapato Road, Wapato, WA 98951. The applicant’s agent and representative for this application who testified at the hearing is Jaime Cuevas, Jr., the General Counsel and Chief Business Development Officer of Ramsey Companies which is located at the same address.

II. Location. The five parcels subject to this Rezone application are located southeast

of the rural community of Donald east of the Donald-Wapato Road and north of Interstate 82 about two miles northeast of the Wapato city limits. The Assessor's parcel numbers are 191101-22008, 24001, 24002, 24004 and 24005.

III. Application. The main aspects of this Rezone application may be described as follows:

(1) On April 13, 2023, Yakima County Public Services Department - Planning Division received a minor nonproject Rezone application which was determined to be complete for processing on May 10, 2023.

(2) The application requests an amendment to the official zoning map established by the Yakima County Zoning Ordinance (YCC Title 19) to change the zoning of five parcels comprising 33 acres from the Rural-10/5 (R-10/5) zoning district to the Highway/Tourist Commercial (HTC) zoning district. The process for considering minor Rezones requires the Hearing Examiner to conduct an open record public hearing prior to rendering a Recommendation to the Board of Yakima County Commissioners which makes the Decision after conducting a closed record hearing.

(3) The five parcels are adjacent to 55 acres which were rezoned to the Highway/Tourist Commercial zoning district in 2014 and which have since been purchased by the applicant. The parcels are shown on Exhibits 15 and 16 at pages 118 and 119 of the Hearing Record. The property is generally flat. The construction of Interstate 82 severed the property's connection with the surface waters of the Yakima River and located the freeway interchange immediately south of one of the parcels and immediately west of the other four parcels.

(4) Three of the subject parcels have recently been farmed and a fourth subject parcel is a segment of the abandoned Union Pacific Railroad corridor. The fifth subject parcel is a small 0.19-acre parcel adjacent to the I-82 off-ramp that has no access rights to the off-ramp, is separated from the other parcels and appears to be the remnant site of a previously existing house and its accessory structures that existed prior to I-82's construction around the early 1980s. The other four parcels are adjacent to lands on the west and south that are zoned HTC and adjacent to other lands on the north and east that are zoned R-10/5. There are currently no structures on any of the subject parcels.

(5) No new uses or new structures are proposed with this application. The requested Rezone would enable future business and commercial uses to be approved or considered for approval on these five parcels. Those uses are listed on Attachment A to this Recommendation and in Attachment A to the Planning Division Staff Report of the

Administrative Official which is in the Hearing Record. This type of a Rezone application is sometimes referred to as an application for a nonproject minor Rezone because it does not include a request for approval of any specific future uses and does not include a request for a Comprehensive Plan amendment.

IV. Jurisdiction. The jurisdictional aspects of this application may be summarized as follows:

(1) YCC Table 19.36-1 provides that the Highway/Tourist Commercial (HTC) zoning district is “potentially consistent” with the Rural Self-Sufficient (RSS) designation of the Comprehensive Plan (**Horizon 2040**). YCC §19.36.030 entitled “Minor Rezone – Map Amendment” provides 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. Mr. Hoge indicated at the hearing that Table 19.36-1 was amended in 2021 pursuant to the Planning Division’s recommendation to refer to zoning districts as “potentially consistent” rather than “consistent” with the various designations of the Comprehensive Plan in order to be able to explain to the public why consideration of Goals and Policies of the Comprehensive Plan is also required to determine the consistency of a proposed zoning district with the Comprehensive Plan designation of the property. Mr. Hoge also explained that YCC §19.36.030 still refers to Rezone applications that are “consistent” rather than “potentially consistent” with the Table due to an oversight. YCC §19.36.030 also provides that these quasi-judicial applications, when site-specific, may be processed at any time under Type 4 review pursuant to YCC §16B.03.030. YCC §16B.03.030(d) states that Type 4 project permit applications are quasi-judicial actions which require an open record public hearing before the Hearing Examiner and that the Examiner’s written decision constitutes a recommendation to the Board of Yakima County Commissioners. The Board will make the final Decision which could be appealed to Superior Court under the procedures of the Land Use Petition Act (LUPA) that are set forth in RCW 36.70C.

(2) According to YCC §19.30.100(2), conditions may be imposed on approval of Type 4 applications to:

- (a) Comply with any development standard or criterion for approval set forth in YCC Title 19 or other relevant provisions of the Yakima County Code;
- (b) Mitigate material impacts of the development, whether environmental or otherwise;
- (c) Ensure compatibility of the development with existing neighboring land uses; assure consistency with the intent and character of the zoning district involved;

(d) Ensure that the structures and areas proposed are surfaced, arranged and screened in such a manner that they are compatible with and not detrimental to existing or reasonable expected future development of the neighborhood, or resource uses, consistent with the Comprehensive Plan; and

(e) Achieve and further the intent, goals, objectives, and policies of the Comprehensive Plan and YCC Title 19.

(3) YCC §19.30.100(3) grants broad authority to impose special conditions and safeguards to achieve and further the objectives set forth in YCC §19.30.100(2).

(4) The Pre-Application Conference required by YCC §16B.04.010(1) for minor Rezones was held on March 21, 2023 (File No. EAC2023-00011). A summary of the Pre-Application Conference is included as Exhibit 13 at pages 110-116 of the Hearing Record.

(5) The review process will consider those sections of YCC Title 19 that specify the requirements for approval of Rezone applications. The Yakima County Hearing Examiner has conducted an open record public hearing, has considered the written evidence and testimony presented and has prepared this written Recommendation which will be forwarded to the Board of Yakima County Commissioners (Board). The Board will then consider this Recommendation at a closed record public hearing, deliberate in public and conclude with the Decision regarding the application.

V. Processing of Application. Steps to process this Rezone application have been or will be completed as follows:

(1) After this application was submitted, the Building and Fire Safety Division, Water Resources Division, Yakima Health District, Transportation Division, Code Enforcement Division, Current Planning Section, Long Range Planning Section, Environmental and Natural Resources Planning Section, and Utilities Division were notified to provide comments on the proposal. Comments were received from the Building and Fire Safety Division, the Water Resources Division, the Transportation Division, and the Planning Division Sections. These internal comments are set forth in Attachment D of the Planning Division Staff Report.

(2) Other steps required in order to process this application have been or will be accomplished on the following dates as follows:

Application Submitted:	April 13, 2023
Application Determined Complete:	May 10, 2023
Notice of Application/Completeness/Future Hearing/ SEPA Environmental Review mailed:	May 11, 2023

Notice of SEPA Preliminary Threshold Determination (DNS) inviting comments & Notice of Open Record Hearing published in Yakima Herald-Republic:	August 13, 2023
Notice of SEPA Preliminary Threshold Determination (DNS) inviting comments & Notice of Open Record Hearing mailed:	August 14, 2023
Notice of Open Record Public Hearing posted on the property:	August 16, 2023
Open Record Public Hearing held:	August 31, 2023
Board of County Commissioners Closed Record Hearing:	To be scheduled

(3) Comments during the first 14-day comment period ending on May 25, 2023 received from the following external agencies are set forth respectively as Exhibits 6, 7 and 8 at pages 17-21 of the Hearing Record and are summarized as follows:

(a) Department of Archaeology & Historic Preservation (DAHP): DAHP indicated that there is a high probability of encountering cultural resources within the proposed project area; recommended a professional archaeological survey of the project area prior to ground disturbing activities; provided comments of the State Architectural Historian regarding the nearby but off-site historic Herke Hop Kiln; recommended that any historic buildings or structures be evaluated for eligible listing on the National Register of Historic Places on Historic Property Inventory forms; encouraged the SEPA lead agency to ensure that these evaluations are written by a cultural resource professional; requested copies of any correspondence or comments received by Yakima County from Tribes or other parties concerning cultural resource issues; and requested that any reports, site forms, and/or historic property inventory forms be uploaded to WISAARD by the consultants.

(b) Washington State Department of Transportation: I-82 and ramps are fully access controlled; future uses and their significant impacts will require mitigation paid for by the developments; the potential increase in traffic volumes at the I-82 interchange may result in the possible need for Traffic Impact Analyses (TIAs) for certain future uses; stormwater generated on the subject site must be kept from flowing onto the I-82 right-of-way; any signage must comply with the Scenic Vistas Act of 1971; and any lighting must be directed away from I-82.

(c) Sunnyside Valley Irrigation District (SVID): SVID has no facilities within the subject parcels.

These comments will be addressed at the time when future development is proposed on the site. Future development will be subject to a possible Traffic Impact Analysis, will have to keep stormwater from flowing onto the I-82 right-of-way, will have to comply with the Scenic Vistas Act of 1971, and will have to have any lighting directed downward. Similarly, when future development is proposed, it may be subject to a

professional archaeological survey prior to ground disturbing activities. Since the Herke Hop Kiln is not located on the subject properties, there are no structures or buildings on the site to be evaluated for listing on the National Register.

VI. State Environmental Policy Act (SEPA). The SEPA review findings are set forth as follows:

(1) This minor Rezone application is subject to review under the State Environmental Policy Act (SEPA). Yakima County's Planning Division issued and provided a joint Notice of Environmental Review/Notice of Completeness/Notice of Application/Notice of Future Public Hearing to adjacent property owners and interested agencies on May 11, 2023.

(2) The comments that are summarized above were received from the Department of Archaeology & Historic Preservation (DAHP), the Department of Transportation, and the Sunnyside Valley Irrigation District. Because the DAHP letter stated that Tribes may have recommendations different from DAHP's, on July 31, 2023, the Planning Division emailed DAHP's letter and the County's notice of May 11, 2023, to Yakama Nation's Cultural Resources staff asking if they concurred with DAHP's comments and inviting them to provide any additional comments as desired. This email is included in the Hearing Exhibits. No comments were received prior to the open record public hearing.

(3) Yakima County's SEPA Responsible Official issued a Determination of Non-Significance for comments on August 11, 2023, with the comment period ending on August 28, 2023. No additional comments were received. A Final Determination of Non-Significance was issued and mailed with a Notice of Final Threshold Determination on August 31, 2023. They are included in the Hearing Record as Exhibit 17 at pages 120-127. YCC §16B.03.030 provides that there is no administrative appeal of the final threshold determination.

VII. Comprehensive Plan. The subject five parcels are all within the Rural Self-Sufficient (RSS) designation of the Yakima County Comprehensive Plan (**Horizon 2040**), as are all of the surrounding parcels that were rezoned to the Highway/Tourist Commercial zoning district in 2014. The Comprehensive Plan describes the purposes of the Rural Self-Sufficient designation as follows in the Land Use Element, Chapter 5 at page 82:

(1) The Goals and Policies of the Rural Self-Sufficient designation provide a broad choice of areas where an independent lifestyle can be sustained on acreage homesites. The Self-Sufficient designation is intended to maintain rural character by establishing lot sizes which will make feasible individual wells and septic systems on each parcel, and by minimizing conflicts with adjoining or nearby resource land uses through buffers and special setbacks that will permit farm, forestry and mineral resource uses to continue.

(2) Density incentives are provided to encourage development where fire protection services and hard surface roads are available. The Rural Self-Sufficient Policies also provide for flexible parcel sizing or clustering to encourage development that more effectively uses the site to reduce infrastructure and service costs. These lands are generally found at the periphery of Urban Growth Areas and Rural Transitional areas separating designated farm or forest lands and the remote rural and developmentally constrained lands.

VIII. Zoning. The zoning considerations relative to this Rezone application may be summarized as follows:

(1) The subject parcels are currently zoned Rural-10/5 (R-10/5). The intent of the R-10/5 zoning district as set forth in YCC §19.11.030(1)(b) is to maintain rural character and provide density incentives to encourage development where fire protection services and access to roads with a paved or other hard surface are available.

(2) The application requests that the subject parcels be rezoned to Highway/Tourist Commercial (HTC). The intent of the HTC zoning district set forth in YCC §19.11.040(1)(b) is to provide areas for commercial establishments which offer accommodations, supplies, services or recreational opportunities to the traveling public. The HTC zoning district is also intended to provide appropriate space and, in particular, sufficient depth from the street to satisfy the needs of modern commercial development where access is almost entirely dependent on motor vehicles and to encourage the development of the zoning district with such uses and in such a manner as to minimize traffic hazards and interference from highway oriented businesses. This zoning district is further intended to permit only those uses which promote and enhance the recreation and tourism industry and to prevent the intrusion of incompatible, non-tourist uses which would be overly disruptive or would directly compete with shopping areas of nearby communities. The zoning district shall only be located at freeway interchanges, along or at the intersections of state highways or generally recognized tourist routes and the approaches thereto. The HTC zoning district may be located inside or outside of Urban Growth Areas.

IX. Nearby Zoning and Land Uses. Most parcels near the subject five parcels are within the Highway/Tourist Commercial zoning district and are undeveloped without any structures located on them.

X. Rezone Review Criteria. YCC §19.36.030(4) states that this Recommendation regarding this minor Rezone application must be based upon a consideration of the following criteria:

(1) The testimony at the public hearing (YCC §19.36.030(4)(a)): No testimony was presented at the hearing in opposition to approval of the requested Rezone.

(2) The suitability of the property in question for uses permitted under the proposed zoning (YCC §19.36.030(4)(b)):

(a) The applicant’s narrative states that pursuant to YCC Table 19.36-1, the proposed HTC zoning district would be consistent with the Comprehensive Plan and would not require a Comprehensive Plan map amendment and is suitable for a minor rezone.

(b) The uses potentially permitted in the HTC zone are identified by Table 19.14-1 (Allowable Land Use Table) in YCC Chapter 19.14. Attachment A of the Planning Division Staff Report presents an excerpt from Table 19.14-1 showing all such uses and their levels of review, but omitting the uses specifically prohibited in the HTC zone. Attachment A of this Recommendation is a list of the Type 1, the Type 2 and the Type 3 uses allowed in the HTC zoning district.

(c) The property is suitable for uses permitted in the HTC zone subject to adequate infrastructure improvements being made concurrently with the development of specific uses permitted on the property.

(d) The subject five parcels are generally flat and their soils were formed by the historic meandering of the Yakima River and more recently by farming activities. None of the parcels currently have direct access to public or private roads. However, the applicant property owner also owns adjacent lands that do have direct access to Donald-Wapato Road by way of Main Avenue, which is an 80-foot-wide unimproved County right-of-way. The owner would therefore be able to establish easements or lot reconfigurations to provide the subject five

parcels with access to the County road system. Donald-Wapato Road is a paved County-maintained road with a functional classification of Rural Major Collector.

(e) The subject five parcels currently have no developed water or sewage disposal systems, and the owner would be responsible for concurrently providing such systems for the particular future developments on the property.

(f) Subject to overcoming the current lack of access and subject to the need to provide water and sewage systems, the area is physically suitable for many of the Type 1, Type 2 and Type 3 uses listed as permitted in the HTC zoning district.

(g) While the site may be physically suitable for many of the uses that are listed as permitted in the HTC zone, Goals and Policies of **Horizon 2040** would disfavor or limit some proposed uses or their proposed scale. Also, the site's isolated location or lack of particular utilities and other services might limit the economic suitability of the site for some of those uses.

(h) Some proposed future uses may be subject to further SEPA review which would provide specific analysis of the suitability of the site for particular proposed uses.

(3) The recommendation from interested agencies and departments (YCC §19.36.030(4)(c)):

(a) The applicant's narrative states that the applicant has completed the mandatory pre-application early assistance meeting with County departments and obtained feedback.

(b) The meeting summary for the mandatory pre-application early assistance meeting is Exhibit 13 at pages 110-116 of the Hearing Record. Other than the Planning Division's recommendation contained in the Staff Report, no recommendations for approval or denial have been received from interested agencies and departments. The comments received from internal agencies set forth as Attachment D of the Staff Report and the comments received from interested external agencies set forth as Exhibits 6, 7 and 8 at pages 17-21 of the Hearing Record provide site data and information about development standards and review processes that would apply to future applications for land uses, but do not contain any recommendations as to approval or denial of the requested Rezone.

(4) The extent to which the proposed amendments are in compliance with and/or deviate from the goals and policies as adopted in the Comprehensive Plans, adopted neighborhood plans and the intent of this Title (YCC §19.36.030(4)(d)):

(a) The applicant’s narrative states that the parcels and neighboring HTC properties are suitable for future commercial development and that future commercial development in this area is consistent with the Comprehensive Plan and would benefit the surrounding area and community.

(b) There are no adopted neighborhood plans applicable to the proposed Rezone, but there are Goals and Policies of **Horizon 2040** that are applicable to the Rezone request. A key policy to consider relative to the proposed Rezone is Economic Development Policy ED 5.4 because it specifically addresses allowing highway commercial zoning at a freeway interchange and expresses policy considerations in that regard as follows:

“ED 5.4: Allow highway commercial zoning to serve the needs of the traveling public at selected limited access highway interchange areas if they satisfy the following criteria:

1. The uses do not conflict with adjacent city business areas;
2. Adjacent land uses are buffered from the commercial area;
3. The site is not designated as an agricultural, forest or mineral resource area, and resource lands are not materially affected by the use;
4. The operation and effectiveness of the interchange is not impacted by the commercial use; and
5. If outside an Urban Growth Area, the uses can be accommodated without the extension of urban level services to the site.”

The subject Rezone request clearly meets Criterion 3 because the **Horizon 2040** designation for the site is Rural Self-Sufficient rather than Agricultural Resource, Forest Resource, or Mineral Resource Overlay. Depending upon the type of HTC uses proposed, Criterion 1 could be satisfied because the nearest city is Wapato which is about two miles away across the Yakima River and which is not visible from the site. Likewise, Criterion 2 could be satisfied by the fact that parcels adjacent to the subject five parcels are either already zoned HTC or are buffered by I-82 on the south, the Donald-Wapato Road on the west, and a pond on the east. Criterion 4 could be satisfied because it would not be likely that commercial development on the HTC-zoned property would generate enough traffic to impact the operation and effectiveness of the interchange. Finally, Criterion 5 could be satisfied because services from an urban area are not likely to be close enough to be extended to the site. However, in the final analysis, the extent to which the requested Rezone complies with Criteria 1, 2, 4 and 5 of Policy ED 5.4 will need to be considered at the project level when particular HTC uses are proposed.

(c) The extent of the rezone’s compliance with and/or deviation from other relevant Goals and Policies of **Horizon 2040** and the intent of YCC Title 19 will

likewise need to be considered at the project level when particular uses are proposed. These include:

(i) Policy ED 3.2: Encourage economic growth and redevelopment in existing downtown and neighborhood centers.

(ii) Policy ED 3.12: Support commercial or industrial development in 1) existing properly zoned, serviced sites within UGAs; 2) existing properly zoned, unserviced sites within UGAs; 3) other sites within UGAs that have been designated in a comprehensive plan or identified on a countywide inventory for commercial or industrial use.

(iii) Goal LU-R 1: Maintain the rural character of the County.

(iv) Policy LU-R 1.1: Ensure that only rural densities and uses are permitted [within Rural areas].

(v) Policy LU-R 6.2: Encourage growth within Type I Rural Settlement LAMIRD boundaries through infill and the use of clustering, when appropriate infrastructure is in place. Rural Settlement LAMIRDs are not allowed to expand geographically.

(vi) The intent of YCC Title 19, as stated in the intent statement for the HTC zone (YCC §19.36.030(4)(d)), is that the HTC district is further intended to permit only those uses that promote and enhance the recreation and tourism industry and to prevent the intrusion of incompatible, non-tourist uses that would be overly disruptive or would directly compete with shopping areas of nearby communities.

(d) The subject Rezone could be considered inconsistent with and deviate from **Horizon 2040**'s Policy ED 3.15 because it is outside of urban growth boundaries and would expand the existing 55-acre HTC rural commercial area into an 88-acre rural commercial area unless the future proposed development on the subject five parcels could, for example, constitute fill-in development or improve safety for fire apparatus access and vehicular traffic circulation or complement development on surrounding HTC parcels. That Policy states:

“Policy ED 3.15: Existing rural commercial and industrial areas outside of urban growth boundaries should not be expanded except for fill-in development, and where possible, should be upgraded, improving appearance, safety and neighborhood compatibility.”

(5) The adequacy and availability of public facilities, such as roads, sewer, water and other required public services (YCC §19.36.030(4)(e)):

(a) The applicant's narrative states that this application is submitted in anticipation of future development and no current development applies.

(b) The site currently is lacking adequate and available public facilities for many developments that could be proposed if the requested Rezone is approved. But this is typical of most rural developable sites. Under the philosophy of **Horizon 2040** that “growth pays for growth” (i.e., rather than taxpayers or ratepayers paying for growth), developments are required by the existing development standards to provide any required public facilities concurrently with their development.

(6) The compatibility of the proposed zone change and associated uses with neighboring land uses (YCC §19.36.030(4)(f)):

(a) The applicant’s narrative states that since the neighboring parcels are jointly owned by applicant and are already zoned HTC, a rezone of the subject five parcels is necessary to adequately develop the area in the future pursuant to the purposes permitted under HTC zoning.

(b) The proposed zone change itself is currently compatible with neighboring land uses because no associated uses are being proposed with this nonproject Rezone application. When future uses and other land use actions are proposed, their compatibility with neighboring land uses will need to be considered in order to determine the appropriateness of approving them or of applying conditions to limit any incompatibilities with neighboring land uses.

(7) The public need for the proposed change. Public need shall mean that a valid public purpose, for which the Comprehensive Plan and this Title 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 (YCC §19.36.030(4)(g));**

(a) The applicant’s narrative states that the public holds a valid public purpose/interest in seeing that this area is developed pursuant to the Comprehensive Plan; that rezoning the subject parcels in accordance with the neighboring and jointly owned HTC parcels will only further the public interest in the commercial development of the area; and that the future commercial development will bring necessary jobs and amenities to the area in furtherance of the public interest. By email dated July 12, 2023, the applicant’s evidence relative to this

criterion was supplemented by adding the following information that is especially relevant to the criterion set forth above in YCC §19.36.030(4)(g):

(i) Economic development: Rezoning land to commercial use can stimulate economic growth and create job opportunities. The development of commercial properties, such as retail stores, office spaces, or industrial facilities, can attract businesses, increase tax revenue, and contribute to the local economy. Our proposal would create jobs and spark economic growth during a time when we are dealing with an economic inflation crisis.

(ii) Increased tax base: Commercial development typically generates higher property tax revenue compared to residential, agricultural, or undeveloped land. Rezoning for commercial use can lead to an expanded tax base, allowing the appropriate local governments to fund public services, infrastructure improvements, and community projects in an area that currently has neighboring parcels zoned commercial and commonly owned that are looking at being developed along a common plan in the future.

(iii) Improved services and amenities: Rezoning this land to commercial use can result in the establishment of businesses and services that cater to community needs. It may lead to the development of shopping centers, restaurants, entertainment venues, or other amenities that enhance the quality of life for residents in the Yakima Valley and passing through the interstate highway, making the area more vibrant and attractive in a key geographic location.

(iv) Job creation: Commercial development often provides employment opportunities for local residents. Rezoning land to commercial use can lead to the creation of jobs in various sectors, including retail, hospitality, professional services, and manufacturing, thereby reducing unemployment rates and supporting the livelihoods of community members.

(v) Revitalization of underutilized areas: Rezoning this underutilized property to commercial use can serve as a catalyst for urban or neighborhood development. Including to undeveloped parcels nearby for residential. By attracting new businesses and investment, commercial development can breathe new life into this neglected area, improve property values, and foster community pride.

(vi) Support for transportation and infrastructure in this area is greatly needed. Rezoning these parcels according to the commonly owned and neighboring commercial parcels is essential to finally and properly develop this area for the benefit of the community and to support the transportation sector utilizing I-82.

(vii) Community services and amenities: rezoning these parcels can promote and lead to the development of key community services and amenities in that area like fuel stations, a place to buy food, groceries, culturally significant items, and a place to obtain basic health store items.

(viii) Many of these points are in-line with the existing Comprehensive Plan, which is the reason the commonly owned neighboring parcels were rezoned commercial. This is the final step in being able to properly develop that commonly owned area.

(b) Staff is unaware of additional HTC-zoned land being needed for a particular purpose at the subject vicinity. With no particular use proposed simultaneously with the subject rezone, the requirement for more HTC land for a particular purpose at the subject location, or its timeliness, is unknown.

(c) Anecdotally, the HTC land at the Outlook interchange, which was rezoned in 1997, has stayed undeveloped for 26 years, and the adjacent 55 acres of HTC land which was rezoned in 2014 has stayed undeveloped for nine years. This would tend to indicate that demand is lacking for additional rural HTC zones at interchanges, but this may also be due to many factors relating to the property owners' circumstances and could also indicate that the current lack of such development will increase the demand for it.

(d) The policies of **Horizon 2040** are geared towards supporting and promoting general commercial developments in UGAs, rather than undermining them with rural HTC areas. Rural HTC areas are intended to limit uses to those that promote and enhance the recreation and tourism industry as are planned for the subject five parcels and to prevent the intrusion of incompatible, non-tourist uses that would be overly disruptive or would directly compete with shopping areas of nearby communities. Increased property values and economic development in UGAs create as much public benefit as in rural areas, but typically result in public services being more cost-effectively provided.

(8) Whether substantial changes in circumstances exist to warrant an amendment to the current designation or zone (YCC §19.36.030(4)(h)):

(a) The applicant's narrative states that no amendments to the Comprehensive Plan map are required for this request; that the subject parcels are jointly owned by applicant who also owns the neighboring HTC parcels; and that this application for the subject parcels is limited to a minor Rezone for future development in accordance with all applicable and permissible development for properties zoned HTC.

(b) The subject five parcels and surrounding parcels were zoned Valley Rural (VR) in 2000 to implement the County's GMA-compliant Comprehensive Plan that was adopted in 1997. In 2015 the name of the VR zone was changed county-wide to Rural-10/5 (R-10/5) with limited changes to the standards that applied to the former VR zone. The applicant's narrative does not demonstrate that substantial changes in circumstances exist since the land was last rezoned to warrant the requested Rezone, but the applicant provided additional evidence regarding this criterion at the open record public hearing for the Hearing Examiner's consideration.

(c) Washington case law establishes that a party seeking the rezone of land has the burden of demonstrating (1) that circumstances have substantially changed since the last time the land was zoned; (2) that the change in circumstances justifies a rezone for the public health, safety, morals, or general welfare; and (3) that local criteria for a rezone are satisfied. A variety of factors may indicate a substantial change in circumstances sufficient to support a rezone of property, including changes in public opinion, local land use patterns, and the property itself. Proof of changed circumstances is not required for a rezone if the proposed rezone implements policies of the local comprehensive plan use plan. (*Henderson v. Kittitas County*, 124 Wn. App. 747, 100 P.3d 842 (Division III, 2004) which is Attachment B of the Planning Division Staff Report). On the other hand, a later Court of Appeals Division III case arose out of a Superior Court order that granted a nonproject Rezone request because a Board of County Commissioners twice failed to make adequate findings setting forth reasons to justify its denial of a Rezone request. Since Kittitas County did not appeal the Superior Court decision, the appellate court did not decide whether the Superior Court's decision granting the Rezone that had been denied by the Board of Kittitas County Commissioners would have been upheld. (*Manna Funding, LLC v. Kittitas County*, 295 P.3d 1197, 1210, footnotes 4 and 7 (Division III, 2013)).

(d) While YCC Table 19.36-1 in YCC Chapter 19.36 (Zoning District potential consistency with Comprehensive Plan Future Land Use Designations) indicates that the HTC zone is potentially consistent with **Horizon 2040's** map designation of Rural Self-Sufficient, the applicant should demonstrate that the rezone is also consistent with the relevant Goals and Policies of **Horizon 2040** as listed above. Based on the findings above, the proposal is found to be substantially consistent with the minor Rezone review criteria except for this criterion relative to a substantial change in circumstances to warrant approval of the requested Rezone. The applicant's representative testified at length at the open record public hearing regarding this criterion. He established that a substantial change in circumstances does in fact warrant approval of the requested Rezone due to the following

changes that have taken place since the subject parcels were zoned Valley Rural in the year 2000 (which now is known as the Rural-10/5 zone due to a name change):

(i) The amount of traffic on I-82 passing by this interchange has increased since the year 2000 when the property was zoned Valley Rural (VR), now known as Rural-10/5 (R-10/5) since the zoning district's name was changed by means of zoning ordinance text amendments in 2015;

(ii) The five subject parcels are no longer being farmed and were removed from open space taxation when the farmers sold the parcels after the year 2000;

(iii) Parcels adjacent to the subject five parcels were rezoned from the Valley Rural zone to the Highway/Tourist Commercial zone by the Board of Yakima County Commissioners in 2014 for reasons that were found sufficient to satisfy the criteria for approval of that similar nonproject minor Rezone request;

(iv) The amount of traffic on the nearby Donald-Wapato Road has increased since the year 2000 due in part to the fact that a commercial business with a visible presence, Hoptown Wood Fired Pizza, was established in the nearby community of Donald in about 2017;

(v) The traveling public and investors in commercial developments have been recently emerging from the health crisis posed by the COVID pandemic which discouraged travel and developments related to travel;

(vi) Grant opportunities have recently become available for HTC commercial uses such as, for example, those related to clean energy and biofuels which have become available, for example, through the State Department of Commerce, as well as through the Federal Department of Commerce and the Federal Department of Agriculture;

(vii) The applicant has purchased all of the other HTC-zoned parcels in this area as well as the subject five parcels. Due to the recent purchase of the subject five parcels in 2022, all of the parcels that are currently zoned HTC and that are here proposed to be rezoned to HTC on the north and east sides of this interchange are under single ownership. So now for the first time, the requested Rezone can provide a nearly rectangular area of HTC zoning that would have a regular boundary approximately parallel to I-82. Exhibits 15 and 16 on pages 118 and 119 of the Hearing Record show the configuration of the HTC-zoned property in this area if this Rezone is granted. Those maps show the parcels which are currently zoned HTC in relation to the subject five parcels which are sought to be rezoned to HTC. The fact that all of these parcels are now owned by the applicant means that for the first time HTC-zoned parcels can be developed at this interchange with sufficient distance from I-82 to provide safe and efficient fire

apparatus access and vehicular circulation in and around a variety of potential HTC uses that would be clearly visible to the traveling public on I-82. If the requested Rezone is approved, the HTC uses could be developed as far to the east as the buffer area for the existing pond so that the westbound traveling public on I-82 would know well in advance of the need to take the off-ramp exit in order to access the HTC uses from the Donald-Wapato Road.

XI. Consistency of the Rezone with Development Regulations and the Comprehensive Plan under the Criteria Required by Section 16B.06.020 of the Yakima County Code is determined by a consideration of the following factors:

(1) The types of land uses permitted at the site through a Rezone to the Highway/Tourist Commercial (HTC) zone would be consistent with that zone and with the Comprehensive Plan designation of the property.

(2) The density of residential development or the level of development such as units per acre or other measures of density is not affected by this application because any use permitted under Highway/Tourist Commercial (HTC) zoning will be consistent with the density allowed by the Comprehensive Plan and zoning ordinance.

(3) The availability and adequacy of infrastructure and public facilities is not an issue because areas designated as Rural Self-Sufficient by the Comprehensive Plan (**Horizon 2040**) are areas where property owners are responsible for providing a level of service for water, sewer and stormwater drainage that is adequate for the uses they develop.

(4) The characteristics of any development resulting from this rezone will be uses prescribed for the Highway/Tourist Commercial (HTC) zone which are consistent with the Comprehensive Plan land use designation for the property and will have to be consistent with the applicable development regulations of the zoning ordinance for whatever uses are developed.

CONCLUSIONS

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

(1) The Hearing Examiner has jurisdiction to make this Recommendation to the Board of Yakima County Commissioners regarding this Rezone application.

(2) The zoning ordinance public hearing notice requirements have been satisfied.

(3) YCC Table 19.36-1 provides that the proposed Rezone of the subject parcels from the Rural-10/5 (R-10/5) zoning district to the Highway/Tourist Commercial (HTC) zoning district would be potentially consistent with the Rural Self-Sufficient (RSS) Comprehensive Plan designation, and the majority of applicable Goals and Policies of the Comprehensive Plan support a finding that the requested Rezone of the subject five parcels to the HTC zoning district would in fact be consistent with the RSS Comprehensive Plan designation of the subject parcels.

(4) The requested Rezone of the subject five parcels from the Rural-10/5 (R-10/5) zoning district to the Highway/Tourist Commercial (HTC) zoning district would satisfy the criteria and requirements for a Rezone set forth in YCC §19.36.030(4) and the consistency criteria of YCC §16B.06.020.

RECOMMENDATION

Based upon the findings and conclusions set forth above, the Hearing Examiner recommends that the Board of Yakima County Commissioners **APPROVE** this proposed nonproject minor Rezone of Parcel Numbers 191101-22008, 24001, 24002, 24004 and 24005 from the Rural-10/5 (R-10/5) zoning district to the Highway/Tourist Commercial (HTC) zoning district for the reasons described in this Recommendation and in the documents contained in the record of the Planning Division file numbers ZON2023-00002 and SEP2023-00012.

DATED this 15th day of September, 2023.



Gary M. Cuillier, Hearing Examiner

**ATTACHMENT A: USES ALLOWED AS EITHER TYPE 1, TYPE 2 OR
TYPE 3 USES IN THE HIGHWAY/TOURIST COMMERCIAL (HTC)
ZONING DISTRICT BY YCC TABLE 19.14-1:
(An asterisk denotes a defined term)**

As Type 1 Permitted Uses (allowed when they meet standards):

- Agricultural building*
- Agricultural market*
- Agricultural stands* not exceeding 1,000 square feet in area
- Agriculture*, silviculture, wholesale nurseries*, and animal feeding operations* (Excluding: concentrated animal feeding operations*, livestock auction/sale yards, rendering plants and slaughter houses)
- Irrigation distribution/drainage facilities*
- Bowling alleys
- Movie theaters, auditoriums, exhibition halls
- Sporting goods, Retail
- Hazardous waste treatment and storage facilities subject to the state siting criteria of Chapter 70.105 RCW: Onsite, and storage of chemicals and empty chemical containers
- Stockpiling of earthen materials not within FEMA Flood Plain*
- Dwelling for occupancy by guards, watchmen, caretakers or owners of non-residential permitted use
- Amateur radio antenna and support structure*, communication tower*, anemometer* or personal wind energy tower* and related facilities [Note 1: type of review varies per YCC §19.18.490]
- Antique store*
- Bakery, butcher shop, delicatessen, specialty food store
- Beauty & barber shops
- Bed & breakfast inn* with a maximum of two guest bedrooms and without receptions, group meetings or special gatherings
- Boarding or lodging house*
- Car wash, detailing
- Convenience* store*
- Drive-through food, espresso/coffee and beverage vendor*
- Mobile food vendor located on a site longer than four hours within a 24 hour period

- Espresso/coffee stand*
- Financial institutions
- Florist
- Gift shop*, souvenirs, coins, stamps, toys, hobby store
- Jewelry, watches, silverware
- Laundries, laundromats and dry cleaners
- Overnight lodging facilities*
- Parking lots and garages accessory to another allowed use
- Parts and accessories (tires, batteries, etc.)
- Printing, photocopy service
- Rental agencies: Auto, truck, trailer, fleet leasing services
- Roller skating or ice skating rink
- Service station, automotive*
- Towing services*
- Transportation brokerage offices*; without truck parking
- Utility services* (substations, reservoirs, etc.), when no building or series of buildings exceeds 120 sq. ft. and the SEPA threshold is not exceeded
- Mini-storage*

As Type 2 Administrative Uses (“generally allowed”):

- Brewery, micro*
- Distillery*
- Distillery*, craft*
- Amusement park (permanent) fairgrounds, racetracks and other outdoor amusements*
- Aquatic center
- Campground* and RV park*
- Drive-in theatres
- Exercise Facilities, gymnasiums
- Golf courses, clubhouses, pro shops, driving ranges
- Miniature golf courses
- Historic landmark* allowable use permits
- Hunting and fishing services, horse rental, pony rides
- Parks, playgrounds, greenways and other public or private outdoor recreational facilities
- Safe/shelter home* (See Family Home Services)

- Fraternal organizations*, lodges and clubs, meeting/reception hall*
- Libraries
- Museums, art galleries
- Police, fire station, ambulance service
- Public buildings and uses*
- Extraction of mineral resources as part of a federal or state approved fish or wildlife habitat restoration/enhancement project (Temporary)
- Federal or state approved wetland mitigation projects requiring extraction of mineral resources (Temporary)
- Solid waste drop box site*
- Bed and breakfast inn* with a maximum of five guest bedrooms and/or receptions, group meetings and/or special gatherings
- Clothing and accessories
- Maintenance and repair shops, including specialized repair (radiator, etc.)
- Restaurant, café and drive-in eating facilities
- Tasting room*
- Taverns*, bars, dance establishments
- Veterinarian/animal clinic/hospital* (see also Ag. Service)
- Video sales/rental
- Transportation brokerage offices*; with truck parking
- Truck service stations, washes and shops
- Linear transmission facilities*
- Utility services* (substations, reservoirs, etc.), when the building or series of buildings exceeds 120 sq. ft. or the SEPA threshold is exceeded

As Type 3 Conditional Uses (“generally not appropriate throughout the zoning district”):

- Heavy construction equipment storage, maintenance, repair and contracting services
- Contract truck hauling, rental and trucks with drivers
- Power generating facilities
- Sewage treatment plants
- Wastewater lagoons and sprayfields*