

BOARD OF YAKIMA COUNTY COMMISSIONERS
ORDINANCE NO. 6-2007

**AN ORDINANCE AMENDING THE YAKIMA COUNTY ZONING ORDINANCE MAP
(YCC TITLE 15)**

WHEREAS, the Board of Yakima County Commissioners (hereinafter "Board") adopted the Yakima Zoning Ordinance on February 8, 2000 (Ordinance 1-2000, codified as YCC Title 15); and,

WHEREAS, the Board adopted the Yakima Comprehensive Plan, ***Plan 2015***, in 1997; and,

WHEREAS, application #ZON07-03 requested a rezone from MR (Mountain Rural) to R/ELDP (Remote/Extremely Limited Development Potential); and

WHEREAS, Yakima County issued a Determination of Non-Significance for ZON07-03 on June 19, 2007 in fulfillment of environmental review requirements of the State Environmental Policy Act (SEPA); and,

WHEREAS, an expedited review for the 60-day notice of the proposed rezone was provided to the Department of Community, Trade, and Economic Development (CTED) in accordance with RCW 36.70A.106 by Yakima County and accepted by CTED on June 22, 2007 in fulfillment of Growth Management Act requirements; and,

WHEREAS, the Hearing Examiner, in accordance with YCC Title 15 and YCC Title 16B, conducted an open record public hearing to consider the requested rezone on July 5, 2007 and issued a recommendation for approval dated July 19, 2007; and,

WHEREAS, Yakima County provided notice of a closed record public hearing by the Board in accordance with YCC 16B.05 to consider the proposed rezone; and,

WHEREAS, the Board held said public hearing in accordance with YCC Title 15 on – August 21, 2007 at which time it considered the proposal and provided a full and complete opportunity for all persons desiring to speak for, against, or in relation to the proposed rezone to be heard during the hearing process; and,

WHEREAS, the Board, having deliberated on the matter, has determined that the proposed rezone should be adopted; and,

WHEREAS, based on the public hearing record in this matter, the Board finds that it is in the best interest of the County to enact the following; NOW THEREFORE,

The Board of Yakima County Commissioners hereby ordains as follows:

SECTION 1. Adoption of Hearing Examiner's Recommendation. The Hearing Examiner's recommendation in this matter dated July 19, 2007 (attached hereto as Exhibit 1) is hereby adopted.

SECTION 2. Amending Yakima County Zoning Map. The official zoning map for Yakima County, referred to in YCC 15.16, is hereby amended as follows: The Subject Site, a 3.9 acre portion of parcel no. 141736-33008 indicated on the attached Map "A," is amended from MR (Mountain Rural) to R/ELDP (Remote/Extremely Limited Development Potential).

SECTION 3. Severability. If any section, phrase or provision of this ordinance is held illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

SECTION 4. Effective Date. This ordinance shall become effective immediately upon adoption.

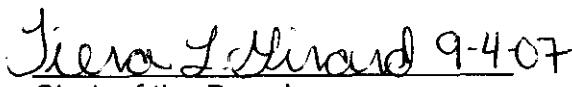
SECTION 5. Instructions to Clerk. The Clerk of the Board shall:

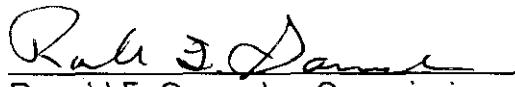
- (1) Transmit a copy of this ordinance to the Washington State Department of Community Trade and Economic Development within ten (10) days of its adoption pursuant to RCW 36.70A.106.
- (2) Promptly publish notice of adoption of this ordinance pursuant to RCW 36.70A.290.

ADOPTED this 4th day of September, 2007.

Attest: Christina Steiner


Michael Leita, Chairman


Tiera L. Girard 9-4-07
Clerk of the Board


Ronald F. Gamache, Commissioner

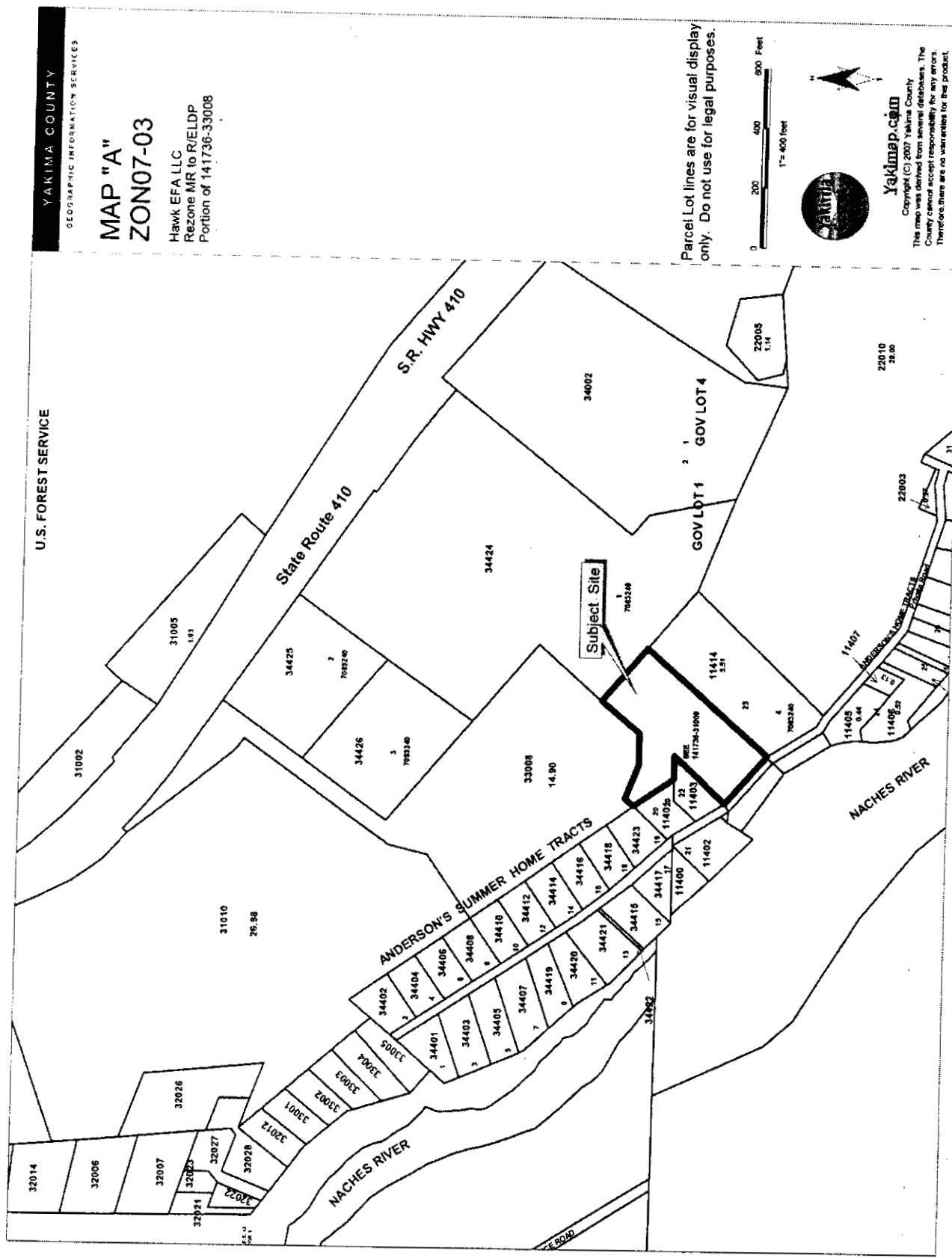
Tiera L. Girard
Deputy Clerk of the Board


J. Rand Elliot, Commissioner
Substituting the Board of County Commissioners
of Yakima County, Washington

Approved as to form:


Deputy Prosecuting Attorney





Board of Yakima County Commissioners

Notice of Amendment to the Yakima Zoning Ordinance Map

Pursuant to RCW 36.70A.290, notice is hereby given that on September 4, 2007 the Board of Yakima County Commissioners adopted Ordinance No. 6-2007, which amended the Yakima Zoning Ordinance map, as follows:

- Approximately 3.9 acres of a portion of a 14.9 acre parcel, located between State Route 410 and the Naches River, about 25 miles northwest of Naches, were changed from MR (Mountain Rural) to R/ELDP (Remote/Extremely Limited Development Potential)

This ordinance is effective September 4, 2007. More information is available from Yakima County Public Services, Planning Division, 4th Floor Courthouse, 128 N. 2nd Street, Yakima, Washington or by contacting Nathan Gwinn, Project Planner, at (509) 574-2300 or nathan.gwinn@co.yakima.wa.us [file no. ZON07-03, Hawk EFA LLC)

Publish: September 6, 2007

Bill: Account #10826, Planning

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

July 19, 2007

In the Matter of a Rezone)	
Application Submitted by:)	
)	ZON #07-03
Hawk EFA, LLC)	SEP #07-017
)	PRJ #06-1685
For rezone of about 3.9 acres)	
From the MR to the R/ELDP zone)	

Introduction. The Hearing Examiner conducted a public hearing on July 5, 2007, and this recommendation has been issued within ten business days of the hearing. A thorough staff report presented by Project Planner Nathan Gwinn recommended approval of the rezone application. The applicant's representative who is the prospective purchaser of the property, Don Luster, testified in favor of the application. Adjoining property owners objected to vacating a 30-foot-wide easement for a private road in the area which would not be affected by approval of this rezone. No testimony or comments were submitted in opposition to the requested rezone.

Summary of Recommendation. The Hearing Examiner agrees with Nathan Gwinn's report and recommends approval of this rezone application.

Basis for Recommendation. Due to the Examiner's familiarity with the area involved in this application and the distance and time that would be involved in viewing this site specifically for this application, the Examiner did not again travel to the site for this

application. Based upon 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 July 5, 2007, and a review of both the Yakima County Comprehensive Plan (Plan 2015) and the Yakima County Zoning Ordinance (YCZO), the Hearing Examiner makes the following:

FINDINGS

Applicant. The applicant is Don Luster, 15251 Highway 410, Naches, Washington 98937 who is the prospective purchaser of the property.

Property Owner. The property owner is Hawk EFA, LLC whose principal is Ed Anderson, P.O. Box 13025, Spokane, Washington 99213.

Location. The location is 18432 Highway 410 on the southwesterly side of Highway 410 about ¼ mile south of Old River Road near the Naches River about 25 miles northwest of the City of Naches. It is a portion of parcel number 141736-33008.

Application. This application requests a rezone of 3.9 acres from the Mountain Rural (MR) zoning designation to the Remote/Extremely Limited Development Potential (R/ELDP) zoning designation. The application is classified as a minor rezone under Section 15.76.050 of the YCZO because the R/ELDP zone is consistent with the Rural Self-Sufficient (RSS) comprehensive plan designation according to Table 15.76 of the YCZO. The Hearing Examiner makes a recommendation to the Board of County Commissioners for minor rezones.

Property Description. About 3.9 acres of the current 14.9-acre parcel would be rezoned to R/ELDP. The requested rezone was suggested by County staff as a solution to the problems associated with the original proposal which would have merged property in two zoning districts where the zoning district boundary was also the boundary between platted and unplattd land.

The proposed rezone would serve three purposes. It would first correct the split-zoning of the existing parent parcel. It would secondly insure that a lot that is proposed to be created by a proposed boundary line adjustment (SSE #2006-168) which will merge platted and unplattd property will have the same R/ELDP zoning that is presently applicable to the platted property near the Naches River rather than be comprised partially of R/ELDP zoning and partially of Mountain Rural (MR) zoning. (The adjacent plat created in 1935 for summer homes and cabins on small lots near the river is zoned R/ELDP because of its location in a floodprone area.) The rezone would thirdly insure that the remaining 11 acres that are proposed to be short platted into two lots after approval of the rezone and lot line adjustment (SUB 2007-018) will all be in the same MR zoning district rather than have about an acre thereof in the R/ELDP zoning district.

The 14.9-acre parent parcel is irregularly shaped. It is a sparsely-wooded meadow on the floor of the Naches River Valley that contains grassland pasture, outbuildings and a large pond. A barn, shed and corral are located on the property to be rezoned which formerly also contained a home. The Naches River is to the south, a pond more than three acres in size is to the north and private property is to the east and west. The Naches River is a Type I stream and shoreline of the State with a Rural Shoreline Environment designation. The Naches River and its associated 100-year floodplain identified on the Federal Emergency Management Agency maps are regulated critical areas. County staff has determined that there are possible wetlands nearby. The floodplain covers about 3.5 of the 3.9 acres proposed to be rezoned.

Notices. Notices of the public hearing were provided in the following manner:

Publishing of notice of public hearing:	June 7, 2007
Mailing of notice of public hearing:	June 4 and 19, 2007
Posting of notice of public hearing on the property:	June 20, 2007

State Environmental Policy Act. Environmental review for this proposed rezone was conducted in accordance with the optional SEPA process authorized by WAC 197-11-355. A final Determination of Nonsignificance (DNS) was issued on June 19, 2007. No appeal was filed during the appeal period which expired on July 3, 2007. Besides the comment from neighboring property owners objecting to vacating a private road easement on the property which is not being proposed, comments were received from the Washington State Department of Transportation (DOT) and Washington State Department of Community, Trade and Economic Development (CTED). DOT did not comment on the rezone, but indicated that additional approaches will not be allowed to SR 410 for applicant's proposed subdivision SUB 07-018. CTED acknowledged receiving and forwarding the rezone notice to State agencies per State law.

Current Comprehensive Plan and Zoning Designations and Land Uses. The current comprehensive plan designation of the portion of the parcel to be rezoned is Rural Self-Sufficient (RSS) and its current zoning designation is Mountain Rural (MR). The same is true of the property to the north and east. Properties in a strip of land along the Naches River to the south and west are designated R/ELDP by both the comprehensive plan and the zoning ordinance. Properties across the river to the south and west are designated Forest Resource (FR) by the comprehensive plan and are classified Forest Watershed (FW) by the zoning ordinance. The existing comprehensive plan designations, zoning classifications and land uses in the vicinity are:

<u>Location</u>	<u>Comprehensive Plan</u>	<u>Zoning</u>	<u>Land Use</u>
Subject Site	RSS	MR	Outbuildings, rangeland, and critical areas
North	RSS	MR	Rangeland, vacant land
East	RSS	MR	Farmland
South	R/ELDP & FR	R/ELDP & FW	Woodland, critical areas
West	R/ELDP & FR	R/ELDP & FW	Woodland, critical areas

Rezone Review Criteria. The recommendation regarding this rezone application must be based upon the following criteria specified in Section 15.76.036(3) of the YCZO:

(a) The extent to which the proposed rezone is consistent with and/or deviates from the goals, objectives, mapping criteria and policies adopted in the comprehensive plan and the intent of this title.

(i) Consistency with goals, objectives, mapping criteria and policies of the Comprehensive Plan: The parent parcel currently has split comprehensive plan designations. The comprehensive plan designation boundary follows a private road named Jefferson Road between the majority of the parcel and the river. Most of the property is within the Rural Self-Sufficient designation which maintains the rural character of areas where an independent and private lifestyle can be sustained on lots large enough to make individual wells and septic systems feasible on each parcel of remote rural and developmentally constrained lands. A small southwesterly portion of the parcel less than one acre in size between Jefferson Road and the Naches River is within the Remote/Extremely Limited Development Potential comprehensive plan designation which maintains the limited development potential of areas that are constrained by their

remote location or natural hazard potential, consistent with environmental constraints, carrying capacity of the land and service availability. Since a large amount of the property to be rezoned is within the Naches River floodplain, the R/ELDP comprehensive plan designation is either as appropriate as, or more appropriate than, the RSS designation. Future review and updates to the comprehensive plan may reconsider the designation of this property and place it entirely within the R/ELDP comprehensive plan designation based on consistency with the mapping criteria for such designations on developmentally constrained lands. Otherwise the property will remain mainly within the RSS comprehensive plan designation and partially within the R/ELDP designation. Either way, the R/ELDP zoning classification is consistent with both of these comprehensive plan designations under Table 15.76 of the zoning ordinance. The proposed rezone is consistent with the comprehensive plan's Land Use Goal LU-R 10 which is to provide areas where an independent private lifestyle can be sustained and Land Use Goal LU-R 11 which is to recognize and maintain R/ELDP areas and allow development at a level consistent with environmental constraints and service availability in remote areas and other places with extremely limited development potential. The proposed rezone is not inconsistent with any comprehensive plan goals or policies.

(ii) Consistency with Intent of Zoning Ordinance: The proposed rezone would be consistent with the intent of the zoning ordinance because Table 15.76 of the zoning ordinance specifically provides that the proposed R/ELDP zoning district is consistent with both the RSS and the R/ELDP comprehensive plan designations. The property to be rezoned is also consistent with the intent of the R/ELDP zoning district stated in Section 15.27.010 of the zoning ordinance. The general intent of that zone is to implement comprehensive plan goals and policies directed toward protecting the environment and retention of open spaces at a level consistent with carrying capacity of the land and cost-effective service availability. Properties within the R/ELDP zone usually either are remote locations or are subject to development constraints for reasons

such as potential flooding. The zone is appropriate for shorelines and critical areas. It has been applied in a variety of situations, including property with flooding potential. Subsections 15.27.010(2) and (3) of the zoning ordinance state that the intent of the R/ELDP zone is in part to “minimize public health and safety risk on lands which have been mapped as critical areas (floodways, floodprone areas, wetlands, shorelines), excessively steep slopes, or where developmentally constrained soils are predominant” and to “provide development criteria for lands which have public values that must be protected under state law, where shorelines, wetlands, sensitive fish and wildlife habitat or other critical area features are predominant.” The property to be rezoned currently and historically has been in agricultural hobby farm use with a barn and pens to accommodate horses in an area that has flooding potential along the Naches River. The character of the property is therefore consistent with the intent of the proposed R/ELDP zone.

(b) The adequacy of public facilities, such as roads, sewer, water and other public services required to meet urban or rural needs. The proposed rezone will not adversely affect public facilities. Current public facilities are adequate to serve the current use of the property. Future development will be reviewed for potential impacts and availability of public facilities at the time that development occurs.

(c) 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.

A valid public purpose would be served by this rezone because additional property should be included within the R/ELDP zone to minimize public health and safety risks in floodprone areas along the Naches River. The timing is appropriate to classify additional land as R/ELDP because the boundary line adjustment involving neighboring property in the R/ELDP zone provides the opportunity to improve a split-zoned parcel by creating new parcels that will not be split-zoned. All of the new lots will be entirely within either the R/ELDP or MR zone so that the property owner and County can easily determine which development standards apply to all portions of the new lots.

(d) Whether substantial changes in circumstances exist to warrant an amendment to the current designation or zone. The substantial change of circumstances that has occurred is the desire and willingness of the prospective purchaser of the 14.9-acre parent parcel to create new lots by a boundary line adjustment and a short plat which will not be split-zoned, but which will be entirely within the MR zone as to two of the lots and entirely within the R/ELDP zone as to one of the lots.

(e) The testimony at the public hearing. No neighboring property owners attended the public hearing. All of the testimony at the public hearing favored the proposed rezone.

(f) The compatibility of the proposed zone change and associated uses with neighboring land uses. The existing and previous land uses of the parcel (residential, rangeland and small-scale agricultural) and other uses permitted in the R/ELDP zoning district are compatible with neighboring land uses.

(g) The suitability of the property in question for uses permitted under the proposed zoning. The property is suitable for its current residential, rangeland and farmland uses, as well as for other uses permitted in the Remote/Extremely Limited Development Potential zoning district if the criteria for their approval are satisfied.

(h) The recommendation from interested agencies and departments. The only recommendation received from agencies and departments relative to the rezone was the Yakima County Planning Division's recommendation to approve the requested rezone.

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 consideration of the following factors which will be considered in greater detail during future project review:

a) The types of land uses permitted at the site through a rezone to Remote/Extremely Limited Development Potential (R/ELDP) would be consistent with the current comprehensive plan designation of the site because Table 15.76 of the YCZO provides that the R/ELDP zoning district is consistent with the current Rural Self-Sufficient (RSS) comprehensive plan designation.

b) 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 on the parcel will be consistent with the density allowed by the comprehensive plan and zoning ordinance.

c) The availability and adequacy of infrastructure and public facilities is not an issue because adequate infrastructure and public facilities are available for the current uses and because future development will be reviewed for potential impacts and availability of infrastructure and public facilities at the time that specific development is

proposed. Approval of the zoning map amendment does not vest or imply approval of subsequent developments.

d) **The characteristics of the development** will have to be consistent with the development regulations of the zoning ordinance. The boundary line adjustment proposed with the rezone meets all development standards. The subsequent adjacent proposed subdivision will be reviewed as an additional project and environmental review will be conducted for that proposal as well. The zoning ordinance and critical areas ordinance set forth specific standards for maximum lot coverage, minimum building setbacks, parking, building height, sight screening, buffering, flood proofing, street development standards and other details of any proposed future development of the site. Project and environmental review would take place at the time of application for development.

CONCLUSIONS

1. The Hearing Examiner has jurisdiction to make a recommendation to the Board of Yakima County Commissioners regarding this rezone application.
2. The public hearing notice requirements of the zoning ordinance have been satisfied.
3. Table 15.76 of the zoning ordinance specifically provides that the proposed rezone of the subject property from the Mountain Rural (MR) zoning district to the Remote/Extremely Limited Development Potential (R/ELDP) zoning district is consistent with the comprehensive plan's Rural Self-Sufficient (RSS) designation for the property.

4. The proposed rezone of the subject property from the Mountain Rural (MR) zoning district to the Remote/Extremely Limited Development Potential (R/ELDP) zoning district satisfies the requirements for a minor rezone set forth in Section 15.76.036(3) of the zoning ordinance.

5. Future development of the property will be reviewed for consistency and compliance with applicable development regulations in effect at the time of future development, and approval of the requested rezone at this time will neither vest nor imply approval of subsequent developments.

6. The requested rezone should only become effective if and when the boundary line adjustment for the new lot is timely completed because the rezone would result in a split-zoned lot if that boundary line adjustment is not timely completed.

RECOMMENDATION

The Hearing Examiner recommends that the Board of Yakima County Commissioners approve this application for a rezone from the Mountain Rural (MR) zoning district to the Remote/Extremely Limited Development Potential (R/ELDP) zoning district to become effective upon completion of all boundary line adjustment requirements necessary to configure the entire new lot within the R/ELDP zoning district within the timeframe required by applicable County ordinance provisions.

DATED this 19th day of July, 2007.

Gary M. Cuillier, Hearing Examiner