

BOARD OF YAKIMA COUNTY COMMISSIONERS

ORDINANCE 10-2014

IN THE MATTER OF AMENDING THE OFFICIAL ZONING MAP OF YAKIMA COUNTY

WHEREAS, Robert Huerd and Karl Staudinger submitted a complete minor rezone application (File Nos. ZON2014-00001 and SEP2014-00007) on May 16, 2014 to rezone four parcels that they own, totaling approximately 55 acres in the unincorporated community of Donald, from VR (Valley Rural) to HC (Highway/Tourist Commercial); and,

WHEREAS, in accordance with the State Environmental Policy Act (SEPA), codified as Title 43, Ch. 21C of the Revised Code of Washington (RCW), and in the Yakima County Codes at YCC 16.04 and YCC 16B, the Yakima County SEPA Responsible Official issued a Mitigated Determination of Non-Significance (MDNS) at the conclusion of conducting an environmental review on the proposed action to approve the application; and,

WHEREAS, in accordance with the procedural provisions in YCC 15 and YCC 16B, the Yakima County Administrative Official provided public notices of the application and the open record public hearing, requesting comments thereon; and,

WHEREAS, in further compliance with the provisions of YCC 15 and YCC 16B, the Yakima County Hearing Examiner conducted an open record public hearing on the application on August 7, 2014, followed by the issuance of his recommendation on August 21, 2014 to APPROVE the requested rezone, subject to conditions to be contained in an incorporated development agreement; and,

WHEREAS, after providing public notices in accordance with YCC 16B, the Board conducted a closed record public hearing on October 14, 2014 to act on the Hearing Examiner's recommendation in accordance with YCC 16B.03.030(1)(d); and,

WHEREAS, after closing the hearing, the Board deliberated and determined that the requested rezone should be approved subject to a development agreement as recommended by the Hearing Examiner; now, therefore,

BE IT HEREBY ORDAINED by the Board of County Commissioners of Yakima County, Washington that:

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

- A. Findings, Conclusions, and Recommendation of the Hearing Examiner. The Board hereby adopts the Hearing Examiner's Recommendation dated August 21, 2014, including its Findings and Conclusions, attached hereto as Attachment A.

B. State Environmental Policy Act (SEPA). The proposed amendment to Yakima County's official zoning map, adopted by YCC 15, was subject to environmental review under SEPA, codified at RCW 43.21C. Yakima County's SEPA Responsible Official reviewed the proposed amendment in accordance with the provisions of YCC 16.04 and determined that approval of the rezone is not likely to have a probable significant adverse environmental impact provided that certain Mitigation Measures are followed. Accordingly, he issued a Mitigated Determination of Non-Significance on July 16, 2014, which was not appealed to superior court within the prescribed time limits. The Board finds that environmental review is complete and adequate.

Section 2. YCC Title 15 Official Zoning Map Amendment. The official zoning map, as adopted by YCC 15.16.010 and subsequently amended, is hereby further amended by rezoning the "Subject Property" depicted on the map attached hereto as Attachment B, from VR (Valley Rural) to HC (Highway/Tourist Commercial).

Section 3. Severability. The provisions of this ordinance are declared separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, sections, or portion of this ordinance, or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of the ordinance, or the validity of its application to any other persons or circumstances.

Section 4. Effective Date. This rezone shall be effective upon recording of a development agreement as recommended by the Hearing Examiner and that is in substantial conformance with the draft development agreement attached hereto as Attachment C.

DONE this 21st day of October, 2014



Attest: Tiera L. Girard
Clerk of the Board

Kevin J. Bouchey, Chairman

J. Rand Elliott, Commissioner

Michael D. Leita, Commissioner
*Constituting the Board of County Commissioners
for Yakima County, Washington*

Attachments to Ordinance:

Attachment A: *Hearing Examiner's Recommendation*, dated August 21, 2014.

Attachment B: *Map of Subject Property* (depicting the area hereby rezoned from VR to HC).

Attachment C: *Draft Development Agreement*

AUG 21 2014

Vern____ Gary____ Don____ Steve____
Dave____ Lisa____ Carmen____**County of Yakima, Washington
Hearing Examiner's Recommendation****August 21, 2014**

**In the Matter of a Rezone)
Application Submitted by:)
)
Robert Huerd & Karl Staudinger)
)
For Rezone of 54.56 Acres at the)
Northeast Corner of I-82/Donald)
Wapato Road Interchange from)
The VR to the HC Zoning District)**

**ZON2014-001
SEP2014-007
PRJ2014-0090**

A. Introduction. The Hearing Examiner conducted a public hearing on August 7, 2014, and this rezone recommendation has been issued within ten business days of the hearing. A thorough staff report prepared by Senior Project Coordinator Phil Hoge recommended approval of the rezone application subject to execution of a development agreement. Applicant/property owner Robert Huerd offered testimony in favor of the application. A written public comment expressing several concerns was received prior to the hearing from Gary and Donna Kenney who live in a single-family residence north of property involved in this application. No other testimony or written comments from the public were submitted regarding the requested rezone.

B. Summary of Recommendation. The Hearing Examiner agrees with the Planning Division's reasons for recommending approval of this rezone from the Valley Rural (VR) to the Highway/Tourist Commercial (HC) zoning district and recommends that the Board of Yakima County Commissioners approve same subject to a development agreement.

C. Basis for Recommendation. Based upon a view of the site without anyone else present on August 6, 2014; 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 7, 2014; and a review of both the Yakima County Comprehensive Plan (*Plan 2015*) and the Yakima County Zoning Ordinance which is Title 15 of the Yakima County Code (YCC), the Hearing Examiner makes the following:

FINDINGS

I. Applicants/Property Owners. The applicants/property owners are Robert Huerd, P.O. Box 130, Buena, Washington and Karl Staudinger, 506 North 36th Avenue, Yakima, Washington.

II. Location. The location of the property is at the northeast corner of the interchange (Exit 44) of Donald Wapato Road and Interstate 82 within the community of Donald. The parcel numbers are 191101-23004, 22012, 23005 and 31003.

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

(1) On February 6, 2014, Yakima County Public Services Department - Planning Division received a minor rezone application and Washington State Environmental Policy Act (SEPA) Environmental Checklist from Robert Huerd who is one of the applicants and one of the property owners. The application was deemed incomplete for processing on March 6, 2014. The applicant submitted additional information on April 14, 2014, but the application was again deemed incomplete for processing. The applicant submitted additional information on May 16, 2014, and the application was determined to be complete for processing on May 28, 2014.

(2) The application requests an amendment to the official zoning map established by the Yakima County Zoning Ordinance (YCC Title 15) to change the zoning of the subject property from Valley Rural (VR) to Highway/Tourist Commercial (HC). 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 subject property consists of four parcels totaling 54.56 acres. There is one structure on the property which is an old hop kiln which the applicant would like to remove and preserve. The property is generally flat and its soils were formed by the historic meandering of the Yakima River and more recently by farming activities. In the 1980s, the construction of Interstate 82 severed the property's connection with the surface waters of the river and located the freeway interchange adjacent to the subject property.

(4) No new structures or new uses are proposed with this application. According to the applicant, it has been submitted to enable future business uses to be located on this property at the Wapato Donald Road interchange of Interstate 82. The application states that a prospective buyer will only make an offer to buy the property if it is rezoned and that two east coast firms have an interest in the site if it is rezoned. The rezone is sought to enable future uses such as potentially a truck stop, truck wash and shop, motel and eatery. The prospective buyer indicated that an additional ingress/egress would be constructed through private properties located north of the subject property and this was indicated on the initial site plan submitted with the application. However, the applicant later clarified that the rezone application does not include any specific future uses and revised the site plan to remove the reference to the additional ingress/egress.

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

(1) According to Table 15.76 of YCC Title 15 entitled "Zoning District Consistency with Comprehensive Plan Future Land Use Designations," the requested HC zoning district is one of the zoning districts that is consistent with and may implement the underlying Rural Self-Sufficient land use designation of the Yakima County Comprehensive Plan (*Plan 2015*). Therefore, this rezone application is classified by YCC 16B ("Project Permit Administration") as a minor rezone and is processed as a Type IV quasi-judicial application pursuant to YCC Title 16B.

(2) The review process will consider those sections of YCC Title 15 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. The records of both public hearings will be open to public inspection (YCC 16B).

V. Notices. Notices of the public hearing were provided in accordance with applicable ordinance requirements in the following manner:

Mailing of notice of public hearing:	June 25 & July 16, 2014
Publishing of notice in the Yakima Herald-Republic:	June 28 & July 20, 2014
Posting of notice of public hearing on the property:	July 18, 2014

VI. State Environmental Policy Act. SEPA review of this requested rezone resulted in issuance of a Mitigated Determination of Nonsignificance (MDNS) on July 16, 2014, which was not appealed during the appeal period which expired on July 30, 2014. Three agencies, one neighboring property owner and a real estate professional responded during the comment periods. Their comments and the SEPA Mitigation Measures imposed as a result of their comments or the staff responses thereto may be summarized as follows:

(1) Yakima County Public Services – Transportation Division submitted a letter recommending that the applicant be required to provide a Traffic Impact Analysis (TIA), implement any mitigation measures in the TIA and improve the unopened County right-of-way along the north boundary of the property to the County's Minor Collector

Standard (the County's Standard Rural Major Collector Roadway Detail, RS-4, was attached to the letter).

(2) Yakima County's SEPA Mitigated Determination of Nonsignificance (MDNS) includes Mitigation Measure A1 which requires that a TIA be conducted and that any identified impacts be mitigated as determined by the TIA.

(3) The Department of Ecology submitted a letter concerning Shorelands/Environmental Assistance, recommending that information should be presented in the SEPA checklist about how the change in zoning could affect potential wetland areas and existing pond areas on the site or in the vicinity. Future development of the properties from a non-agricultural state will require an in-depth study (wetland delineation) regarding the presence of wetlands on the site. Any wetlands present will be under shoreline jurisdiction requiring a shoreline permit if there are any direct impacts to them.

(4) Yakima County's SEPA MDNS includes Mitigation Measure B1 which states that a site visit and critical area review may be required prior to any future development and that any Critical Area or Shoreline permits required as a result of the review shall be applied for and issued prior to the issuance of any building or land use permits. Yakima County's SEPA MDNS also includes Mitigation Measure C1 which requires future development to include best management practices for stormwater design in accordance with the Stormwater Management Manual for Eastern Washington.

(5) The Department of Ecology submitted another letter concerning Toxics Cleanup stating that there is a possibility the soil contains residual concentrations of pesticides. Ecology recommends that the soils be sampled and analyzed for lead and arsenic, and for organochlorine pesticides and that potential buyers be notified of any concentrations above the Model Toxics Control Act cleanup levels.

(6) The Department of Ecology submitted a third letter that related to water rights and use. It indicated that the parcels probably have associated water rights and if that is the case, Ecology recommends that the proponent consider submitting an application to change the use from irrigation to domestic/municipal. If water is obtained from another source, the purveyor is responsible for ensuring that the proposed uses are within the limitations of its water rights. If the proposal's actions are different than the existing water right, then it is subject to approval from Ecology in accordance with statute.

(7) The Sunnyside Valley Irrigation District (SVID) submitted a letter indicating that it has no facilities within the parcels proposed for rezone and that the parcels are not within SVID boundaries. SVID provided contact information for the Konewock Ditch Company and the Piety Flats Ditch Company.

(8) Neighbors Gary and Donna Kenney submitted a letter saying that they live on a parcel north of and adjacent to the subject rezone. They enjoy their quiet residential neighborhood and are not in agreement with the rezone for the following reasons:

(a) The dirt road to their property (apparently within the 80-foot-wide County right-of-way that is adjacent to the north boundary of the property involved in this rezone request) is narrow and small;

(b) A truck stop, motel, truck wash and eatery will not allow them to enjoy their property peacefully due to the 24/7 operation with noise, traffic, environmental impacts and bright lights shining in their house at night along with truck headlights, horns, airbrakes, noise and dust nuisance from adjoining HC-zoned land;

(c) Neighbors and their pets risk getting run over or hurt by 18 wheelers and other trucks and traffic;

(d) The applicant made an offer to buy their property, but it was very low and they cannot afford to relocate;

(e) The commenters feel that this is a major rather than a minor rezone and that any rezone from VR to HC is not conducive to the neighborhood.

(9) The letter from Gary and Donna Kenney opposing the rezone is the only one received from neighbors. While this rezone to HC, if approved, would allow many more types of commercial uses than the current VR zone, the current application is a request for a nonproject rezone. The establishment of any particular future uses would require prior submittal of an application that would be reviewed for compliance with existing development standards. Special conditions to address identified adverse impacts and/or to improve compatibility with the neighborhood may be imposed as part of that review process. The zoning ordinance uses the term “minor rezone” to mean any rezone that can be considered without also needing a Comprehensive Plan amendment, and uses the term “major rezone” to mean any rezone that may only be considered concurrently with a Comprehensive Plan amendment.

(10) A real estate professional submitted two property profiles prepared by Valley Title Guarantee and a water delivery agreement among the applicants and others involving Piety Flats Water shares on the subject property without any other written information as to the relevance of those submittals to the requested rezone.

VII. Comprehensive Plan. The Comprehensive Plan considerations relative to this application may be summarized as follows:

(1) The subject property and adjacent property to the west, east and northeast are designated Rural Self-Sufficient by the Comprehensive Plan (*Plan 2015*).

(2) The intent of the Rural Self-Sufficient land use designation is to implement Growth Management Act Planning Goals related to reducing sprawl, protecting the environment and providing adequate facilities and services commensurate with the density of development. The Rural Self-Sufficient category provides a broad choice of areas within rural Yakima County where an independent and private lifestyle can be sustained on acreage homesites. This 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. The designation provides density incentives to encourage development where fire protection services and hard-surfaced County Roads or State Routes are available. The Rural Self-Sufficient designation also provides 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. Lands found at the valley floors, at the periphery of the urban growth areas and rural transitional areas separating designated farm or forest lands and the remote rural and developmentally constrained lands are considered "Valley" areas. Valley areas are closer to the more urbanized retail and commercial centers while still allowing for a rural lifestyle. Lands found above the State Route 410 – Highway 12 "Y", and in the upper Wenas Valley above Wenas Lake are "Mountain" areas that are intended to cater to the traveling public and tourists along the mountain passes and recreation areas. These lands are more isolated from the urban retail centers than the Valley areas, and therefore have limited options for commercial and retail uses. For this reason, certain uses which are allowed in the Mountain areas are not intended or appropriate in the Valley areas.

(3) Adjacent areas to the northwest are designated Rural Settlement LAMIRD. Lands to the south of adjacent I-82 are designated Rural Remote/Extremely Limited Development Potential.

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

(1) The subject property is currently zoned VR (Valley Rural). The Yakima County Zoning Ordinance states that the VR zoning district is intended to protect and maintain the openness and rural character of outlying areas of the County in the lower Wenas, and the valley floors of the lower Ahtanum, Naches and Yakima Valleys. The Valley Rural zoning district implements the Rural Self-Sufficient Comprehensive Plan goals and policies related to protecting the environment and providing adequate facilities and services commensurate with the density of development. The VR zoning district is generally found at the periphery of urban growth areas and the rural transitional zoning district separating designated resource lands and the remote and developmentally constrained lands. This zoning district is characterized by a wide mixture of parcel sizes and land uses including semi-arid range lands, large and small-scale commercial agriculture, part-time farms, and isolated and scattered very low-density commuter residential development.

(2) The application requests that the subject property be rezoned to Highway/Tourist Commercial (HC). YCC § 15.41.010 states that the HC zoning district is intended to provide areas for commercial establishments which offer accommodations, supplies, services or recreational opportunities to the traveling public. The HC 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 HC zoning district may be located inside or outside of urban growth areas.

(3) YCC Chapter 15.76 includes Table 15.76 entitled "Zoning District Consistency with Comprehensive Plan Future Land Use Designations," which establishes that new Highway/Tourist Commercial (HC) zoning districts are consistent with the Rural Self-Sufficient Comprehensive Plan designation.

IX. Nearby Zoning and Land Uses. Adjacent lands to the west and east are zoned VR and are used for farming and for a pond owned by the State Department of Fish and

Wildlife. Adjacent lands to the northeast are also zoned VR and are used for an automobile wrecking yard, an abandoned railroad corridor, and some vacant lands. Adjacent lands to the northwest are zoned Rural Settlement and form the unincorporated community of Donald. Immediately south is Interstate-82. Lands south of I-82 are zoned Remote/Extremely Limited Development Potential and include the Yakima River, lands owned by State Department of Fish and Wildlife and lands used for agricultural purposes.

X. Rezone Review Criteria. Under YCC § 15.76.050, the recommendation regarding this minor rezone application must be based upon the following criteria specified in YCC 15.76.036(3):

(1) 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 the zoning ordinance, YCC Title 15.

(a) Pertinent Goals and Policies of the Yakima County Comprehensive Plan (*Plan 2015*) and the extent to which the proposed rezone is consistent with them may be summarized as follows:

(i) ED 1.2: Encourage economic opportunities that strengthen and diversify the County's economy while maintaining the integrity of the natural environment.

(ii) ED 2.5: Sites to be designated for industrial or commercial development should be capable of being served by required utilities and other services on a cost-effective basis and at a level appropriate to the uses of the area.

(iii) GOAL ED 3: Ensure an adequate supply of commercial and industrial sites to provide opportunity for new and expanding firms wishing to locate or remain in Yakima County.

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

(v) ED 3.3: Support the maintenance and improvement of existing commercial facilities in preference to creation of new commercial areas.

(vi) ED 3.4: Encourage well-planned clustered employment centers in and adjacent to cities and towns.

(vii) ED 3.7: Locate commercial and industrial concentrations in those areas most suitable for development on the basis of proximity to existing facilities, accessibility, cost for extension of services, terrain, and other natural and manmade conditions.

(viii) 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.

(ix) 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.

(x) 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:

- (i) The uses do not conflict with adjacent city business areas;
- (ii) Adjacent land uses are buffered from the commercial area;
- (iii) The site is not designated as an agricultural, forest or mineral resource area, and resource lands are not materially affected by the use;
- (iv) The operation and effectiveness of the interchange is not impacted by the commercial use; and
- (v) If outside an urban growth area, the uses can be accommodated without the extension of urban level services to the site.

(xi) GOAL LU-R 1: Maintain the rural character of the County.

(xii) GOAL LU-R 6: Recognize and maintain the role of existing Rural Settlement Type I LAMIRDs as part of the fabric of rural community life.

(xiii) GOAL H 6: Encourage the preservation and protection of existing neighborhoods and design and/or plan future development in a manner which promotes neighborhood settings and environments.

(xiv) H 6.1: Minimize business and/or industrial development which encroaches on existing neighborhoods.

(xv) H 6.2: Provide substantial land use buffers between residential neighborhoods and incompatible land uses.

(xvi) Of the plan policies above, the key policy for consideration of the subject rezone is ED 5.4 because it specifically addresses highway commercial zoning at interchanges. The requested rezone meets all five of the criteria under ED 5.4, provided that existing adjacent land uses are buffered from the HC area (criterion #2), which could be accomplished through a condition of rezone approval. Some of the plan policies, such as encouraging economic opportunities that strengthen the County's economy and providing required utilities, also support the rezone. Some of the other policies suggest a development pattern to infill existing underutilized areas, particularly urban growth areas, before expanding such uses into the hinterlands. An infill pattern would also support the policies to maintain the rural character of the County and to minimize business development which encroaches on existing neighborhoods (the community of Donald, in this case).

(b) The extent to which the proposed rezone is consistent with the intent of the zoning ordinance may be summarized as follows:

(i) YCC § 15.41.010 states that the Highway/Tourist Commercial (HC) zoning district is intended to provide areas for commercial establishments which offer accommodations, supplies, services or recreational opportunities to the traveling public. The HC 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 Highway/Tourist Commercial (HC) zoning district may be located inside or outside of urban growth areas.

(ii) The location of the requested rezone is consistent with the intent to locate HC zoning at freeway interchanges, including those outside of urban growth areas, so as to provide commercial establishments to serve the traveling public where traffic hazards can be minimized. Yakima Valley Highway, while not immediately adjacent to the subject property, is about one-fourth mile to the north of the subject property and is identified as a Tourist Emphasis Route by *Plan 2015*.

(iii) The large size (55 acres) of the proposed rezone may compete with the shopping areas of nearby communities and allow land uses other than those that promote and enhance the recreation and tourism industry, such as the mentioned truck stop and related uses, but the record does not contain evidence that such competition would necessarily result from the requested rezone.

(2) The adequacy of public facilities, such as roads, sewer, water and other public services required to meet urban or rural needs. Neither public nor community water or sewer facilities exist in the area, so they will need to be provided by the applicants and at their expense. While the applicants' basic infrastructure plan would allow many uses on the site, the infrastructure that will actually be provided will self-limit the types of uses that may be located on the site.

(3) The public need for the proposed change. Public need shall mean that a valid public purpose, for which the Comprehensive Plan and Title 15 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) There is not any nearby land that is zoned HC and there is no vacant area as large as the subject property zoned HC anywhere in the County. The nearest vacant HC land along I-82 is located 14 miles away at the Granger interchange.

(b) The uncontradicted evidence presented at the hearing was to the effect that buyers are interested in purchasing the subject property for development if it is

rezoned for HC uses, which fact indicates that the timing is appropriate to provide additional land for such uses, particularly near an I-82 interchange.

(4) Whether substantial changes in circumstances exist to warrant an amendment to the current designation or zone. The applicant testified at the hearing that the recent installation of roundabouts near Gear Jammer has made it difficult for truckers to now utilize that business for their needs as shown by truck tire marks in the roundabouts outside the traveled portions of the roadway. That testimony may provide circumstantial evidence of a recent change in circumstances that would support a need for more convenient access for some HC uses. But more indicative of changed circumstances was the evidence presented at the hearing about prospective buyers who have expressed interest in purchasing the subject property if, and only if, it is rezoned for HC uses. The recent interest in developing HC uses at this interchange would circumstantially suggest that a change in the demand for commercial services at interchanges, whether due to changes in economics, population and/or other circumstances, has probably occurred since the property was initially zoned VR in 2000 that would warrant an amendment to the current zoning.

(5) The testimony at the public hearing. All of the testimony at the public hearing favored approval of the requested rezone.

(6) The compatibility of the proposed zone change and associated uses with neighboring land uses. Most of the uses that would be allowed in the proposed HC zone can be conditioned to be compatible with neighboring land uses. Possible future Type II and Type III uses in the HC zone can be denied or conditioned to ensure or increase the compatibility of the uses. The Rural Settlement (RS) zoning on neighboring properties already allows many types of commercial uses that would be allowed in the HC zone. However, most of the RS lots are much smaller than the subject parcels proposed for HC zoning, and thus are likely to have commercial uses with smaller impacts than could potentially occur on the subject property. Large projects are likely to be subject to SEPA environmental review which would allow conditions to be imposed that would mitigate impacts on neighboring land uses.

(7) The suitability of the property in question for uses permitted under the proposed zoning.

(a) A list of the uses allowable in the requested HC zone set forth in Table 15.18 entitled "Allowable Land Uses" is provided in Attachment A.

(b) The subject area is physically suitable for most the Type I and II uses in the HC zoning district. However, its isolated location and lack of particular utility and other services would limit its economic suitability for some uses. The Department of Ecology indicates that there may be wetlands on the site that could further limit the suitability for particular uses. Existing development regulations, particularly the Critical Areas Ordinance and the Shoreline Master Program, would tend to ensure that only uses that are suitable for the property would be permitted.

(c) The property is suitable for some of the Type III uses in the HC zoning district, and those uses that are not compatible could be denied through the review process, thereby ensuring that only suitable uses will locate on the property.

(d) Possible uses mentioned by prospective purchasers (i.e., a truck stop and related uses) would trigger SEPA review which would allow them to be conditioned so as to be suitable on the property.

(8) The recommendation from interested agencies and departments. The comments from Yakima County Public Services – Transportation Division and some of the comments from the Department of Ecology were incorporated into SEPA Mitigating Measures. No interested agencies or departments recommended denial of the requested rezone.

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 (HC) 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 (HC) 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 the Rural Self-Sufficient plan designation is an area 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 (HC) 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 a 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 15.76 entitled "Zoning District Consistency with Comprehensive Plan Future Land Use Designations" provides that the proposed rezone of the subject property from the Valley Rural (VR) to the Highway/Tourist Commercial (HC) zone would be consistent with the Rural Self-Sufficient Comprehensive Plan designation.

(4) The requested rezone from the Valley Rural (VR) zone to the Highway/Tourist Commercial (HC) zone would satisfy the requirements for a rezone set forth in YCC § 15.76.036(3) and the consistency standards of YCC § 16B.06.020.

RECOMMENDATION

The Hearing Examiner recommends that the Board of Yakima County Commissioners **APPROVE** this proposed minor rezone identified as file number ZON2014-001 and entitled "Huerd Minor Rezone" from the Valley Rural (VR) zone to the Highway/Tourist Commercial (HC) zone, subject to the following condition:

Since the County's SEPA Responsible Official issued an MDNS as a result of analyzing the environmental impacts associated with the Huerd Minor Rezone

(SEP2014-007), a development agreement will be needed to implement the mitigating conditions in the MDNS. The development agreement must also contain provisions for buffering of any future commercial use(s) on the rezoned property from existing residential uses to the north by such means as are appropriate when considering the type, size, location and other characteristics of the use(s) proposed for the rezoned property. The development agreement which includes the mitigating conditions of the MDNS and provisions related to buffering future commercial uses on the rezoned property from existing residential uses to the north must be executed by the property owners and the Board of Yakima County Commissioners and recorded with the Yakima County Auditor before the rezone becomes effective.

DATED this 21st day of August, 2014.



Gary M. Cuillier, Hearing Examiner

**ATTACHMENT A: USES ALLOWED AS EITHER TYPE I, TYPE II OR
TYPE III USES IN THE HIGHWAY/TOURIST COMMERCIAL (HC)
ZONING DISTRICT BY YCC 15.18:
(An asterisk denotes a defined term)**

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

- Agriculture*, silviculture, and animal feeding operations* (Excluding: Concentrated animal feeding operations*, livestock auction/sale yards, rendering plants and slaughter houses);
- Agricultural Market*;
- Agricultural Stand*;
- Irrigation distribution/drainage facilities*
- Movie theaters, auditoriums, exhibition halls, bowling alleys, skating rinks
- Recreational equipment sales and rentals
- Hazardous waste treatment and storage facilities subject to the State siting criteria of Chapter 70.105RCW: Onsite, and storage of chemicals and empty chemical containers
- Dwelling for occupancy by guards, watchmen, care-takers or owners of a nonresidential permitted use
- Antique store*
- Automotive: Car wash
- Automotive: Parts & accessories (tires, batteries, etc.)
- Automotive: Rental agencies
- Service stations*
- Automotive: Towing services*
- Automotive: Vehicle storage*
- Bakery, butcher shop, delicatessen, specialty food store
- Beauty & barber shops
- Bed & breakfast inn*
- Convenience* and general merchandise store
- Drive-thru food and beverage vendor*, e.g.: espresso stand, juice bar, mobile food vendor
- Dry cleaners, laundries and Laundromats
- Financial institutions
- Florist

- Gift and souvenir shops*
- Overnight lodging facilities*
- Photocopy and mail service
- Rental: Truck, trailer
- Restaurant, cafe and drive-in eating facilities
- 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
- Storage facilities: Residential (mini)*

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

- Campgrounds* and RV parks
- Exercise facilities, gymnasiums
- Golf courses, clubhouses, pro shops, golf driving ranges
- Historic landmark allowable use permit
- Hunting and fishing services, horse rental, pony rides
- Outdoor commercial amusements*
- Parks*, playgrounds, greenways and other public or private outdoor recreational facilities
- Fraternal organizations*, lodges and clubs
- Libraries
- Museums, art galleries
- Police stations, fire stations, ambulance service
- Public buildings and uses*
- Safe/shelter home* (see Family Home Services)
- 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*
- Expansion of legally nonconforming mobile/ manufactured home parks* (see Chapter 15.62)
- Automotive: Maintenance & repair shops
- Clothing & accessories
- Fuel and oil distributors

- Restaurant or cafe serving alcoholic beverages
- Video sales/rental
- Transportation brokerage offices*; with truck parking
- Truck service stations, washes and shops
- Utility services* (substations, reservoirs, etc.), when the building or series of buildings exceeds 120 sq. ft. or the SEPA threshold is exceeded

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

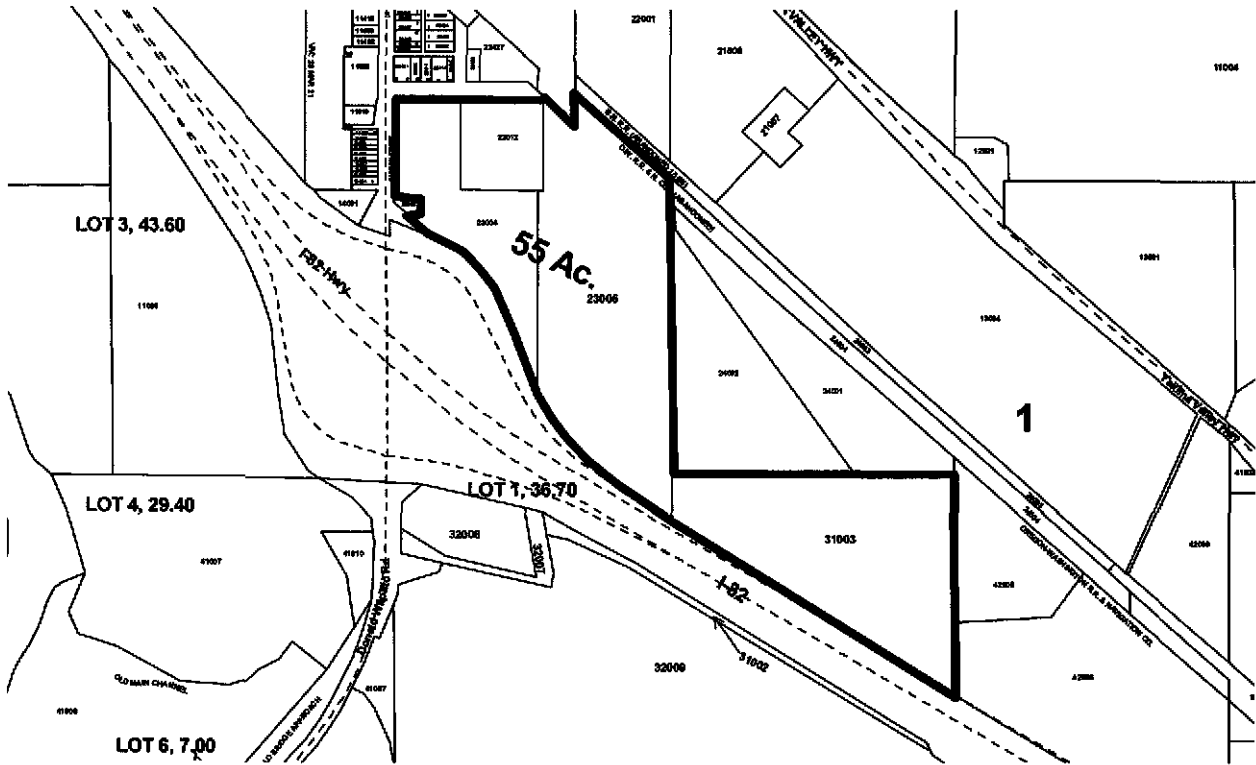
- (When designated Mineral Resource by the Comprehensive Plan): Mineral processing*, Mining site/operation* (Long-term or temporary)
- (When designated Mineral Resource by the Comprehensive Plan): Mineral batching* (Temporary)
- (When designated Mineral Resource by the Comprehensive Plan): Recycled asphalt or concrete, Stockpiling or storage of (when accessory to an approved mining site/operation)
- (When not designated Mineral Resource by the Comprehensive Plan): Mineral processing*, Mining site/operation* (Temporary)
- (When not designated Mineral Resource by the Comprehensive Plan): Mineral batching* (Temporary)
- Heavy equipment storage, maintenance, repair and contracting services
- Contract truck hauling, rental of trucks with drivers
- Power generating facilities
- Sewage treatment plants
- Wastewater lagoons and sprayfields*

As Type IV Quasi-Judicial Uses (“Board decision after Hearing Examiner recommendation”):

- Resort or AG tourist operation*

Attachment B

Map of Subject Property



After Filing Return to:
Yakima County Public Services Department
128 N. Second Street, Fourth Floor
Yakima, WA 98901
Attention: Planning Manager

Attachment C

**DEVELOPMENT AGREEMENT
BETWEEN ROBERT HUERD, KARL STAUDINGER, MARILYN STAUDINGER and
YAKIMA COUNTY, a Washington county**

Grantors(s):	Robert Huerd, Karl Staudinger, Marilyn Staudinger, and County of Yakima, a Washington county
Grantee(s):	Robert Huerd, Karl Staudinger, Marilyn Staudinger, and County of Yakima, a Washington county
Abbreviated Legal Description:	Section 1, Township 11 North, Range 19, E.W.M.
Additional Legal Description:	Exhibit A
Assessor's Property Tax Parcel Account Numbers:	191101-23004 191101-22012 191101-23005 191101-31003

**DEVELOPMENT AGREEMENT
BETWEEN ROBERT HUERD, KARL STAUDINGER, MARILYN STAUDINGER and
YAKIMA COUNTY, a Washington county**

THIS DEVELOPMENT AGREEMENT ("Agreement"), entered into between YAKIMA COUNTY, a Washington county, and ROBERT HUERD, KARL STAUDINGER, MARILYN STAUDINGER, the owners of the property described herein ("Subject Property"), is executed as a condition of amending the Official Zoning Map of the Yakima County Zoning Ordinance with respect to Subject Property in accordance with Yakima County Ordinance No. [REDACTED]-2014. (Yakima County Public Services File Nos. ZON2014-00001 and SEP2014-00007.)

I. Property Affected

The property subject to this Agreement (“Subject Property”) is legally described in Exhibit A and depicted by the map in Exhibit B. It lies adjacent to and north of Interstate Highway 82 and adjacent to and east of Donald-Wapato Road.

II. Purposes

This Agreement is entered into for the purposes of implementing:

- (1) The Mitigating Measures specified in the Final Mitigated Determination of Non-Significance (MDNS), issued by Yakima County’s SEPA Responsible Official on July 16, 2014 concerning the proposed action to rezone the Subject Property from VR (Valley Rural) to HC (Highway/Tourist Commercial). This Agreement obviates the need, under RCW 43.21C (State Environmental Policy Act), to conduct an Environmental Impact Statement prior to approving the rezone; and
- (2) Provisions for buffering any future commercial use(s) on the rezoned property from existing residential uses to the north, as required by the Hearing Examiner’s recommendation dated August 21, 2014 and as provided in the Yakima County Comprehensive Plan’s (*Plan 2015*) Policy ED 5.4(ii), which states: “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: ... (ii) Adjacent land uses are buffered from the commercial area[.]”

III. Applicability

- (1) The Mitigating Measures provided in said MDNS are incorporated into this Agreement as Exhibit C. Said Mitigating Measures shall apply to any and all future development on any portion of Subject Property that is zoned Highway/Tourist Commercial by Yakima County.
- (2) Buffering of any and all future commercial uses(s) on the Subject Property from existing residential uses to the north by such means as are appropriate when considering the type, size, location and other characteristics of the use(s) proposed for the Subject Property shall be required by all divisions of Yakima County’s Department of Public Services when issuing any permit for commercial use(s) on the Subject Property.

IV. Permit Process

In reviewing applications for future development on the Subject Property, Yakima County officials shall ensure that the Mitigating Measures in the MDNS and appropriate buffering described in Section III are enforced.

V. General Provisions

This Agreement and/or said Mitigating Measures of the MDNS may be amended upon agreement of the parties after following the public review and comment procedures for a minor rezone established in YCC 15.76 (or its succeeding ordinance) and RCW 43.21C.

This Agreement shall be recorded with the Yakima County Auditor promptly after execution and shall constitute a covenant running with Subject Property that shall be binding on the heirs, successors, and assigns of the parties.

IN WITNESS WHEREOF, this Agreement has been entered into between the parties on the date last signed below.

List of Exhibits:

Exhibit A – Legal Description of Subject Property

Exhibit B – Map of Subject Property

Exhibit C – Final MDNS, dated July 16, 2014 (SEP2014-00007)

BOARD OF YAKIMA COUNTY COMMISSIONERS

Kevin J. Bouchey, Chairman

J. Rand Elliott, Commissioner

Attest: Tiera L. Girard
Clerk of the Board

Michael D. Leita, Commissioner
*Constituting the Board of County Commissioners
for Yakima County, Washington*

Approved as to form:

Deputy Prosecuting Attorney

Robert Huerd

Karl Staudinger

Marilyn Staudinger

On this ____ day of _____, 2014, before me, a Notary Public in and for the State of Washington, personally appeared Kevin J. Bouchey, J. Rand Elliott, and Michael D. Leita, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons who executed this instrument, on oath stated that they were authorized to execute the instrument, and acknowledged it as the Board of Commissioners of County of Yakima to be the free and voluntary act of said County for the uses and purposes mentioned in the instrument.

NOTARY PUBLIC in and for the State of Washington, residing at _____
My appointment expires _____
Print Name _____

On this ____ day of _____, 2014, before me, a Notary Public in and for the State of Washington, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) who executed this instrument, on oath stated that he/she/they executed the instrument as a voluntary act for the uses and purposes mentioned in the instrument.

NOTARY PUBLIC in and for the State of Washington, residing at _____
My appointment expires _____
Print Name _____

Legal Description of Subject Property

Yakima County Assessor's Parcel No. 191101-23004:

All that part of the West half of the Northwest quarter of Section 1, Township 11 North, Range 19 EWM described as follows:

Commencing at the Northwest corner of said subdivision;
thence South 0°01'10" West, along the West line thereof, 899.92 feet to the centerline of Main Avenue as monumented and shown on the Plat of Donald as recorded in Volume "C" of Plats, page 34, records of Yakima County, Washington and the point of beginning;
thence East along the centerline of Main Avenue 380.00 feet;
thence South 0°01'10" West 470.00 feet;
thence East 330.00 feet;
thence South to the E.D. Line of Donald Road Interchange of SR 82;
thence Northwesterly along said E.D. Line to the West line of the West half of the Northwest Quarter of said Section 1;
thence North 0°01'10" East to the point of beginning.

EXCEPTING THEREFROM the following:

1. Right of way for Main Avenue.
2. Right of way for State Highway and Division Street.
3. Commencing at the Northwest corner of said Section 1;
thence South 0°01'10" West along the West line thereof 1327.15 feet to the point of beginning; thence South 89°58'50" East 163.00 feet;
thence South 0°01'10" West 70.00 feet;
thence North 89°58'50" West 163.00 feet to the West line of said Section 1;
thence North 0°01'10" East to the point of beginning.

Yakima County Assessor's Parcel No. 191101-22012:

All that part of the West half of the Northwest 1/4 of Section 1, Township 11 North, Range 19 East, W.M., described as follows: COMMENCING at the Northwest corner of said subdivision; thence South 0°01'10" West, along the West line thereof, 899.92 feet to the centerline of Main Avenue as shown on the Plat of Donald as recorded in Volume "C" of Plats, page 34, records of Yakima County, Washington; thence East along the centerline of Main Avenue, 380.00 feet to the point of beginning; thence South 0°01'10" West 470.00 feet; thence East 360.00 feet; thence North 0°01'10" East to the Southwesterly right-of-way line of the Union Pacific Railroad; thence Northwesterly, along the Southwesterly right-of-way line of said railroad, to the centerline of Main Avenue; thence West to the point of beginning; EXCEPT right of way for Main Avenue.

Yakima County Assessor's Parcel No. 191101-23005:

Parcel Z as shown on that certain Boundary Line Adjustment recorded under Auditor's File Number 7465994, records of Yakima County, Washington, and as approved by
SSE #2007-114

Yakima County Assessor's Parcel No. 191101-31003:

PARCEL A

All that part of the West 1/2 of the Northwest 1/4 of Section 1, Township 11 North, Range 19 East, W.M.,
described as follows:

COMMENCING at the Northwest corner of said subdivision;
thence South 0°01'10" West, along the West line thereof, 899.32 feet to the center line of Main Avenue as
shown on the Plat of Donald as recorded in Volume "C" of Plats, Page 34, records of Yakima County,
Washington;
thence East along the centerline of Main Avenue, 380.00 feet to the point of beginning;
thence South 0°01'10" West 470.00 feet;
thence East 360.00 feet;
thence North 0°01'10" East to the Southwesterly right-of-way line of the Union Pacific Railroad;
thence Northwesterly, along the Southwesterly right-of-way line of said railroad, to the centerline of Main
Avenue;
thence West to the point of beginning;

EXCEPT right of way for Main Avenue,

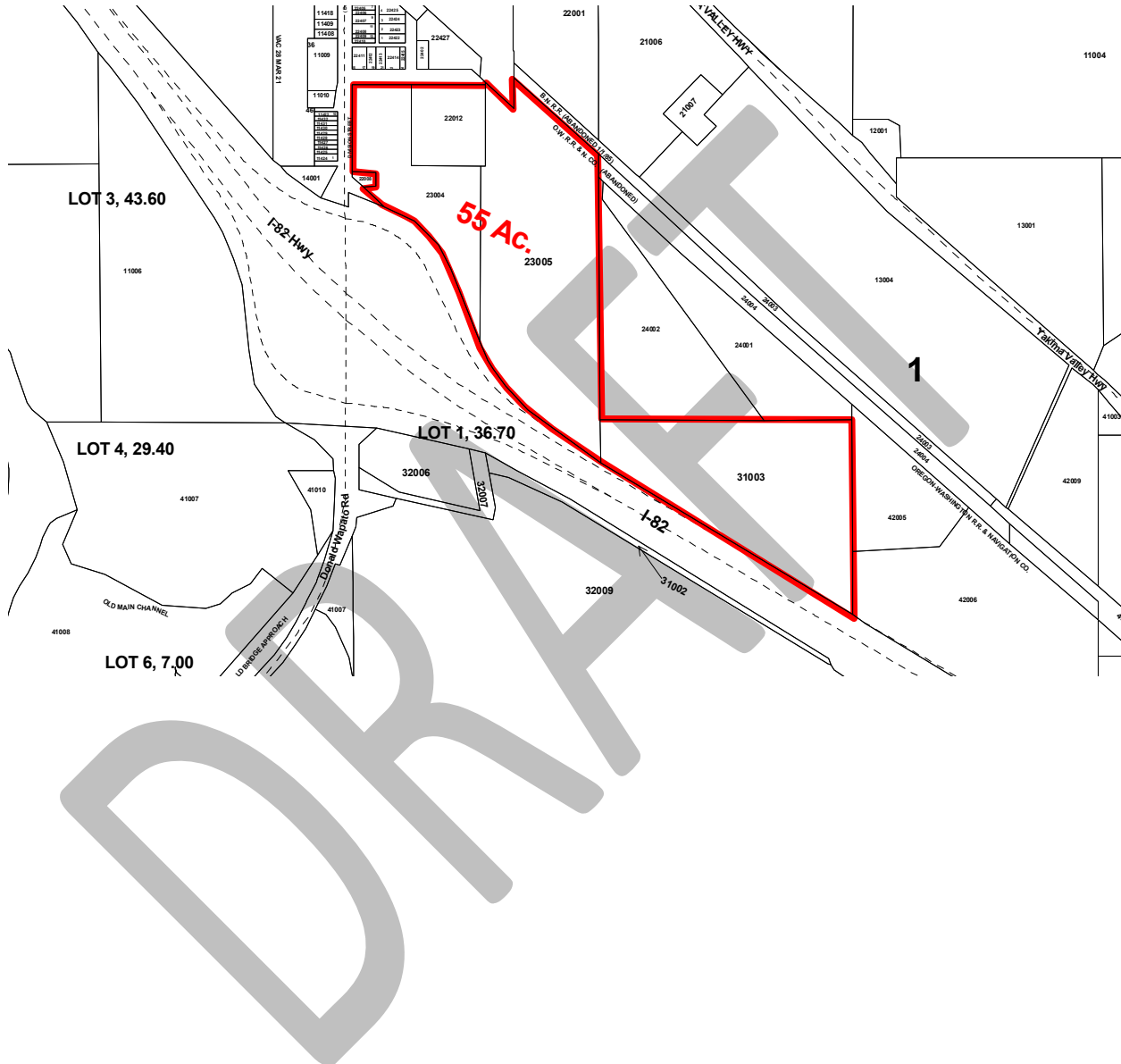
Situated in Yakima County, State of Washington.

PARCEL B

That portion of the Northeast 1/4 of the Southwest 1/4 of Section 1, Township 11 North, Range 19, E.W.M.,
lying Northeasterly of SR 82 as conveyed to the State of Washington by Deed recorded under Auditor's File
Number 2537905, records of Yakima County, Washington.

Situated in Yakima County, State of Washington.

Map of Subject Property



FINAL
MITIGATED DETERMINATION OF NON-SIGNIFICANCE
 (Notice of Action)

1. **Description of Proposal:** The Yakima County Planning Division has received a request to rezone four parcels consisting of 55 acres from Valley Rural (VR) to Highway Commercial (HC) under the Yakima County Zoning Ordinance. The applicant has indicated potential future development may consist of a truck stop, motel, eatery, and truck wash. This environmental review is for the rezone proposal. Future development may require additional environmental review.

2. **File Number:** SEP2014-00007

3. **Owner:** Robert Huerd
 P.O. Box 130
 Buena, WA 98921

 Karl and Marilyn Staudinger
 506 N. 32nd Ave
 Yakima, WA 98902

Proponent: Robert Huerd
 P.O. Box 130
 Buena, WA 98921

4. **Location of Proposal:** Donald Wapato Road & Interstate 82. On the east side of Donald Wapato Road and the north side of Interstate 82; approximately 1,500 feet south of Yakima Valley Highway; 1.5 miles north of the City of Wapato. (Parcel Nos. 191101-22012; 191101-23004; 191101-23005; 191101-31003)

5. **Lead Agency:** Yakima County Planning Division

6. **Determination:** The lead agency for this proposal has determined that it will not have a probable significant adverse impact on the environment and an Environmental Impact Statement (EIS) is not required under RCW 43.21C.030(2)(c), provided the measures listed below are taken to mitigate potential adverse impacts. This decision was made after a careful review of the completed environmental checklist, and other information on file with the lead agency. This information (including all environmental documentation) is available to the public on request and can be examined in our offices during regular business hours. Environmental documents include the SEPA checklist, this threshold determination, and submittal materials.

7. **Identified Environmental Impacts and Mitigation Measures:**

Substantive authority to require mitigation for significant and non-significant impacts is derived from WAC 197-11-660, Yakima County Code Chapter 16.04.230 and, by reference, the policies contained in the Yakima County Comprehensive Plan.

A. Transportation (Vehicular Traffic)

This rezone has potential to substantially increase vehicular traffic on Donald Wapato Road and at the Interstate 82 interchange. Increased vehicular traffic may have impacts on traffic safety, travel times, air quality, and road maintenance (**Plan 2015** Policies NS 3.2, NS 3.4, T 4.2, T 6.15 & T 7.5)

Mitigation Measure A1: To control for the potential traffic increase on Yakima County roads, a Traffic Impact Analysis shall be conducted and submitted to the Yakima County Transportation Division for review and approval prior to the issuance of any construction or land use permits. Any identified impacts shall be mitigated as determined by the Traffic Impact Analysis.

B. Land and Shoreline Use

This proposal occurs on land proximate to Shoreline jurisdiction of the Yakima River, and is in the direct vicinity of potential wetlands. A change to Highway Commercial zoning district will allow for more intensive development on these parcels, which may have impacts on water infiltration and water quality. (**Plan 2015** Policies NS 7.11, NS 7.12, NS 7.13, NS 7.29, NS 7.48, NS 8.2, & NS 9.3)

Mitigation Measure B1: To determine the presence and extent of any wetlands on the parcels, a site visit and critical area review may be required prior to any future development. Any Critical Area or Shoreline Permits required as a result of the critical area review shall be applied for and issued prior to the issuance of any building or land-use permits.

C. Water (Ground and Surface water)

The project area has high groundwater and nearby surface water features. Future development will likely cause impacts to drainage facilities, adjacent property owners, adjacent sensitive environments, or groundwater due to construction erosion, increased runoff, and/or stormwater infiltration unless development is properly designed and managed. Adequate site investigation and development planning will mitigate these impacts. (**Plan 2015** Policies NS 13.1, NS 13.3, & NS 14.2)

Mitigation Measure C1: Future development shall include best management practices for stormwater design in accordance with the Stormwater Management Manual for Eastern Washington.

8. **Comment and Appeal Information:** This Final MDNS is issued under WAC 197-11-340(2). There is no further comment on it. You may appeal this


SEPA threshold determination to the Hearing Examiner. You should be prepared to make specific factual objections. The 14-day SEPA appeal period ends at 4:00 p.m. on 7/30, 2014. Agencies and those providing comments will receive a copy of the final decision. A notice of such appeal (with the filing fee) must be filed in writing and delivered to the address below. For information on the comment or appeal processes, or on other issues relating to this proposal, contact Rebecca Brown, Project Planner, at (509) 574-2300.

9. **SEPA Responsible Official:** LYNN DEITRICK, AICP

10. **Designee:**

11. **Address:**

12. **Date:**



Thomas Carroll
128 N. 2nd St.
4th Floor Courthouse
Yakima, WA 98901
7/16, 2014

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