

STAFF REPORT

Thorp Landing Non-Project Rezone (CP-22-00002 & RZ-22-00002) – Docket Item 22.22

I. GENERAL INFORMATION

Requested Action:

Thorp Landing LLC is proposing a comprehensive plan land use amendment from Rural Working to Rural Residential and a rezone of 72.78 acres from Agricultural 20 to Agricultural 5. A comprehensive plan amendment (CP-22-00002), rezone application (RZ-22-00002), and SEPA checklist were submitted as part of the application packet. This project is being processed through the 2022 Annual Comprehensive Plan Docket process.

Location: Tax parcels 443233, 493233, 19590, 19591, 19589, 19588, 19592 and 19593, located approximately 1500 feet northwest of the intersection of N Thorp Hwy and I-90 off of Thorp Landing Lane in Section 11, Township 18, Range 17, W.M.; Kittitas County.

II. SITE INFORMATION

Total Proposal Size:	72.78 acres
Number of Lots:	8
Domestic Water:	None requested/proposed at this time.
Sewage Disposal:	None requested/proposed at this time.
Fire Protection:	Fire District 1 (Thorp)
Irrigation District:	Westside Irrigating Company

Site Characteristics: The site is relatively flat land located with a mix of agricultural and development for a few houses.

Surrounding Property:

North: Residential/Town of Thorp
South: A Few Commercial Uses/Farming
East: A Few Residential Lots/Vacant Land
West: Farming Uses

Access: The proposal will have access from Thorp Landing Lane

History of Zoning: Prior to the end of 2006, most of these parcels were zoned Commercial Agriculture and Agriculture 20. A rezone was approved in 2006 (RZ-05-16) to make the parcels Rural 3 zoning. These parcels were zoned Rural 3 up until 2013. In 2013, they were rezoned to Agriculture 20 as part of the compliance effort with the mandated court order from the 2011 State Supreme Court case *Kittitas County v. E. Washington Growth Management Hearings Board*. This effort was to help in preserving rural character.

Zoning and Development Standards: The subject property is currently located within Agricultural 20 zoning district. Agricultural 5 zoning is being requested for the properties.

The purpose and intent of the Agricultural 20 zone is an area wherein farming, ranching and rural life styles are dominant characteristics. The intent of this zoning classification is to preserve fertile farmland from encroachment by nonagricultural land uses; and protect the rights and traditions of those engaged in agriculture.

The purpose and intent of the Agricultural 5 zone is to provide for an area where various agricultural activities and low density residential developments co-exist compatibly. A-5 zones are predominately agricultural-oriented lands and it is not the intent of this section to impose further restrictions on continued agricultural activities therein.

Agricultural 20 has a 20-acre minimum lot size while Agriculture 5 has a 5-acre minimum lot size. 7 of the 8 lots proposed in this rezone are already below 5 acres in size (8 at 3 acres and 1 at 2.41). Both zones have the same building setbacks (Front and Rear Yards: 25 feet, Side Yard: 5 feet).

III. ADMINISTRATIVE REVIEW

Complete Annual Comprehensive Plan Docket Application: Application for a comprehensive plan map amendment, rezone from Agricultural 20 to Agricultural 5, and SEPA environmental checklist was received on June 23, 2022. This submittal packet was received prior to the June 30th docketing deadline. The application was deemed complete on July 21, 2022. A Notice of Application was issued on August 11, 2022. These notices were published in the official county paper of record and were mailed to jurisdictional government agencies, adjacent property owners within 500 feet and other interested parties.

Posting of Site: The signed Affidavit of Posting was returned to CDS on August 2, 2022 indicating that the site had been accurately posted with the “Land Use Action” signs as provided by CDS and required per KCC 15A.03.110.

IV. COMPREHENSIVE PLAN

The current land use designation is Rural Working. Uses within this designation generally encourage farming, ranching and storage of agriculture products, and some commercial and industrial uses compatible with the rural environment and supporting agriculture and/or forest activities. Areas in this designation often have low population densities with larger parcel sizes compared to Rural Residential areas. Rural Working land use designations can include the following zoning districts: Agricultural 20 and Forest & Range.

The proposed land use designation is Rural Residential. Rural Residential lands are those which are adjacent or near UGA’s or LAMIRDS. They generally have a lower population density than urban areas but higher than most rural areas. A limited level of government services usually exists, and they are often inside Fire Districts and are outside flood areas and most hazard areas. Rural residential lands are characterized by activities generally associated with small-scale farms, dispersed single-family homes, and some types of recreational uses and open spaces. Lands are typically too far from the urban area to enable cost-effective provision of public services, and the typical uses do not require urban services. Rural Residential land use designations can include the following zoning districts: Agricultural 5, Rural 5, General Commercial, Planned Unit Development.

Staff finds that the proposed location for this comprehensive plan amendment is near and between two areas of Limited Areas of More Intense Rural Development (LAMIRD): Thorp and I-90 Thorp LAMIRD. It is also located within Fire District 1 (Rural Thorp) and the majority of the property is outside of flood hazard areas.

Under the 2021 Comprehensive Plan, Kittitas County has established the following goals and policies to guide future development through a 20-year planning window for Rural Residential Lands. These Rural Residential goals and policies were developed in an effort to ensure consistency and coordination with County Wide Planning Policies:

RR-G16: Allow for residential opportunity with rural character and a variety of densities outside UGA’s without population expecting all urban services.

Staff Response: With changing the land use to Rural Working and Agriculture 5, this provides residential opportunity with rural character without all urban services.

RR-G17: Generally, provide services supporting rural development and lower population densities

Staff Response: These parcels are served by Cascade Irrigation District and Fire District 1 that can both support rural development with lower population densities.

RR-G18: Designate areas where lots are generally less than 10 acres in size and have a common land use pattern.

Staff Response: Most of the parcels in the nearby vicinity from the Town of Thorp LAMIRD south to the I-90 LAMIRD are in the 3-to-12-acre range other than one of the parcels (443233 is 51.98 acres) in this proposal. Most of these parcels have some sort of farming use on them in addition to a house on the property.

RR-G19: Permit siting in areas generally without commercial activity.

Staff Response: The siting of this property is in the general vicinity of I-90 Thorp Commercial Uses and the Town of Thorp Commercial Activities. While not on a direct route for commercial activity, there is likely going to be some intermingling of vehicles with commercial traffic.

RR-G21: Preserve views of open space while providing opportunity for variety of rural densities.

Staff Response: While Agriculture 5 limits lot sizes to 5 acres and provides a variety of density for the area, there was no mention of trying to preserve views of open space.

RR-P32: Residential uses, where permitted, shall be located where farming and forestry activities and opportunities are not negatively impacted.

Staff Response: The existing land use pattern in the area currently has been farming and/or parcels with houses and farming uses on them. There have been some residential uses that have recently gone in that could affect farming activities in the area but it is also near higher density and employment areas.

V. REZONE CRITERIA

The following criteria must be met per KCC 17.98.020.6 (a-h).

- a) The proposed amendment is compatible with the comprehensive plan; and
- b) The proposed amendment bears a substantial relation to the public health, safety or welfare; and
- c) The proposed amendment has merit and value for Kittitas County or a sub-area of the county; and
- d) The proposed amendment is appropriate because of changed circumstances or because of a need for additional property in the proposed zone or because the proposed zone is appropriate for reasonable development of the subject property; and
- e) The subject property is suitable for development in general conformance with zoning standards for the proposed zone; and
- f) The proposed amendment will not be materially detrimental to the use of properties in the immediate vicinity of the subject property; and
- g) The proposed change in use of the subject property shall not adversely impact irrigation water deliveries

to other properties; and

- h) The proposed amendment is in full compliance with KCC 17.13 Transfer of Development Rights.

The applicant's and staff response to the above criteria can be found below:

- a) The proposed amendment is compatible with the comprehensive plan.

Applicant Response: *“The Kittitas County comprehensive plan and development codes, adopted pursuant to the Growth Management Act, identify Ag-5 zone as an implementing zone for the land that is designated Rural Residential uses therefore if the comprehensive plan designation changed from rural working to rural residential the proposed amendment is consistent with and compatible with the comprehensive plan.”*

Staff Response: This property is between two LAMIRD's, is inside a fire district, has limited area in the floodplain and the nearby area is mostly small-scale farms making the amendment compatible with the comprehensive plan.

- b) The proposed amendment bears a substantial relation to the public health, safety or welfare.

Applicant Response: *“This requested rezone will result in the property being designated for and zoned for uses that are more consistent with the surrounding diverse mix of uses and densities and this enhances the public health and welfare. The property when zoned Ag-5 will not negatively impact the public health safety welfare of the community. The rezone will benefit the welfare of the county by creating the opportunity for compatible rural land uses.”*

Staff Response: This amendment will not be detrimental to the health, safety, or welfare of the public. Most uses in the Ag-5 zone mirror Ag-20 regulations with a few additional commercial uses that can be done on the property. Well and septic systems will need to be approved by public health and with more allowed density, safety is usually better as this area is not remote in any way which reduces response times for police and fire.

- c) The proposed amendment has merit and value for Kittitas County or a sub-area of the county.

Applicant Response: *“The change of the comprehensive plan designation and the rezone of the property to Ag-5 will create a mix of rural densities and rural uses. The comprehensive plan's rural element calls for a mix of rural densities and uses. Thus the rezone has merit and value and is appropriate because it implements the comprehensive plan by achieving these comprehensive plan goals:*

RR-G16: Allow for residential opportunity with rural character and a variety of densities outside UGAs without population expecting all urban services.

RR-G17: Generally, provide services supporting rural development and lower population densities

RR-G18: Designate areas where lots are generally less than 10 acres in size and have a common land use pattern.

RR-G19: Permit siting in areas generally without commercial activity.

RR-G20: Protect residential activities from flooding areas and natural hazard areas.

RR-G21: Preserve views of open space while providing opportunity for variety of rural densities”

Staff Response: The proposed amendment will provide for a mix of densities and could provide additional tax revenue for the county creating merit and value for the county while also preserving some rural area.

- d) The proposed amendment is appropriate because of changed circumstances or because of a need for additional property in the proposed zone or because the proposed zone is appropriate for reasonable development of the subject property.

Applicant Response: *“See C above”*

Staff Response: There has been little changed circumstances in the area other than a few new residential uses being put in. Most of the area is still farmed, however with the current size of lots in the area and small-scale farms with houses, an Ag-5 zoning designation is appropriate for reasonable development of the property.

- e) The subject property is suitable for development in general conformance with zoning standards for the proposed zone.

Applicant Response: *“The property is suitable for development consistent with the zone. With the maximum density of 5 acres, parcels with the zone can be developed without impacting critical areas. The property does not have a flood designation that will prevent it from being developed.”*

Staff Response: The existing property already has 7 legal non-conforming parcels under Ag-20 standards with lots less than 20 acres. This will be the same under Agriculture 5 zoning with 5-acre minimums except for parcel 443233 which is approximately 51.98 acres. This property does have a floodplain designation in the northeast quarter of the property. While the properties do not meet the current zoning, they are more in conformance with a designation of Ag-5 zoning.

- f) The proposed amendment will not be materially detrimental to the use of properties in the immediate vicinity of the subject property.

Applicant Response: *“The proposed amendment will not be detrimental to the surrounding properties. The surrounding properties are all used for similar or compatible uses.”*

Staff Response: It is unlikely that the amendment will be detrimental to surrounding properties. Additional residential uses would abut some farmland but would not be inconsistent with the area.

- g) The proposed changes in use of the subject property shall not adversely impact irrigation water deliveries to other properties.

Applicant Response: *“The proposed rezone will not have any effect or any adverse impact on surround irrigation or delivery of water to other sites. In fact, with the rezone the uses on the parcels will be consistent with the surrounding area.”*

Staff Response: The proposal is located within the Westside irrigation district. According to Westside Irrigating Company (WSIC), they do not have formal objection to it, but mention future projects will need to meet future requirements for irrigation delivery and reallocation of irrigation deliveries prior to any plat approval. This should not adversely impact water deliveries.

- h) The proposed amendment is in full compliance with KCC 17.13 Transfer of Development Rights.

Applicant Response: *“The proposed rezone does not involve the transfer of development rights and does not conflict with Chapter 17.13 KCC”*

Staff Response: This rezone does not involve Transfer of Development Rights and as such is in full compliance with KCC 17.13 Transfer of Development Rights.

V. ENVIRONMENTAL REVIEW

Based upon review of the submitted application materials including an environmental checklist, correspondence received during this comment period and other information on file with Community Development Services, Kittitas County issued a Determination of Non-Significance (DNS) on September 8, 2022 with a 14 day comment period that ended on September 22, 2022 at 5:00 p.m. Two comments unrelated to environmental issues were submitted for the SEPA DNS from Kittitas County Public Works (KCPW) and Kittitas County Public Health (KCPH). KCPW commented that two of the parcels in the proposal had been sold off by Thorp Landing LLC and KCPH commented that they had no concerns.

Kittitas County retained the DNS on October 13, 2022. Any appeals of SEPA had to be submitted by October 27, 2022 by 5 PM. No appeals were filed.

VI. AGENCY AND PUBLIC COMMENTS

Applicable agencies, adjacent property owners, and interested parties have been given the opportunity to review this proposal. Comments were received from agencies and the public.

Agencies commenting on this proposal include Kittitas County Fire District 1, Kittitas County Public Health (KCPH), Kittitas County Public Works and Westside Irrigating Company (WSIC). A summary of the comments can be found below.

Kittitas County Fire District 1

Kittitas County Fire District 1 has concerns about new developments and fire concerns with the resources they have. They commented they would like new developments to have a fire hydrant system to better protect them from fire as this is in a rural area. They did comment that there is Kittitas County Water District 4 has their furthest south fire hydrant near the entrance of Thorp Landing Lane that may be able to be used. They commented that without fire hydrants, fire protection ratings may decrease with higher insurance premiums for homeowners.

Staff Response: Any new plat within the past 2 years in rural areas has included a condition and plat note that states "A hydrant system, or other system as approved by the Fire Marshal, shall be installed and operational to support required fire flow before building permits are issued". At the time of any new plats, the Fire District will be contacted for comments.

Kittitas County Public Health (KCPH)

KCPH commented that the applicant is currently working with their department on the approval of a public water system to serve the lots in the Thorp Landing Plat. Additionally, soil logs have been done, as well as site evaluations have been completed where requested and had no further comments.

Staff Response: Community Development Services (CDS) staff has not seen any application for a plat for these lots. It appears some of the lots that are in this request were part of a segregation, which was an old way of subdividing land that Kittitas County no longer allows. Any plat application would need to go through at least the short platting process before any new lots could be created. This will give opportunity for the neighbors and agencies to weigh in on the proposal and considered by CDS staff in any report and conditions of a plat.

Kittitas County Public Works (KCPW)

KCPW commented that a portion of parcel #443233 is in the FEMA identified special flood hazard area (100-year floodplain). Any future development and/or subdivision must be consistent with the regulations within KCC 14.08.

Westside Irrigating Company (WSIC)

WSIC commented about irrigation deliveries and what happens and what is required when land is subdivided. While they have no formal objection to the project, they wanted to make the applicant aware of future requirements and that they have to be allowed in the planning process to ensure water delivery to all parcels.

Staff Response: Any future subdivision (plat) will require notice to WSIC and meet the requirements of KCC 16.18.030-.035. WSIC will be welcome to comment on any proposed plat that is sent in for approval. CDS staff will review comments and consider them in any staff recommendation or approval including conditions related to irrigation.

Public Comments were received from Jarred Fudacz, Johnny & Erinn Boitano and Paula Thompson. Chad Bala testified at the Planning Commission Hearing on November 8, 2022. A summary of those comments can be found below.

Jarred Fudacz

Jarred Fudacz commented that there is not Agriculture 5 zoning within any proximity of the Thorp Landing properties and mentions that they believe this is a spot rezone and could create issues in the future with the county as this would set a precedent for future spot zones. He mentioned that the rezone only benefits one party and not the entire community as it would not equally benefit adjacent landowners categorized as AG-20.

Jarred also comments that on Section F or the rezone criteria, that the rezone would create future issues with future development and potential to disrupt delivery of water to other sites and that lands in this proposed rezone have numerous natural springs along the western boundary near the Palouse to Cascade Trails with associated water rights. He talks about an easement on parcel 443233 to deliver spring water to parcel 573233. He mentioned excavating and altering ground could damage drain tile and disrupt water service to the parcel in which holds the water rights would violate RCW 90.03.410 of the water code. His final comment is that the rezone would not follow the comprehensive plan and does not follow or meet the designations of adjacent lands.

Staff Response: Illegal spot zoning is defined as “A zoning action by which a smaller area is singled out of a larger area or district and specially zoned for a use classification totally different from, and inconsistent with, the classification of surrounding land and not in accordance with the comprehensive plan.” The proposed rezone is consistent with surrounding residential uses and lot sizes. The proposed comprehensive plan land use map amendment is consistent with the comprehensive plan because the property is located between two LAMIRDs, is in a fire district, and is generally located outside of flood and other hazard areas. If the comprehensive plan amendment is approved, then the rezone would be consistent with the comprehensive plan. Staff is not aware of any issues related to water at this time. Any future development including creating new lots will go through a detailed review process that would include conditions.

Johnny & Erinn Boitano

Johnny & Erinn Boitano commented that sometime in the not far past that that acreage was already evaluated for a rezone and left the 50 plus acres of farmland intact and mentioned that many extensive public hearings and public input to keep the acreage Ag20. They mentioned nothing has since changed that would make this a good and necessary choice for the Thorp community. The Boitano’s commented that they are appalled that this matter is up for debate that has long been decided and that this decision to rezone does not protect or enhance what is “rural character” within the county. They said once it’s developed, there is no going back and that there is substantial land within our county that has been subdivided to accommodate the growth and there are better places for urban growth. They mentioned the landowner knew what they were purchasing and that the matter has already been settled and that they could split the remaining big parcel into 2 lots under Ag-20 zoning and any rezoning would not be in the best interest of the community.

Staff Response: Every landowner has the right to petition for a rezone if they wish even if zoning was changed a while back through numerous hearings and debate. They still go through the process of having to get approval. Staff believes that Rural Residential and Agriculture 5 is an appropriate land use and zoning based off the current

comprehensive plan goals and policies. Ag-5 does not promote urban densities or urban growth as stated in the comment letter. The minimum lot size is still 5 acres for any new lot and there is only one lot that can be subdivided at all in the future under this request.

Paula Thompson

Paula Thompson commented on the past of some of these parcels and 3-acre parcels through the segregation process that should have never happened. She talked about the hearings about zoning and land use designations with Thorp residents when the compliance effort was going on for preserving Rural Character from the decision of the 2011 court case where she said it was decided this land should be Ag-20 zoning and Rural Working Land Use. She mentioned that more analysis needs to be done in the Thorp area and mentioned about average density in the area being 8.12 acres.

Staff Response: Every landowner has the right to petition for a rezone if they wish even if zoning was changed a while back through numerous hearing and debate. They still go through the process of having to get approval. Staff believes that Rural Residential and Agriculture 5 is an appropriate land use and zoning based off the current comprehensive plan goals and policies.

The applicant provided a response to these comments on October 31, 2022. They are attached as Addendum A to this staff report. These are the comments that have been received at the time of writing of this staff report. There may be additional comments prior to hearings and at the public hearings for this matter.

Planning Commission Public Hearing Comments

Chad Bala

“I’ve been in Kittitas County since 1991 and continuously worked in the land use arena. Back in 2007 when the First Growth Hearings Board Appeal was filed with land use designations, I was on the Land Use Advisory Committee, what they called LUAC from 2007-2009. To Mr. Slothower’s point, we re-designated those Thorp areas as LAMIRD’s. Prior to LAMIRD’s becoming state law, there was numerous areas within Kittitas County: Vantage, Thorp, Easton, Snoqualmie Pass that were called Urban Growth Nodes that were developed by Kittitas County back in the day. What that urban growth node did is took into consideration the higher densities and that was the nomenclature that the County did before the new LAMIRD was developed. We went through comp plan appeal process and now these areas were designated as LAMIRD’s. As part of that LUAC committee, which was about 14 members: environmentalists, buildings, realtors, and so forth. We looked at every single parcel from Snoqualmie Pass down to Vantage. One of the areas we looked at was Thorp. We submitted a recommendation to the Board of County Commissioners, and we had developed new rural land use designations and new zoning designations with uses that were applicable to all these areas. Specifically to Thorp, we looked at this area and noticed all the non-conforming land that is in this area. In our specific recommendation to the Board of County Commissioners at that time in 2008 which was reviewed by C-10, we looked at this area and actually didn’t come to an Ag-20 zone but rather an Ag-10 zone that only points to the non-conforming parcels in this area. I would just like to voice my support for the Thorp Landing to go down to the AG-5 zone and Rural Residential Land Use because this is what happening in this area surrounded by LAMIRD’s, I-90, Mineral Lands and Ag-Lands of Long-term of Commercial Significance.”

Staff Response: Staff agrees that there is a fair amount of legal non-conforming parcels in the area and appreciates Mr. Bala’s work in the past on the Land Use Advisory Committee.

Public Comments after Planning Commission Public Hearing

Kittitas County Fire District 1

“The comment back from the developer is talking about higher densities nearby to this proposed site and they are correct. Thorp proper is more dense, but what they are missing is that the areas that are more dense have a

hydrant system supplied by Kittitas County Water District #4. Adding these homes in close proximity to each other in what will look like a cul-de-sac development, without hydrants, will negatively affect the fire district and all of the people in it when we are evaluated by the Washington State Ratings Bureau, where they take into account the number of residences not near a hydrant system. I feel it is important to set this county and it's citizens up for success and although they attempted to discredit this claim, the neighboring large agriculture lots could do this same exact thing and go AG-5, do 8-10 5 acre lots for each parcel and then we have 20, 30, 50, etc. homes in a close area with no hydrant system. They would technically be separate developments but would look like 1 big one. This may or may not be the time to make these claims but I would like it known how the Fire District feels.”

Staff Response: *Any new plat within the past 2 years in rural areas has included a condition and plat note that states “A hydrant system, or other system as approved by the Fire Marshal, shall be installed and operational to support required fire flow before building permits are issued”. At the time of any new plats, the Fire District will be contacted for comments that could be put into conditions in any future plat.*

These are all the comments staff has received as of November 18, 2022. There may be additional comments submitted prior to and during the Board of County Commissioner’s Public Hearing on November 29th.

VII. PROJECT ANALYSIS

In review of this proposal, it is important to consider the goals and policies of the comprehensive plan, applicable county code, public and agency comments, any identified environmental concerns and state and federal requirements. Identified below is planning staff’s analysis and consistency review for the subject application.

Comprehensive Plan Consistency:

The proposal is somewhat consistent with the goals and policies of the Kittitas County Comprehensive Plan. As referenced above in Section IV of this staff report, the following Comprehensive Plan Goals and policies apply to this proposal: RR-G16, RR-G17, RR-G18, RR-G19, RR-G21 and RR-P32. This proposal seems to be consistent with the intent of Rural Residential Lands in Kittitas County.

Consistency with the provisions of KCC Title 12 Roads and Bridges:

This proposal is for a non-project rezone, therefore there will be no impact on existing infrastructure. The proposal is consistent with the provisions of KCC Title 12.

Consistency with the provisions of KCC 13 Water and Sewers Code:

This proposal is for a non-project rezone, therefore there will be no impact on existing infrastructure. The proposal is consistent with the provisions of KCC Title 13.

Consistency with the provisions of KCC Title 14 Buildings and Construction:

As this is a non-project rezone and comprehensive plan request, no building or construction is being requested by this action. This proposal is consistent with Kittitas County Code Title 14 for Building and Construction.

Consistency with the provisions of KCC 17.28A, Agriculture 5 Zoning:

This proposal is not completely consistent with Kittitas County Zoning Code 17.28A, as all but one of the parcels is already less than the 5-acre minimum lot size in Agriculture 5 but they are also even more non-conforming under Ag-20 with a 20 acre lot size minimum. This at least reduces to an extent the matter of non-conformity. Setbacks for Agriculture 20 and Agriculture 5 are the same.

Consistency with the provisions of KCC 17A Critical Areas Code:

As this is a non-project specific rezone no critical areas will be affected. Future activities and/or development will be required to comply with all regulations at the time of the new proposal and the critical areas will be assessed at that time.

Consistency with the provisions of KCC 20 Fire and Life Safety Code:

As this is a non-project rezone this proposal is consistent with the Kittitas County Code for Fire Life Safety.

Agency Comments:

Comments were received from Kittitas County Fire District 1, Kittitas County Public Health, Kittitas County Public Works and Westside Irrigating Company. Fire District 1 submitted additional comments on November 12, 2022.

Public Comments:

Public Comments were received from Jarred Fudacz, Johnny & Erinn Boitano and Paula Thompson. Chad Bala testified at the Planning Commission Public Hearing on November 8, 2022.

VIII. RECOMMENDATION

Staff recommended **approval** of the Thorp Landing Non-Project Rezone (CP-22-00002 & RZ-22-00002) subject to the following findings of fact and conditions:

Findings of Fact

1. Thorp Landing LLC is proposing to rezone 72.78 acres of property currently zoned Agricultural 20 to Agricultural 5 and do a comprehensive land use plan map amendment from Rural Working to Rural Residential. A comprehensive plan amendment (CP-22-00002), rezone application (RZ-22-00002), and SEPA checklist were submitted as part of the application packet. This project is being processed through the 2022 Annual Comprehensive Plan Docket process.
2. This proposal is located approximately 1500 feet northwest of the intersection of N Thorp Hwy and I-90 off of Thorp Landing Lane in Section 11, Township 18, Range 17, W.M.; Kittitas County. This proposal includes the following tax parcels: 443233, 493233, 19590, 19591, 19589, 19588, 19592 and 19593
3. Total Proposal Size: 72.78
 Number of Lots: 8
 Domestic Water: None requested/proposed at this time.
 Sewage Disposal: None requested/proposed at this time.
 Fire Protection: Fire District 1 (Thorp)
 Irrigation District: Westside Irrigating Company
4. Site Characteristics: The site is relatively flat land located with a mix of agricultural and development for a few houses
5. Surrounding Property:
North: Residential/Town of Thorp
South: A Few Commercial Uses/Farming
East: A Few Residential Lots/Vacant Land
West: Farming Uses
- Access: The proposal will have access from Thorp Landing Lane
6. The Comprehensive Plan designation is currently Rural Working with a proposed designation of Rural Residential
7. The subject property is currently located within an Agriculture 20 zoning district. Agriculture 5 zoning is

being requested, which is an appropriate zoning designation within certain rural areas of the county. The purpose and intent of this zone is to provide for an area where various agricultural activities and low-density residential developments co-exist compatibly. A-5 zones are predominately agricultural-oriented lands and it is not the intent of this section to impose further restrictions on continued agricultural activities therein.

8. An application for a comprehensive plan map amendment, rezone from Agricultural 20 to Agricultural 5, and SEPA environmental checklist was received on June 23, 2022. This submittal packet was received prior to the June 30th docketing deadline. The application was deemed complete on July 21, 2022. A Notice of Application was issued on August 11, 2022. These notices were published in the official county paper of record and were mailed to jurisdictional government agencies, adjacent property owners within 500 feet and other interested parties.
9. Based upon review of the submitted application materials including an environmental checklist, correspondence received during this comment period and other information on file with Community Development Services, Kittitas County issued a Determination of Non-Significance (DNS) on September 8, 2022 with a 14-day comment period that ended on September 22, 2022 at 5:00 p.m. Two comments unrelated to environmental issues were submitted for the SEPA DNS from Kittitas County Public Works (KCPW) and Kittitas County Public Health (KCPH). KCPW commented that two of the parcels in the proposal had been sold off by Thorp Landing LLC and KCPH commented that they had no concerns. Kittitas County retained the DNS on October 13, 2022. Any appeals of SEPA had to be submitted by October 27, 2022 by 5 PM. No appeals were filed.
10. This proposal is consistent with the provisions of Kittitas County Roads and Bridges Title 12.
11. This proposal is consistent with the provisions of KCC 13 Water and Sewers Code.
12. This proposal is consistent with Kittitas County Code Title 14 for Building and Construction.
13. This proposal is consistent with Kittitas County Code Title 17A Critical Areas.
14. This proposal is consistent with Kittitas County Code Title 20 Fire Life Safety.
15. This proposal is consistent with Kittitas County Code (KCC 17.13) Transfer of Development Rights.
16. The following agencies commented on this proposal: Kittitas County Fire District 1, Kittitas County Public Health, Kittitas County Public Works and Westside Irrigating Company. Fire District 1 submitted additional comments on November 12, 2022.
17. The following members of the public commented on this proposal: Jarred Fudacz, Johnny & Erinn Boitano and Paula Thompson. Chad Bala testified at the Planning Commission Public Hearing on November 8, 2022.

Suggested Conclusions:

1. As conditioned, the proposal meets the goals, policies and implementation recommendations as set forth in the Kittitas County Comprehensive Plan.
2. As conditioned, this proposal is consistent with applicable federal and state laws and regulations.
3. Public use and interest will be served by approval of this proposal.

4. As conditioned, the proposal is consistent with Kittitas County Code Title 12 Roads and Bridges, Title 13 Water and Sewer, Title 14 Building and Construction, Title 15 Environmental Policy, Title 17 Zoning, Title 17A Critical Areas, and Title 20 Fire Life Safety.

Suggested Conditions of Approval:

1. The applicant is responsible for compliance with all applicable local, state and federal rules and regulations, and must obtain all appropriate permits and approvals

The Planning Commission voted 5-0 to recommend approval of the Thorp Landing Rezone & Comprehensive Plan Amendment at their November 8, 2022 Public Hearing.

Addendum A

Lathrop, Winbauer, Harrel & Slothower L.L.P.

Attorneys at Law

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October 31, 2022

Via Email: Jeremiah.cromie@co.kittitas.wa.us

Jeremiah Cromie, Planner II
Kittitas County Community
Development Services
411 N. Ruby Street, Ste. 2
Ellensburg WA 98926

Re: Thorp Landing LLC Rezone & Comprehensive Plan Amendment, CP-22-00002
& RZ-22-00002

Dear Jeremiah:

The purpose of this letter is to respond to the comments Community Development received for the above-referenced land use applications. Your letter of September 14, 2022 provides that if we have responses, we should deliver them to you by 5:00 p.m. on November 1, 2022. Our responses consist of two primary areas. First, below we respond to each comment that the County received, and then secondly our land use consultant, who is an expert in land use planning in Kittitas County, has provided the letter dated October 31, 2022, which is annexed to this response as Appendix A.

Kittitas County Fire District No. 1, Dated August 13, 2022.

The comment by Kittitas County Fire District No. 1 is from the Chief of the fire district. The Fire Chief does not really comment on the change in the comprehensive plan designation or the rezone. His concern is a development specific comment that is more appropriately made when there is a specific development proposed on the property, whether that be under the current comprehensive plan and zone, or under the comprehensive plan designation and the zone the application seeks in this application. The comment references "multiple other large agricultural parcels around these ones that could sell and be developed using similar size lots". That is not necessarily an accurate statement. As the Applicant demonstrated the vast majority of the parcels in the vicinity of the subject properties are already developed at densities much greater than the subject property.

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Kittitas County Public Health, Dated August 18, 2022.

Kittitas County Public Health had no comments but did indicate that there was work ongoing on a public water system to “serve the lots in the Thorp Landing plat”. There is no “Thorp Landing plat”. There are, within the area subject to the application, several smaller three-acre parcels. The Applicant has those for sale, and in the course of putting in a road and infrastructure, has developed a Class B water system to serve those six lots.

Kittitas County Public Works, Dated September 12, 2022.

Kittitas County Public Works had no comments other than to point out that a portion of Kittitas County Tax Parcel No. 443233 is located in a FEMA 100-year flood plain. The Public Works correctly points out that future development, if any, on the subject property, regardless of the comprehensive designation and the zone designation will be required to comply with Chapter 14.08 of the Kittitas County Code, which deals with development and building of structures within areas designated in the flood plain.

West Side Irrigating Company, Dated September 12, 2022.

West Side Irrigating Company, through its attorneys, Halverson Northwest, provided a comment that is again, not really a comment on the comprehensive plan designation change and/or the rezone change, but is a comment that is more appropriately raised at the development stage when the property that is the subject of these applications is developed. West Side’s concern is that the development that might incur in the future on this property and on other property in the area, provides for a system of providing irrigation water to the designated parcels. The letter goes into detail on West Side Irrigating Company’s subdivision policies and procedures and their water deliveries. West Side concludes by saying they have no formal objection to the project. The only project on which they are commenting is the comprehensive plan designation and the zone change. Again, West Side’s comments are more appropriately addressed should there be a future land use action that creates additional parcels and/or results in structures being constructed on the property.

Jarred Fudacz, Dated September 12, 2022.

Mr. Fudacz provided a letter objecting to the application. To properly respond to Mr. Fudacz’s comment, the Applicant is breaking the Fudacz comment down into sections and responding to each one as appropriate.

- Mr. Fudacz asserts that the rezone will not fit the requirements set forth in the Comprehensive Plan, nor fit the zoning of the surroundings lands. Mr. Fudacz’s comment does not acknowledge that in addition to asking for a change in zone from Ag 20 to Ag 5, the Applicant is asking to change the Comprehensive Plan designation from rural working to rural residential. If the Comprehensive Plan designation is approved, the rezone will be appropriate given the changed Comprehensive Plan designation.

- Mr. Fudacz then asserts that the rezone is a “spot rezone”. Apparently, he asserts that the property in the area is designated as Ag 20, commercial agricultural, or the Type I LAMRID in Thorp. Mr. Fudacz ignores the commercial LAMRID at the Thorp interchange, and also the property in the area that is designated and used as mineral lands. The phrase “spot zoning” has been around a long time¹ and is widely misunderstood. Confusion created by the term is aptly pointed out by the Washington Attorney General in his 1973 opinion:

“The student of the ‘spot zoning’ cases is faced at the outset with a problem of terminology. This results from the fact that the term ‘spot zoning’ is used in many instances as a label for the conclusion reached by the court, that is, whether or not the zoning ordinance under consideration is valid. Other courts, however, and sometimes the same courts at other times, use the term ‘spot zoning’ in a merely ‘descriptive’ sense. And in still other instances the term is used as a mixed ‘descriptive’ and ‘legal’ term.”

...

“The problem is basically one of semantics. Read or interpreted literally, the phrase "spot zoning" as a purely descriptive term has a tendency to conjure up a vision of any zoning action the effect of which is to carve out a relatively small area situated within a larger whole and to treat that small area differently. But while this is most certainly one of the requisite elements of what we will hereinafter for purposes of clarity refer to as illegal spot zoning, it is by no means the only element. In other words, the mere fact that a zoning ordinance or an amendment thereto does single out for special treatment a small area (the spot) within a larger land unit will not, in and of itself, render the ordinance or amendment invalid. In order to constitute an instance of illegal spot zoning there must also be certain other factors present . . .”

A key part of the above-referenced quote is “. . . to carve out a relatively small area situated within a larger whole and to treat that small area somewhat differently . . .” The issue of spot zoning was also addressed in *Henderson v. Kittitas County*, 124 Wn. App. 747, 100 P.3d 842 (2004), *review denied*, 154 Wn.2d 1028 (2005). There the court said:

“Spot zoning is an action by which an area is carved out of a larger area and specifically zoned for a use totally different from, and inconsistent with, the surrounding land and not in conformance with the comprehensive plan. *Save a Neighborhood Env’t v. City of Seattle*, 101 Wash.2d 280, 286, 676 P.2d 1006 (1984). A spot zone grants a

¹ AGLO 1973 No. 103.

discriminatory benefit to some landowners to the detriment of their neighbors or of the community at large.” *Id.* at 847.

This brings the essence of the misunderstanding of spot zoning to the instant case. If you break down what the instant application requests, the only conclusion is that the application does not result in a spot zone. The Applicant is asking that its property be treated the same as all of the surrounding properties, which have been allowed to be developed at a far greater density than allowed in the 20-acre zone, despite the fact that the zone is Ag 20.

The density that the Applicant seeks to rezone the property to is a five-acre density. Under clear and unambiguous Washington law, that is a rural density. The five-acre density is not a “use classification totally different from, and inconsistent with, the classifications of surrounding land.” The surrounding land, despite its zone of Ag 20, which is a rural zone, is virtually all developed at a density much greater than the 20-acre density. In essence, to leave this property at Ag 20 and require it to be developed at 20-acre densities, would be in effect, treating the applicant differently than the rest of the area. In essence discriminating against the applicant. The approval of this rezone does not grant the Applicant a discriminatory benefit of the detriment of its neighbors. Instead, it puts the Applicant in the same position that the vast majority of the surrounding property is in - the ability to be developed at a density of less than 20 acres.²

It is not appropriate to review whether a particular land use action is a spot zone by simply comparing the zones. Instead, it requires a comparison of the area within the larger whole to ensure that you are not treating a small area differently than you are treating the larger area. This is exactly what the Applicant demonstrated in its application. The applicant showed within a half-mile radius, there are a hundred tax parcels and of those, one (1) conforms to the density of the applicable zone. Ninety-nine of the lots within one-half mile are less than the minimum density required in the zone. Taking that further, the average lot size within a one-half mile of the Applicant’s property is 3.17 acres. To expand the radius to .75 miles, there are 167 lots, 8 of which conform to the existing zone, with the average lot size being 4.17 acres in size. A change in the density from Ag 20 to Ag 5 of the subject property, treats the subject property the same, not differently, as the surrounding property. It is the antithesis of a spot zone.

- Mr. Fudacz then raises possible impacts to irrigation water deliveries, principally to his property if a majority of the property were developed at a greater density. Again, as is the case with many of the comments, this is a plat specific issue and if and when a plat application were filed, then the development, location and placement of lots within the plan would have to accord irrigation water deliveries and the Applicant certainly would not be able to impact any of Mr. Fudacz’s easements, to the extent they are valid, which cross the Applicant’s property. Mr. Fudacz cites to RCW

² See also *Save a Neighborhood Env’t v. City of Seattle*, 101 Wn.2d 280, 286, 676 P.2d 1006 (1984); *Citizens for Mount Vernon v. City of Mount Vernon*, 133 Wn.2d 861 (1997).

90.03.410 of the state water code to make a broad statement about what appear to be his rights as an easement holder. The section of the water code that Mr. Fudacz cites with deals with interference of waterworks and the wrongful use of water. It doesn't deal with any easement rights he would have. His easement rights fix his right to convey irrigation water across the Applicant's property. Nothing in the proposed application suggests or event hints at an interference with Mr. Fudacz's easement rights.

- Finally, with respect to Mr. Fudacz's comment, it should not be lost on the decision makers that Mr. Fudacz does not appear as a landowner of record under Kittitas County's Compass website. Mr. Fudacz's comment does reference Kittitas County Tax Parcel No. 573233, which is owned by the Fudacz Bros. Partnership, therefore one can assume that he has some form of ownership interest in land owned by the Fudacz Bros. Partnership. It appears that the Fudacz Bros. Partnership owns Tax Parcel #573233, which is 11.34 acres in size, well below the current 20-acre zone density. Fudacz Bros. Partnership also owns Tax Parcel #725836, which is a 2.39-acre parcel, again, well below the current 20-acre zone. The same can be said for Tax Parcel #735836, which the Fudacz Bros. Partnership also owns, and which is 10.88 acres in size. While Mr. Fudacz may complain about densities of less than 20 acres, he certainly benefits from them based upon the land that he has an interest in. His argument is nothing more than "not in my backyard"; or, stated another way, "I have mine but you can't have yours."

Johnny & Erinn Boitano, Dated September 12, 2022.

The Boitanos point to a rezone "not in the far past". What they refer to is that in the early 2000s a prior owner of this property rezoned it to Ag 3, which allowed for a 3-acre density. In 2011 the Washington State Supreme Court in *Kittitas County v. The Eastern Washington Growth Management Hearings Board*, 172 Wn.2d 144, 256 P.3d 1193 (2011) determined that 3-acre densities were not "rural" densities, and therefore the County was found to not be in compliance with the Growth Management Act with respect to rural densities. The County was given a period of time to comply, and what the County did was area-wide rezones where it changed the density from 3 acres to other densities that were, in fact, rural (primarily 20-acre densities). In a vast majority of those instances the County did no substances of analysis of what the appropriate zone was given the surrounding uses. Instead, the County merely reverted to the 20-acre zone which was a zone that existed prior to the Ag 3 rezone. To say the zone was "evaluated" is a stretch. The County was in a hurry to get into compliance with the Growth Management Act and as a result did the area-wide rezones with little to no analysis as to what the appropriate zone was. (See also Terra Design letter attached as Appendix A)

The Boitanos also point to this not being a "rural charecter [sic]" is contrary to what the Supreme Court found in *Kittitas County v. The Eastern Washington Growth Management Hearings Board*. There the court found that the County, in allowing 3-acre densities in rural lands, was allowing urban development in lands that are designated as rural uses. As a result, the County went back through a compliance effort and adopted several different types of rural zones, all centered around a 5-acre density and a 20-acre density. The Growth Management Hearings

Board then found the County compliant, thus in effect concluding that 5-acre densities were in fact a rural zone.

Paula Thompson Dated September 12, 2022.

Ms. Thompson's comment consists of taking Exhibit A to the Thorp Landing Comprehensive Plan docket request and making hand-written notes (some of which are unintelligible) on the document. Ms. Thompson then goes through the analysis that the Applicant provided on the densities and surrounding lands and crosses out sections of it, but doesn't indicate why she is crossing them out. The Applicant will attempt to respond to her comments, but given the nature of her comments and the manner in which they were presented, the Applicant specifically reserves the right to respond accordingly if Ms. Thompson clarifies her comments. The Applicant believes it is best to break down the themes in Ms. Thompson's comments as follows:

- Ms. Thompson asserts that "all the three acre or less lots in this application were created by exempted segregation (otherwise known as the 'the Cruse Shuffle'), not a legal method." That is not an accurate statement. Some of the lots were created by exempt segregations, which was a method used to create lots outside of and exempt from the subdivision process set forth in KCC Chapter 16. Thousands of lots in Kittitas County created in this manner are, and remain, legal lots of record. Ultimately the County eliminated the exemption under which these segregations were done, and, as a result, the ability to create lots which are exempt from the subdivision code no longer exists in this county (except in very limited circumstances which are not applicable to the issues here). The fact that the exemption is no longer available doesn't change the fact that the lots were legally created at the time. In addition, as legal lots of record, many of them have been developed at 3-acre density. Her analysis also ignores that the entire Thorp townsite, which has been developed over more than a 100-year period, is zoned Ag 20, and all lots are nonetheless legal lots of record. What Ms. Thompson is pointing out is that this is an area of Kittitas County, most of which, if created today would not be allowed, that has been the subject of a chronic lack of planning for the last 100 years (or at least since modern land use planning began in the County). It is certainly not appropriate to penalize the Applicant, as Ms. Thompson suggests, as it comes forward with applications to properly characterize its property so that it is consistent with the surrounding uses.
- Ms. Thompson also says the zoning "reverted back to Ag 20". (*See* response to the Boitanos and Mr. Bala's letter attached as Appendix A.) The County did an area-wide rezone in an attempt to come into compliance with the Growth Management Act. As a result, the County merely changed the zone back to Ag 20. The County didn't analyze whether that was the appropriate zone. Ms. Thompson refers to this as a "strawman" and points to the LAMRIDs as a basis for correcting the error. Again, that is not accurate. The LAMRIDs recognize areas of more intense limited development in the rural areas. They recognize areas that have been developed more intensely and as a result are not necessarily rural. She ignores the fact that 5-acre density is just as rural as 20-acre density.

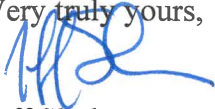
- She then indicates that the Applicant's analysis of zones in the area is not comparing "apples to apples". What the Applicant intended to, and did, demonstrate is that given the vast variety of zones in the area (commercial ag, Ag 20, Type 1 LAMRID, Type 3 LAMRID, mineral lands), few if any lots have been developed consistent with the densities in the Ag 20 zone.
- Ms. Thompson also suggests that an area-wide rezone should be done, not a spot rezone. *See* above and Mr. Bala's letter attached as Appendix A for the discussion of why this is not a spot rezone.

Finally, it should not be lost on the decisionmaker that Ms. Thompson owns Kittitas County Tax Parcel #957233, which is five acres in size. She also owns Tax Parcel #957232, which is 3.54 acres in size, Tax Parcel #957234, which is .5 acres, Tax Parcel #035933, which is 1.13 acres in size, and Tax Parcel #015933, which is .32 acres in size. Ms. Thompson is in the same situation as Mr. Fudacz. All of the property they own in the area is well below the minimum density of 20 acres, and at the end of the day her objections are like Mr. Fudacz's: "not in my backyard", and "I've got mine, but you can't have yours".

Summary.

None of the comments suggest that there is any basis for Kittitas County to deny Thorp Landing LLC's applications.

Very truly yours,



Jeff Slothower

JS:ksb

Enclosures

cc: Clients

APPENDIX A



October 31, 2022

Via Email: Jeremiah.cromie@co.kittitas.wa.us

Jeremiah Cromie, Planner II
Kittitas County Community
Development Services
411 N. Ruby Street, Ste. 2
Ellensburg WA 98926

Re: Thorp Landing LLC Rezone & Comprehensive Plan Amendment, CP-22-00002 & RZ-22-00002 Opinion Letter

Dear Jeremiah:

The purpose of this letter is to provide an opinion regarding the Thorp Landing Land Use Designation and Rezone request. The letter will specifically speak to three items; 1. Historical perspective of the Area wide rezoning due the Kittitas County's compliance effort, 2. Consistency with the land use and rezone zoning, and 3. Spot Zoning.

History:

Since the first appeal of the Kittitas County Comprehensive Plan, Kittitas County took many preliminary steps to come into compliance. As part of these steps early on in 2007 the formation of the Land Use Advisory Committee (LUAC) occurred, which I was a member of, to address the Rural Land Use Designations & Rural Character issues. From 2007 through 2009 the LUAC committee met consistently to review the land use designations and zoning code to develop new land use designations and zoning districts addressing the compliance issues. This committee and county staff spent many hours going parcel by parcel analyzing, discussing, and arguing and finally concluding what the new land use designations and zoning districts should be. Finally, a draft comprehensive plan with land use designations and zoning districts creating consistencies was reviewed by CTED (March 2008) and provided clarity with the creation of the new land use and zoning designations (Rural Residential, Rural Working Lands and zoning districts). This information was provided to the Board of County Commissioners at the time and without consideration of the LUAC product, Kittitas County continued to move forward with coming into compliance and adopting a different version to the land use designation and zoning maps without any consideration of the LUAC's work, of existing uses, and only focused on density issues (3-acre zoning). Throughout this compliance process and as a representative of a landowner, that owned numerous large tracts of lands, I

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LAND USE CONSULTANTS

continuously commented on mapping errors (two land use designations, two zoning designations on a single parcel, and regarding the lack of consideration of existing uses on lands within Kittitas County that warranted land use and zoning mapping reconsiderations. This issue has shown itself again with the inappropriate Rural Working land use and Ag-20 zoning on the property which is the subject of the Thorp Landing proposal. As you can see in reviewing the material submitted by the applicant and from a review of the county's COMPASS mapping website the subject property is adjacent to numerous nonconforming lots, with LAMIRDS being established to the north and south, and a large amount of land designated as mineral lands of long-term commercial significance to the east. This is all within the current Ag-20 zone and only further proves that the Rural Working Lands Designation was an incorrect designation to begin with and these adjacent uses are the same if not similar to uses allowed within the Ag-5 zone. In fact, there are uses within the Ag-20 zone that would be detrimental to the existing uses occurring on site today.

Comprehensive Plan & Zoning Consistency

The properties within the Thorp Landing proposal are governed by the Rural Lands element of the Kittitas County Comprehensive Plan. Presently the rural land uses in Kittitas County are a mixture of diverse development patterns that have been developed in the past. The rural lands element is intended to preserve rural character through the adopted goals and policies designed to encourage and protect the types of uses that are characteristic to the rural area. The goals and policies are intended to accomplish this in part by reducing conflicting land uses within the County's rural area while providing a variety of rural densities, protecting agriculture land resources and activities, and guarding the county's water resources for such environments.

The current Kittitas County Comprehensive Plan provides for GPOs that identify Goals and Policies for each element of the plan. I have addressed a number of these (See Attachment A) in citing how the Thorp Landing proposal is compliant with the Kittitas County Comprehensive Plan land use designation of Rural Residential (RR). As for consistency with the proposed AG-5 Zoning, it must be noted that this is required if the land use designation is changed. As part of the growth management act, development regulations must be consistent with a jurisdictions comprehensive plan. Furthermore, this proposed zone is consistent as the existing uses within the surrounding area are the same if not like the proposed uses allowed within the AG-5 zone (See Attachment B).

Spot Zoning

The Thorp Landing proposal is a request to change the land use designation from Rural Working to Rural Residential based upon the support of existing comprehensive plans goals and policies supporting the Rural Residential designation. It is important to note that this land use designation change request is due to the fact of the surrounding uses and density sizes are already nonconforming to the existing designation and zoning that covers the property.

These surrounding uses have a detrimental impact to the Thorp Landing properties thus the reason this request is in front of you for your consideration. As explained within the History segment of this letter, it describes the historical processes where bad planning occurred to expediently come into compliance. As part of the expedient nature there was a lack of consideration taken by the County to appropriately designate areas and in this specific case the Thorp Area. There was a lack of consideration of the existing densities (nonconforming lot sizes), existing uses, and the surrounding area related to higher developed areas within the Thorp area which are now designated as LAMIRDS. I bring this to your attention in that it's important to understand the land use designations and zoning need to be consistent with one another and for that matter consistent with the uses occurring on the ground and most importantly consistent with the Growth Management Act (RCW 36.70A). With that said if Thorp Landings Land use designation change request is granted approval, then Kittitas County is required to create consistency with its zoning regulations that fall under that new land use designation. The proposed new zoning designation of Ag-5 is supported by the submittal application and additional information submitted with this letter. The supportive information for this rezone is based off the current uses, densities, zoning code uses etc. of the surrounding area that also reflects how the rezone criteria has been met.

With the aforementioned information leads us into the discussion of spot zoning. As one can see Thorp Landing has met the criteria that allows for the land use redesignation to Rural Residential, hence the requirement of rezoning the property to be consistent with the new land use designation. This alone validates that this is not a spot zone, but a requirement of consistency by the growth management act.

As pointed out in the Washington Attorney General 1973 opinion there is not one single item that establishes an illegal spot zone nor that all the following four characteristics must be present for spot zone to be found illegal. In fact, with the Thorp Landing request in mind, I have addressed all four characteristics and responded appropriately validating that the Thorp Landing rezone is not a spot zone.

Characteristic 1. A smaller area is singled out of a large area and given special treatment.

As explained throughout the Thorp Landing application and information submitted with this letter this proposal is not being given special treatment. In fact, this proposal is requesting the property to be able to have the same treatment as the surrounding uses directly adjacent to the subject property.

Characteristic 2. Classification or use allowed in the smaller areas is totally different from and inconsistent with the classification of the surrounding area.

As explained throughout the Thorp Landing application and information submitted with this letter reflects that this property is not different and inconsistent with the surrounding area. In fact, this proposal is bringing its property into compliance and creating consistency with the surrounding uses directly adjacent to the subject property.

Characteristic 3. The action is not for the general welfare.

As explained throughout the Thorp Landing application and information submitted with this letter reflects the land use designation request is supported by the comprehensive plan goals and policies and the rezone is supported by the proposed zoning code and rezone criteria that is all required to be a benefit to the general welfare of the area (See Attachment B).

Characteristic 4. The action is not in accordance with the comprehensive plan.

As explained throughout the Thorp Landing application and information submitted with this letter, if the land use designation changes to Rural Residential then the zoning of the property must also be consistent with that new land use designation therefore consistent with the comprehensive plan and most importantly is not considered a spot zone.

In Summary

In review of the Thorp Landing application this request is consistent and supported to be designated as Rural Residential therefore supporting the inclusion of the property under the AG-5 zoning district.

Sincerely,



Chad Bala

Attachment A
Comprehensive Plan Consistency
For
Rural Residential

RR-G16: Allow for residential opportunity with rural character and a variety of densities outside UGAs without population expecting all urban services.

>>The requested map change is consistent with this goal. This proposed map change will allow for a further variety of densities and housing types outside of the urban growth area without populations expecting all urban services.

RR-G17: Generally, provide services supporting rural development and lower population densities.

>>The requested map change is consistent with this goal. The land that this map change affects will be served by septic systems and community water system, that is already surrounded nonconforming densities.

RR-G18: Designate areas where lots are generally less than 10 acres in size and have a common land use pattern.

>> The requested map change is consistent with this goal. The land that this map change affects contains parcels that nonconforming lot sizes that are consistent with existing land use pattern consistent with the surrounding/adjacent lands.

RR-G19: Permit siting in areas generally without commercial activity.

>> The requested map change is consistent with this goal. The land that this map change affects doesn't not contain any commercial activity.

RR-G20: Protect residential activities from flooding areas and natural hazard areas.

>> The requested map change is consistent with this goal. Majority of this land that this map change affects doesn't not contain natural hazard areas. This proposal does contain a small portion of floodplain, which is located at the far eastern boundary of this proposal. The floodplain areas within Kittitas County are governed by Kittitas County Code Chapter 14.08, which allows construction to occur within floodplains if requirements of Kittitas County Code Chapter 14.08 are met.

RR-G21: Preserve views of open space while providing opportunity for variety of rural densities.

>>The requested map change is consistent with this goal. The land that this map change affects has the ability, with this land use designation, to preserve more views of open space and possible continuance of ongoing agricultural practices while at the same time providing for a variety of rural densities.

RR-P23: Municipal, or public urban services should not be extended outside of urban growth areas in Rural Lands.

>>The requested map change is consistent with this goal. The land that this map change affects is not extending urban types of services as provided by the City of Ellensburg.

RR-P25: New rural residential development shall provide adequate water for domestic use.

>>The requested map change is consistent with this goal. The land that this map change affects has existing water rights along with the domestic water use options developed by Kittitas County further provides that this subject property is consistent with this goal.

RR-P30: Clustering of development can only occur where it results in the protection of open space and protects against conflicts with the use of farming or other resource lands. When clustering of development is proposed on land that shares boundaries with public lands and provides existing public access to recreational uses on adjacent public lands, easements for public access connections shall be considered during development review. The open space portion of the cluster development shall be located to protect fish & wildlife habitat and migration corridors.

>>The requested map change is consistent with this goal. The land that this map change affects has the ability, with this land use designation, to preserve more views of open space and possible continuance of ongoing agricultural practices and other protections under the possible use of clustering future development.

RR-P32: Residential uses, where permitted, shall be located where farming and forestry activities and opportunities are not negatively impacted.

>>The requested map change is consistent with this goal. The land that this map change affects is in an area where farming has continually been reduced with a variety of densities, hobby farms etc. therefore this proposal is consistent with the surrounding area and protects larger acreages that do continue with agricultural practices.

RR-P33: Residences will be located to create the least interference with the movement of farm vehicles and farmlands.

>>The requested map change is consistent with this goal. The land that this map change affects is in an area where farming has continually been reduced with landowner deciding to not continue with farming practices due to the reduction of farming acreage and not being viable, therefore this change will create no interference with the movement of agricultural practices.

RR-P34: The benefits of cluster residential development will be explored with criteria for such to occur in rural areas. Criteria, such as limited density, open space minimums and lot size maximums, will be developed to preserve the rural character existing in the area where clustering is proposed.

>>The requested map change is consistent with this goal. The land that this map change affects has the ability, with this land use designation, to preserve more views of open space and possible continuance of ongoing agricultural practices, minimum lot sizes all consistent with the surrounding and adjacent lands.

RR-P37: Innovative housing developments which preserve rural character will be encouraged.

>>The requested map change is consistent with this goal.

Attachment B
Rezone Consistency
For
Agricultural-5

Question 11A. The proposed amendment is compatible with the comprehensive plan.

This Project's relationship and compatibility with the Kittitas County Comprehensive Plan is consistent with the goals and policies listed below.

H-G1: Support strategies that increase and maintain the availability of affordable housing for all incomes levels throughout the county.

This zone change will allow for additional housing to be built in the future with domestic water provided by Group B water system. Housing units needed for future populations, per the comprehensive plan, is projected to be 8,611 units by the year 2037.

H-G3: Provide equitable housing options to allow residents with supported living needs to live as independently as possible throughout the County.

The proposal will create the possibility for new homes to be built in the future which will provide future home ownership.

H-G7: Provide a sufficient number of housing units for future populations in rural areas of Kittitas County while maintaining environmental corridors and quality habitats.

This proposal will provide additional housing units while maintaining the environmental corridors and quality habitats.

H-G8: Provide for future populations while protecting individual property rights.

This proposal is consistent with this goal.

Question 11.B. The proposed amendment bears a substantial relation to the public health, safety, or welfare.

The proposed amendment must bear a substantial relation to only one of the following: public health, safety or welfare and this proposal benefits county residents in all three categories.

Kittitas County Population Growth: The Kittitas County Conference of Governments (COG) made a recommendation to the Board of County Commissioners to adopt the Office of Financial Management's (OFM) numbers and distribution of populations projections through 2037. These projections are intended to guide in the development of Kittitas County. This recommendation included a population

projection of 65,967 residents within Kittitas County by the year 2037. Using this projection, the 20-year population allocation for Kittitas County is anticipated to increase by 23,297 people. This proposal provides for the possibility of housing that will add to the greater mix of residential housing types that will assist in meeting the carrying capacity that the county is required to provide for in the Kittitas County Comprehensive Plan. By changing this zone to Agricultural-5 with property could be served with a Group B Water System, numerous access roads (Thorp Landing Lane, Thorp Hwy, & Goodwin Road) bears a substantial relation to the public health, safety and/or welfare; and

Public Health:

In 2016 Kittitas County had the availability of new domestic water supplies greatly reduced as the Department of Ecology has determined that the water in the upper Yakima River basin has been over allocated. In addition, the Department of Ecology has found that there is a connection between surface and ground water in the Upper Yakima River Basin and has determined that there will be no new water rights (surface or ground) issued for any use unless mitigated by an existing senior water right. Since this decision Kittitas County came into compliance with the adoption of their comprehensive plan along with the continued development on how to provide water for domestic purposes. One example is that Kittitas County has purchased water rights and developed an over the county water program to meet the domestic needs of Kittitas County. Furthermore, private water banks were developed, with approval from WA ST. Dept. of Ecology to also allow for the ability to provide domestic water for new and future residential uses. This proposal can be served by these options therefore this amendment bears a substantial relation to the public health; and

Welfare:

The Merriam-Webster dictionary defines "welfare" as "the state of doing well especially in respect to good fortune, happiness, well-being, or prosperity ". Home ownership intermixed with recreation activities are specifically designed to provide happiness and well-being. The property is located adjacent to other properties in the same area all destined to be used for Rural home ownership, with easy and local access to wide variety of recreational opportunities for both summer and winter (Wenatchee National Forest). By providing these new opportunities the proposal bears a substantial relation to welfare; and

Safety:

The Merriam-Webster dictionary defines "safety" as "the condition of being safe from undergoing or causing hurt, injury, or loss". The change in the zone from Agricultural - 20 to Agricultural-5 will provide a similar environment for the continued and growing rural population and recreation uses. The proposal is already adjacent to surrounding nonconforming smaller densities therefore larger farming operations cannot exist. By up zoning these parcels for innovated techniques to occur for residential development and providing new housing with safe access, available water, and in a safe environment therefore this amendment bears a substantial relation to safety.

Question 11.C. The proposed amendment has merit and value for Kittitas County or a sub-area of the county

The Merriam-Webster dictionary defines "merit" as "a good quality or feature that deserves to be praised' and/or "the quality of being good, important, or useful ".

Protection of existing agricultural land: With the concept of preserving agricultural land, this proposal is average agricultural land. This area is extremely rocky and not conducive to agriculture/farming due to the encroachment of non-conforming lots directly adjacent, along with higher density scenarios such as LAMIRDS to the north and southeast. All the surrounding land has been continually developed into non-conforming parcels making it even more difficult to continue with any sort of farming practices. By changing the land use designation and zoning designation allows for the continued rural residential

lifestyle to occur at the same time directing growth away from larger tracts of farm ground. By doing this the amendment and rezone has merit and value for the county.

Water Availability: This amendment and rezone will also allow any future development to use water, through the mechanisms developed by Kittitas County and other private water banking systems, for domestic uses. By doing this the amendment has merit and value for the county.

Access: With the existing roads that provide the ability for future connectivity, loop connections and basically two ways in and out (Thorp Landing Lane and Goodwin Road) for future development proves that this amendment has merit and value for the county.

Question 11.D. The proposed amendment is appropriate because of changed circumstances or because of a need for additional property in the proposed zone or because the proposed zone is appropriate for reasonable development of the subject property.

The proposed amendment needs to be found appropriate because one of the following (i) because of changed circumstances, or (ii) because of a need for additional property in the proposed zone, or (iii) because the proposed zone is appropriate for reasonable development of the subject property. As stated above the amendment for the proposal needs to meet only one of these criteria.

Because of Changed Circumstances:

One major change that has occurred is the newly adopted land use designations. When these designations occurred, for the County to be compliant, the boundaries were not clearly thought out. For example, this proposal contains a parcel that has Rural Working land use designations covering numerous nonconforming lots sizes therefore inconsistent with the current land use designation and zoning of Ag-20. This inadvertent change created inconsistencies in applying the county's comprehensive plan polices and development regulations to parcels within this proposal.

Because of a need for additional property in the proposed zone:

This proposal meets the needs for additional property within this rural residential land use designation, based off the Kittitas County Population Growth: The Kittitas County Conference of Governments (COG) made a recommendation to the Board of County Commissioners to adopt the Office of Financial Management's (OFM) numbers and distribution of populations projections through 2037. These projections are intended to guide in the development of Kittitas County. This recommendation included a population projection of 65,967 residents within Kittitas County by the year 2037. Using this projection, the 20-year population allocation for Kittitas County is anticipated to increase by 23,297 people or by 8,611 units.

Because the proposed zone is appropriate for reasonable development of the subject property because.

The property is uniquely suited for rural residential development as it is in an area that has access to multiple access points (Thorp Landing Lane, Thorp Hwy, Goodwin Road, and close access to I-90). The proposed rezone for the property provides for the reasonable development of the land for rural residential uses as well as recreational uses being in the vicinity of the Yakima River and the Wenatchee National Forest.

As stated above this proposed amendment is appropriate because of changed circumstances and because of a need for and because the proposed zone is appropriate for reasonable development of the subject property.

Question 11.E. The subject property is suitable for development in general conformance with zoning standards for the proposed zone.

Chapter 17.28A

A-5 - AGRICULTURAL ZONE

17.28A.010 Purpose and intent.

The purpose and intent of the agriculture (A-5) zone is to provide for an area where various agricultural activities and low-density residential developments co-exist. A-5 zones are pre-dominantly agricultural-oriented lands, and it is not the intent of this section to impose further restrictions on continued agricultural activities herein.

Within the Ag-20 zone, the current zoning of this proposal, there are certain uses such as interpretative centers, Agricultural enhance uses, feedlots, shooting ranges, hospitals, refuse centers, boarding houses, that are allowed within this zone. These types of uses should be located away from rural residential development and located on larger tracts of land. This is the reason why these types of uses were written into the Ag-20 zoning code.

The surrounding land, the surrounding uses of the property, the transitional uses of the land to rural residential, the potential availability of water through the Class B water system and immediate access to road existing road network shows that the property is suitable for development in general conformance with zoning standards for the proposed zone. More importantly this should be considered as a transitional area due to the location of I-90, and numerous LAMIRD designations and non-conforming lots surrounding the subject property.

Question 11.F. The proposed amendment will not be materially detrimental to the use of properties in the immediate vicinity of the subject property.

The proposed rezone of the property will enhance the properties in the immediate vicinity of the subject property. The Ag-5 and the Ag-20 zone are very similar except that Ag-20 allows for certain uses such as interpretative centers, agricultural enhance uses, feedlots, shooting ranges, hospitals, refuse centers, and boarding houses. By rezoning this property, will not be materially detrimental to the use of the properties in the immediate vicinity of the subject property but would be more protective to the properties in the immediate vicinity due to becoming more consistent with the surrounding and existing uses and densities.

Question 11.G. The proposed changes in use of the subject property shall not adversely impact irrigation water deliveries to other properties.

The applicant has water rights through the Westside Irrigation Company. Furthermore, this proposal will not adversely impact irrigation water deliveries to other properties.

Question 11.H. The proposed amendment is in full compliance with Chapter KCC 17.13 Transfer of Development Rights.

According to KCC 17.13 Transfer of Development Rights, specifically 17.14.080 2. the transfer of development rights is not a precondition for any amendment to the Comprehensive Plan, Zoning Map, or proposed rezone to be approved.

KCC 17.13.080.2.

a. The tender of density credits is not a precondition for any amendment to the Comprehensive Plan, Zoning Map, or proposed development to be approved. The density credits are required before the

County issues final plat approval or permits, if no land division is involved, for any development of the additional units in the Comprehensive Plan amendment. The developer must submit the density credits when applying for the permit.

- b. The ordinance granting each Comprehensive Plan Amendment shall condition the approval upon the applicant's compliance with the requirement of development credits.*

There are no Transfer of Development Rights needed at this time for this proposal.