

September 12, 2022

VIA EMAIL <jeremiah.cromie@co.kittitas.wa.us>
AND REGULAR U.S. MAIL

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

Re: *Thorp Landing Rezone and Comprehensive Plan Amendment (RZ-22-00002 & CP-22-00002): West Side Irrigating Company Public Comment*

Dear Mr. Cromie:

This firm represents West Side Irrigating Company (“WSIC”), which delivers irrigation water to farm and residential lands in Kittitas County. WSIC’s authorized service area includes the entirety of the proposed Thorp Landing project under the above-referenced Rezone and Comp Plan Amendment applications (the “Project”). WSIC takes no formal position concerning the Project, acknowledging that much of Kittitas County’s traditional rural and agricultural lands are transitioning toward residential and mixed-use purposes. WSIC’s sole concern in this case is to remind the Project developer and County representatives that WSIC holds and intends to exercise rights as a designated “irrigation entity” under the County Code to ensure that appropriate arrangements are in place for efficient delivery of WSIC water to reconfigured parcels within the Project.

Background

As we understand, the Project comprises nine parcels as currently configured, which abut Goodwin Road and Thorp Highway within Section 11, Township 18 N., Range 17 E.W.M. As noted above, the project lies wholly within WSIC’s service area and authorized places of use under its adjudicated mainstem Yakima River water rights. WSIC’s river diversion lies upstream of the project, from which irrigation supply water is transported via the WSIC Main Canal in a generally southeasterly direction. Project lands are currently served by two turnouts on the Main Canal – Headgate Nos. 12 and 18. The Project contemplates amending the Comprehensive Plan designation of affected lands from Rural Working to Rural Residential, together with a zoning change to Ag-5.

KCC Requirements

Chapter 16.18 of the County Code includes provisions for the orderly system of providing irrigation water to property served by designated irrigation entities (including WSIC),

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which is undergoing parcel creation or reconfiguration under Title 16. KCC 16.18.010 - .020. For such projects, the project proponent must “provide a water delivery system together with rights-of-way to each lot created by the parcel creation entitled to receive irrigation water. The parcel creation shall also provide for easements or rights-of-way from the water source to the water delivery system.” KCC 16.18.030. Further, the proposed project water delivery infrastructure “shall not impair the rights or uses of downgradient water owners or users,” who are to be consulted in connection with the design of such infrastructure. *Id.* As a condition of final plat or similar, final land use change approvals, the affected irrigation entity is entitled to submit a certificate, confirming that proposed irrigation delivery systems and access/easement rights are sufficient for continuing irrigation delivery to all lands and otherwise consistent with the irrigation entity’s requirements. KCC 16.18.035.

Finally, Chapter 16.18 requires the owners of platted or otherwise reconfigured lands to appoint a single representative for purposes of communicating with irrigation entities. Without limitation, such communication routinely concerns installation of water delivery systems linking irrigation entity headgates and end-user lands, as well as aggregated water volumes required from time to time by end users served by particular headgates.

WSIC Bylaws Regarding Water Deliveries

Article V of WSIC’s Bylaws include rules and regulations for the delivery of water to landowners within the WSIC service area. Such rules and regulations contain the following items directly relevant to parcel changes contemplated for the Project:

- Total volume of water delivered to a single WSIC headgate may not exceed the total of then outstanding shares of WSIC stock allocated to lands served by such headgate.
- A WSIC stockholder may irrigate only those lands for which he/she holds shares of stock at the WSIC-established minimum of one-half share for each acre of irrigable land. A stockholder must hold a minimum of one full share of WSIC (and will be fully assessed therefor), even if he/she holds less than one full acre of irrigable land.
- No water may be delivered to lands for which WSIC assessments are not fully paid by May 1st each year.
- A stockholder seeking to divide or reconfigure parcels within the WSIC service area must submit to the Board of Trustees a proposal for new irrigation systems to serve all affected lands. In connection therewith, the Board may require that various arrangements be made among affected landowners and/or with the Ditch Supervisor, to ensure efficient delivery of water to all affected lands.

Summary and Implications for the Project

As stated above, WSIC has no formal objection to the Project. We provide these comments on behalf of WSIC solely to ensure that all parties understand and are planning to comply with irrigation-related requirements under the above-discussed authorities. While there are many irrigation water delivery items to be considered in connection with the Project (all of which WSIC will be pleased to discuss in more detail with the Project proponent), our comments may be summarized thusly:

WSIC must be allowed to participate in the Project planning process in order to provide meaningful direction concerning necessary arrangements for delivery of water to all reconfigured parcels. Without such participation, WSIC cannot provide the required certification confirming adequate irrigation systems and rights-of-way/permissions under KCC 16.18.035, *supra*.

Further, reconfiguration of parcels under the Project will require a reapportionment of WSIC shares to affected lands. Thereafter, owners of those reconfigured lands will be individually responsible for the payment of assessments and the like. (If and to the extent a landowner(s) becomes delinquent in the payment of assessments, the Ditch Supervisor will reduce deliveries to the subject headgate in proportion to the delinquency, but users served by such headgate will be collectively responsible for ensuring that water is ultimately delivered only to paid-up parcels.) At the same time, owners of all Project lands served by individual WSIC headgates will be required to appoint a single point of contact with WSIC for non-assessment-related purposes, including water delivery requirements from time to time during the irrigation season, as well as proposed construction or alteration of facilities potentially affecting the WSIC Main Canal and operations.

If there are any immediate questions or concerns in connection with the above comments, please contact the undersigned. Otherwise, Mr. Kirk Riegel, who serves as WSIC's Secretary, will be pleased to consult further with the Project proponent and/or with County representatives concerning WSIC's irrigation water delivery requirements as a condition on final Comp Plan and Zoning approvals under KCC 16.18.030 -.035.

Thank you very much in advance for your consideration of these comments.

Very truly yours,

HALVERSON | NORTHWEST LAW GROUP P.C.



Paul C. Dempsey

cc: (via email only)

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