

## MEMORANDUM

DATE: November 7, 2017  
TO: Board of County Commissioners  
FROM: Dinah Reed, Senior Project Planner  
RE: APL2017-00005 Report; Hearing Date: TBD

This memorandum provides an update on this appeal scheduled for consideration before the Board on November 21, 2017 and provides a staff recommendation based on the record.

1. **Appellants:** Art and Teresa Mensonides, Mensonides Dairy, LLC
2. **Representative:** Brian J. Iller, Rettig Forgette Iller Adamson
3. **File Numbers:** APL2017-00005 / PRJ2015-00350
4. **Location:** The three subject parcels totaling 258 acres are located and accessed off Glade Road, also known as Mabton Bickelton Road, and approximately 2 miles southeast from the City of Mabton. (Parcels nos. 230817-21001, 230808-33001 and 230808-34001)
5. **Proposal:** Brian J. Iller of Rettig Forgette Iller Adamson on behalf of Art and Teresa Mensonides (Mensonides Dairy, LLC) filed a timely appeal of the Hearing Examiner's land use decision for PRJ2016-00350 / CUP2016-00019 on August 15, 2017. The appellant is requesting that the Board of Commissioners for Yakima County, acting in their quasi-judicial capacity to hear an administrative, closed record appeal, 1) grant their appeal and reverse the Hearing Examiner's decision, denying the Conditional Use Permit. 2) Alternatively, appellants seek a decision from the Board to grant their appeal, but with conditions added to the CUP that any single violation of a condition will result in the termination of the CUP and require the closing of the Concentrated Animal Feeding Operation (CAFO).
6. **Appeal Background:**
  - a) Tim Bardell of B7 Engineering submitted a Type 2 Conditional Use permit on behalf of Frysland Ranch on February 25, 2016 for a Concentrated Animal Feeding Operation. The original proposal, defined as a Concentrated Animal Feeding Operation was subject to Yakima County Unified Land Development Code (Title19) as a Type 2 review in the AG zoning district. The level of review was elevated to require a public hearing due to the comments received from adjoining property owners and interested agencies.
  - b) An Open Record Hearing was held on July 6, 2017.
  - c) The appellant submitted an untimely appeal to the SEPA (SEP2016-00007) prior to the Hearing date of July 6, 2017 based on violations of environmental regulations. The appeal was untimely because it did not meet the appeal criteria pursuant to 16B.09.020.
  - d) The Hearing Examiner's Decision dated August 1, 2017 approved the proposed CAFO with Conditions.

- e) Brian J. Iller of Rettig Forgette Iller Adamson on behalf of Art and Teresa Mensonides (Mensonides Dairy, LLC) filed a timely appeal of the Hearing Examiner's land use decision for PRJ2016-00350 / CUP2016-00019 on August 15, 2017.

7. **Appeal Points:** The appellant's appeal points and objections are as follows, in summary:

- A. "The burden of proof was improperly applied."
  - o The appellant argues the burden of proof was shifted to the appellant, based on the argument made by the applicant that violating environmental regulations were "mere assertions" on noncompliance.
- B. "The Hearing Examiner's Decision is based on an unwarranted trust that the owner will comply with environmental regulations that is not supported by substantial evidence."
  - o The appellant argues that historically, the property owner has violated environmental regulations associated to the practices of running a CAFO, and for that reason cannot be trusted to comply in the future.
- C. "The Hearing Examiner's Decision failed to follow proper procedure by failing to exercise his authority to ensure accountability to the public for implementation of Mitigation."

*Staff findings: The three appeal points cannot be considered by the BOCC because they address the SEPA MDNS and there was no timely appeal of the SEPA.*

*16B.06.070 – Appeals of SEPA Determinations - Administrative SEPA appeals to the Hearing Examiner only are hereby established. It is the purpose of this Section to combine environmental considerations with public decisions, and for this reason, any appeal brought under this Section shall be linked to a specific governmental action. Appeals under this Section are not intended to create a cause of action unrelated to a specific governmental action. The administrative appeal procedures provided by this Section shall be construed consistently with RCW [43.21C.075](#), Chapter [36.70B](#) RCW, and WAC [197-11-680](#).*

8. **Well Monitoring Covenant:** Of the 17 conditions listed in the Hearing Examiner's Decision dated August 1, 2017, two conditions apply to a Restrictive Covenant pertaining to stock water from the existing exempt wells.

- a) Conditions #2 states " Prior to the issuance of building permits for calf yard and calf yard related structures on parcel nos. 230909-33001, 230917-21001 and 230918-34001, property owners of all the parcels must execute and deliver to the Yakima County Planning Division a Deed Restriction, other restrictive covenant, or similar instrument, acceptable as a form to and enforceable by Yakima County, that limits future use of groundwater on those properties only to domestic use for the houses and shops on those properties, and eliminating permit-exempt stock watering on those properties of from the existing wells currently providing stock water on those properties. The Deed Restriction or other

restrictive covenant instrument will be reviewed and approved by Yakima County Planning Division and recorded with the Yakima County Auditor's office prior to the issuance of building permits.

- b) Condition #3 states "Prior to the issuance of building permits, the applicant shall provide a phased schedule to the Yakima County Planning Division for the process of moving the cows from the existing CAFO's on parcels 230909-33001, 230917-21001 and 230918-34001, the cessation of stock watering at those CAFO's and an ongoing inspection plan by Yakima County as an assurance that the Deed Restriction or other restrictive covenant is being complied with.

*Staff findings: Erika Hartliep of Stokes Lawrence Velikanje Moore & Shore provided Yakima County Planning with a Declaration of Well Monitoring Covenant, as requested by the BOCC at the Regular Agenda Meeting on Tuesday, October 24, 2017, as an instrument to comply with Conditions 2 and 3 of CUP2016-00019. Yakima County Planning and Corporate Council to Public Services reviewed the Well Monitoring Covenant and agree that it will meet the requirements of the Conditions.*

9. **Evaluation Criteria:** We recommend that the following goals and evaluation criteria apply in consideration of this appeal before the Board, all of which are discussed in detail in the record:

- a) The proposed CAFO is located within the Agriculture (AG) zoning district  
The subject property is zoned Agriculture. YCC 19.11.010(1)(b) states "The AG zoning district is intended to preserve and maintain areas for the continued practice of agriculture and to permit only those new uses that are compatible with agricultural activities." The subject parcels total approximately 258 acres in size and are surrounded by AG zoned parcels that are large tracts of land, some are DNR grazing leased acreage.
- b) The intent of Yakima County's Agricultural Resource land use category is to implement the Growth Management Act planning goals related to maintaining and enhancing natural resource-based industries, which includes productive agricultural industries. The project has been reviewed for consistency with the following goals and policies of the Yakima County Comprehensive Plan (*Plan 2015*).
  - GOAL ED 4: Preserve and enhance the County's resource-based economy.
    - POLICY ED 4.1: Encourage resource-based industries which are consistent with resource lands goals and policies.
  - GOAL LU-ER-AG 1: Maintain and enhance productive agricultural lands and discourage uses that are incompatible with farming activities.
    - POLICY LU-ER-AG 1.1: Encourage conservation of the County's high quality agricultural lands for productive agricultural use and protect the opportunity for these lands to support the widest variety of agricultural crops.
- c) Mitigation for Water Withdrawal – response to WA State Department of Ecology  
As a Condition of Approval (Condition #2), Yakima County requires a Deed Restriction submitted by the applicant. The Deed Restriction will limit future water withdrawal from the existing CAFO's on parcel nos. 230909-33001, 230917-21001 and 230918-34001 to only domestic use for the houses and shops on those properties, and eliminating stock

watering use from those existing wells. The animal units at Stover Road, Hornby Road and Den Boer Road will be re-located to the new Frysland Ranch, as proposed, combining the operations to one facility. The purpose is to eliminate an increase in water withdrawal in the Yakima Basin. As a Condition of Approval (Condition #3), the applicant shall provide a schedule for the process for moving the cows from the existing CAFO's on parcel nos. 230909-33001, 230917-21001 and 230918-34001, the cessation of stock watering on those parcels, and an ongoing inspection plan by Yakima County, as an assurance that the Deed Restriction is in compliance. Yakima County will work with the applicant and representative on the proposed schedule.

- d) Mitigation for Upland Wildlife Habitat Area – Response to WDFW  
SEP2016-00007 lists the requested habitat mitigation (Mitigation Measure E1): A permanent form of protection (conservation easement, deed restriction, etc.) that prohibits land disturbing activities shall be established on the subject property. The area of protection shall meet ratios of protection established by WDFW. Evidence that this mechanism has been approved by WDFW and established shall be provided to Yakima County Planning prior to construction and grading activities within the CAFO area.
- e) Yakima County Water Resources Division  
The applicant shall provide a stormwater site plan along with supporting documentation to the Yakima County Water Resources Division before any ground disturbing activities occur (Condition #7).
- f) Neighbor Comments Addressing Environmental Practices and Concerns  
According to the Washington State Department of Ecology's website <http://www.ecy.wa.gov/programs/wq/permits/cafo>), "The CAFO permit requires large-scale livestock operations in Washington to implement practices to better protect groundwater, rivers, lakes and marine water from manure pollution. **It builds on the Department of Agriculture's (WSDA) Dairy Nutrient Management Program. WSDA will continue as the principal inspector of dairies and will partner with Ecology to implement the permit.**"

### CONCLUSIONS

**Recommendation:** The Administrative Official recommends that the Board of County Commissioners (BOCC) uphold and affirm the decision (PRJ2015-00350/CUP2016-00019/SEP2016-00007) as issued August 1, 2017.

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*Yakima County ensures full compliance with Title VI of the Civil Rights Act of 1964 by prohibiting discrimination against any person on the basis of race, color, national origin, or sex in the provision of benefits and services resulting from its federally assisted programs and activities. For questions regarding Yakima County's Title VI Program, you may contact the Title VI Coordinator at 509-574-2300. If this letter pertains to a meeting and you need special accommodations, please call us at 509-574-2300 by 10:00 a.m. three days prior to the meeting. For TDD users, please use the State's toll free relay service 1-800-833-6388 and ask the operator to dial 509-574-2300.*