

Lauren Davidson

From: Perry Huston
Sent: Monday, April 04, 2016 8:05 AM
To: Angela Hubbard; Lauren Davidson; Sandy Mackie (amackie6404@gmail.com); Albert Lin
Subject: FW: Zoning Code DEIS Comments
Attachments: Futurewise & MVCC Comments on DEIS Okanogan County Zoning Update April 1 2016 Final.pdf

FYI

From: Tim Trohimovich [<mailto:Tim@futurewise.org>]
Sent: Friday, April 01, 2016 4:45 PM
To: ahubbard@co.okanogan.wa.us; Perry Huston
Subject: Zoning Code DEIS Comments

Dear Madam and Sir:

Enclosed please find Futurewise's and the Methow Valley Citizens' Council's comments on the Draft Environmental Impact Statement (DEIS) for the proposed revisions to the Okanogan County Zone Code. We are having the paper original and enclosed delivered to your office on Monday.

Thank you for considering our comments.

Tim Trohimovich, AICP
Director of Planning & Law



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tim@futurewise.org
connect:  
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1/20/2014

From: [Redacted]
 Sent: Monday, April 14, 2014 8:02 AM
 To: Angela Hubbard, Lauren Davidson, Sandy Mathis (amthiwa503@gmail.com), Amber Du
 Robert: FW: Learning Goals (BIS) Comments
 Attachments: FW: Learning Goals (BIS) Comments on BIS Oklahoma County Spring 2014
 (100 KB)

From: [Redacted]
 Sent: Monday, April 14, 2014 8:02 AM
 To: Angela Hubbard, Lauren Davidson, Sandy Mathis (amthiwa503@gmail.com), Amber Du
 Robert: FW: Learning Goals (BIS) Comments

Dear Western and Sk

Enclosed please find feedback on the metrics. Voices of users' Council's comments on the Data
 Review and Learning Goals (BIS) for their report request to the Oklahoma County Learning Goals
 the following the color of and entered deliver to your email address.

Thank you for considering our comments.

The Oklahoma State
 Director of Learning & Dev

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April 1, 2016

Mr. Perry Huston, Director of Planning
Okanogan County
Office of Planning and Development
123 – 5th Ave. N. Suite 130
Okanogan, Washington 98840

Dear Director of Planning Huston:

Subject: Comments on the Draft Environmental Impact Statement (DEIS) for the proposed revisions to the Okanogan County Zone Code.

Sent via U.S. Mail and email to: ahubbard@co.okanogan.wa.us; phuston@co.okanogan.wa.us

Thank you for the opportunity to comment on Draft Environmental Impact Statement (DEIS) for the proposed revisions to the Okanogan County Zone Code. This letter is submitted on behalf of Futurewise and the Methow Valley Citizens' Council. While we support preparing a DEIS on the zoning amendments, this DEIS does not meet the minimum requirements of the Washington State Environmental Policy Act (SEPA). The reasons for this conclusion follow below.

The DEIS fails to comply with SEPA

The Draft Environmental Impact Statement (DEIS) for the proposed revisions to the Okanogan County Zone Code does not meet the requirements for a non-project EIS. In addressing the adequacy of a nonproject EIS for a rezone, the Court of Appeals wrote that:

In *Leschi v. Highway Comm'n*, 84 Wn.2d 271, 525 P.2d 774 (1974), a majority of the Supreme Court held that the adequacy question is one of law, subject to *de novo* review by the courts. The test to be applied is “whether the environmental effects of the proposed action and reasonable alternatives are sufficiently disclosed, discussed and that they are substantiated by supportive opinion and data.” *Leschi v. Highway Comm'n*, *supra* at 286, 525 P.2d at 785.¹

WAC 197-11-440(6)(a) requires that for the elements of the environment significantly affected by the proposed action, “the EIS shall describe the existing environment that will be affected by the proposal, analyze significant impacts of alternatives including the proposed action, and discuss reasonable mitigation measures that would significantly mitigate these impacts.” In the *Ullock* decision, the Court of Appeals held “that an EIS is adequate in a nonproject zoning action where the environmental consequences are discussed in terms of the maximum potential development of the property under the various zoning classifications allowed.”²

As is documented below, the DEIS fails to comply with these requirements. The DEIS fails to disclose and discuss the allowed densities and allowed uses and their environmental impacts.

¹ *Ullock v. City of Bremerton*, 17 Wn. App. 573, 580, 565 P.2d 1179, 1184 (1977).

² *Id.*

Mr. Perry Huston, Director of Planning Okanogan County Re: Zoning DEIS

April 1, 2016

Page 2

For example, there is no disclosure and discussion of the impacts of the wildfires that have impacted the county in last two summers and the impacts of the allowed uses on wildfires despite the fact that wildfires were identified as an element of the environment to be analyzed in the DEIS.

The DEIS makes statements that are not substantiated by data. For example: that the one acre threshold for Ecology controls for stormwater are sufficient to protect water quality despite the failure of the county's rivers to comply with the adopted water quality standards; that Ecology regulation of air quality pollution sources are adequate (despite the fact the winter air quality is deteriorating).³ Please provide data to support the contentions in the EIS.

The Alternatives description and analysis fails to comply with WAC 197-11-440(5)

Section III, Proposal and Alternatives, on pages 3 and 4 of the DEIS, does not have any description and analysis of any of the alternatives. For example, nothing in Section III sets out the allowed uses and allowed densities under any of the alternatives. In fact, nowhere in the DEIS is it even mentioned that the Minimum Requirement, Rural 1, Rural 5, and Rural 20 zones allow apartments and manufactured home parks with densities of five dwelling units per acre.⁴ Nowhere in the DEIS is it even mentioned that this is an increase from the 4.5 dwellings units per acre allowed by the Minimum Requirement Zone in the no action alternative.⁵

Nor does Section III, or any part of the DEIS, explain the many commercial and industrial uses allowed in the rural zones. Aircraft sales, repair, service and aircraft salvage, just to name a few, are permitted uses in the Minimum Requirement, Rural 1, Rural 5, and Rural 20 zones.⁶ Acid manufacturing, explosive manufacturing and storage, asphalt batch plants, petroleum bulk plants, auto wrecking yards, junk yards, cement and lime manufacturing, just to name a few, are conditional uses in the Minimum Requirement, Rural 1, Rural 5, and Rural 20 zones.⁷ None of these uses are mentioned let alone analyzed in the DEIS. The DEIS studiously avoids any discussion of the impact of accessory dwellings and second homes.

The DEIS lists the regulatory controls available to the county to implement the zone code. Included in the list are:

- The Critical Areas Ordinance (far behind the legal requirement for update).
- The Shoreline Master Program (both far behind schedule and significantly weakened compared to the existing SMP).

³ The 2011 County Health Rankings Snapshot for Okanogan County shows that the county had 30 days in a year where the air quality was unhealthy for sensitive populations due to fine particulate matter air pollution. As a comparison, Washington had six of those days and the national benchmark had zero days.

⁴ Proposed Okanogan County Code (OCC) 17A.220.010, Proposed OCC 17A.030.060A (Minimum Requirement [RM] Zone); Proposed OCC 17A.040.060B (Rural 1 [R1] Zone); proposed OCC 17A.050.060B (Rural 5 [R5] Zone); proposed OCC 17A.060.060B (Rural 20 [R20]).

⁵ Prior OCC 17.05.070B from Appendix 6: Prior Zoning Map and Text.

⁶ Proposed OCC 17A.220.010.

⁷ Proposed OCC 17A.220.010.

- The subdivision and cluster ordinance (yet to be proposed).
- Conditional Use Permits (with vague standards that do not include considering the environmental impact of proposed uses that are SEPA exempt).
- In lieu of a county grading ordinance, the county relies on stormwater general permits administered by the Department of Ecology (whose nearest office is in Union Gap, about a three-hour drive from Okanogan County).

What the list does not include are omissions and gaps in official controls. For example, the county does not have a drainage ordinance, and is proposing to eliminate the landscape requirements from the zone code (Chapter 17.27 Okanogan County Code [OCC]). The above regulations do not adequately address the environmental impacts of the very intense zoning the county has proposed.

Even if Okanogan County had adequate official controls to implement the proposed zone code, we lack confidence that the county will enforce the requirements and ordinate among the departments of Health, Public Works, Planning, and Building.

The DEIS notes that lack of coordination has been a problem in the past, and promises to fix this without disclosing how. On enforcement, MVCC has noted several cases where permits were issued retroactively without penalty, and cease and desist orders ignored. Without administrative civil penalty authority, all violations are misdemeanor criminal offenses and must compete with murder and drug cases for limited resources in the Office of the Prosecutor. We are unaware of *any* such enforcement actions in recent memory. MVCC would support reasonable civil penalty authority for the Planning Director.

Nor does Section III, or any part of the DEIS, include an alternative that would match growth with available water supplies, not increase wildfire hazards, that would protect agriculture and forestry, and otherwise protect the environment. This lack of a protective alternative violates SEPA.

The failure to include this information and analysis means that the DEIS fails the test for adequacy for a nonproject EIS under the SEPA.⁸

The EIS fails to comply with WAC 197-11-440(6) Affected environment, significant impacts, and mitigation measures.

WAC 197-11-440(6)(a) requires that an EIS “shall describe the existing environment that will be affected by the proposal, analyze significant impacts of alternatives including the proposed action, and discuss reasonable mitigation measures that would significantly mitigate these impacts.” The DEIS does include a “Section IV” entitled “Environmental Impacts”⁹ and “Section V” entitled “Potentially Affected Environments and Regulatory Controls.”¹⁰ But it

⁸ *Ullock v. City of Bremerton*, 17 Wn. App. 573, 580, 565 P.2d 1179, 1184 (1977) “an EIS is adequate in a nonproject zoning action where the environmental consequences are discussed in terms of the maximum potential development of the property under the various zoning classifications allowed.”

⁹ *Okanogan County-2016 Zoning Ordinance [Draft] EIS* pp. 4 – 12.

¹⁰ *Okanogan County-2016 Zoning Ordinance [Draft] EIS* pp. 13 – 27.

fails to comply with WAC 197-11-440(6) most conspicuously by failing to describe the existing environment and the impacts on environment of the proposal. We first comment on Section IV and then Section V.

Section IV.

Section IV refers to Appendices 4i through 4l.¹¹ But these Appendices do not “describe the existing environment that will be affected by the proposal, analyze significant impacts of alternatives including the proposed action, and discuss reasonable mitigation measures that would significantly mitigate these impacts,” as WAC 197-11-440(6)(a) requires.

In projecting population growth and development, the DEIS does not consider best available current information about population growth and ignores the likely increase in vacation homes and their environmental impacts.

In Section IV of the DEIS, the county projects little population growth in the coming decades and concludes that there will be few impacts on the environment from new development because of there will be much less growth than the zoning code would allow.¹² Besides being an illogical conclusion – why adopt a zoning code that is not necessary to guide growth because there will be so little growth anyway? – the most current available information on projected population growth indicates that the County should plan for a significantly higher future population than is assumed in the DEIS.

A February 2016 study reviewed the relationship between percentage of federal lands and growth in rural counties in the Western United States.¹³ The study, which concluded that counties with a high percentage of federal land grew faster than those with lower percentages, included data from Okanogan County. The study found that Okanogan County – with about 45 % of its land in federal ownership – experienced a 59% growth in population between 1970 and 2014, from 25,901 in 1970 to an estimated 41,290 in 2014.¹⁴ In contrast, in the DEIS Okanogan County projects growth of about 4,500 people, or about 11%, in the next 30 years. (DEIS Appendix 10) There is a substantial disconnect between these figures: why would a county that has grown by 59% in the last 44 years grow by only 11% in the next 30?

Moreover, there is strong evidence that the county’s claims of slow growth omit vacation and retirement homes that are second homes. The *Okanogan County Shoreline Characterization* report documented that residential development in the county is “significant” and “[m]uch of that development is attributable to non-resident landowners building vacation houses, and so is

¹¹ *Okanogan County 2016 Zoning Ordinance [Draft] EIS* p. 5.

¹² *Okanogan County 2016 Zoning Ordinance [Draft] EIS* pp. 7 – 9.

¹³ *Federal Lands in the West: Liability or Asset?* Headwaters Economics, February 2016. Available at <http://headwaterseconomics.org/public-lands/federal-lands-performance> and enclosed with the paper original of this letter.

¹⁴ *Id.* at Sortable Data Table. <http://headwaterseconomics.org/dataviz/federal-lands-performance-table> Paper version also enclosed with the paper original of this letter.

not reflected in population statistics.”¹⁵ This conclusion is consistent with the *Okanogan County-2016 Zoning Ordinance [Draft] EIS* Appendix 10: Population Information that shows that between 2010 and January 26, 2016, Okanogan County issued 1015 new septic system permits.¹⁶ For the five years for which annual totals are available, this averaged to 203 new septic systems a year. This does not include the 69 new community septic systems permitted over the same period.¹⁷ Nor does it include the permitted holding tanks, chemical toilets, privies, and repaired systems.¹⁸

A recent Washington State Department of Ecology report documented that from 2008 through September 4, 2014, 1,238 permit-exempt wells were drilled in Okanogan County.¹⁹ This was more than any other county.²⁰ Ecology wrote that “[t]here are many reasons for the large increase in Okanogan County, including that it is the largest county in the state and nearly all growth is occurring in rural areas outside of municipal supply areas.”²¹ The DEIS needs to include this information as part of the description of existing environment and use total growth in analyzing the adverse impacts of the proposal.

The DEIS should also acknowledge that certain parts of the state is experiencing significant growth in higher-income earners,²² and that these are the people who are most likely to build vacation homes in a desirable non-metropolitan area such as Okanogan County. Thus the County has seriously underestimated likely growth in both permanent residents and second homes, resulting in erroneous conclusions about the likelihood of adverse environmental impacts under the zoning code’s high-density allowances.

The DEIS does not adequately explain the periodic review.

The DEIS on page 9 states the county will conduct a “periodic review” every five years. But the DEIS does not indicate what this is a periodic review of, the comprehensive plan, the development regulations, or both. The EIS needs to explain this periodic review and clarify if

¹⁵ ENTRIX, Inc., *Okanogan County Shoreline Characterization* p. 8 (Nov. 20, 2008) accessed on March 14, 2016 at: <http://www.ecy.wa.gov/programs/sea/shorelines/smp/mycomments/okanogan/InvCharRpt.pdf> and enclosed with the paper original of this letter.

¹⁶ *Okanogan County-2016 Zoning Ordinance [Draft] EIS* Appendix 10: Population Information p. *6. The annual totals in the table in Appendix 10 add up, but the Total for 2010 through 2016 does not. We use the correct values based on the annual data and shown on the spreadsheet Septic Permits by Type and Year included with the paper original of this letter.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Tom Culhane and Dave Nazy, *Permit-Exempt Domestic Well Use in Washington State* p. 7 & p. 22 (Water Resources Program Washington State Department of Ecology, Olympia, Washington: Feb. 2015: Publication No. 15-11-006) accessed on March 14, 2016 at: <https://fortress.wa.gov/ecy/publications/documents/1511006.pdf> and enclosed with the paper original of this letter.

²⁰ *Id.*

²¹ *Id.* at p. 22.

²² *Rich get richer: Seattle tops income growth of highest-earning households*, Seattle P-I, March 24, 2015, available at <http://blog.seattlepi.com/seattlepolitics/2015/03/24/rich-get-richer-seattle-tops-income-growth-of-highest-earning-households/>

it is a proposed mitigation measure that will be adopted as part of the comprehensive plan or development regulations.

The DEIS claims the new zoning will have a lower density than the proposed regulations, but the proposed regulations will have a higher allowed density and the EIS must analyze these higher densities.

The DEIS on page 9 argues that the Rural Resource areas will have lower densities compared to the no action alternative. However, the Minimum Requirement Zone, which was applied to the Rural Resource areas in the no action alternative, had a maximum density of 4.5 dwellings units per acre for apartments and manufactured home parks.²³ Under the proposed regulations this density increases to five dwelling units per acre for the Minimum Requirement, Rural 1, Rural 5, and Rural 20 zones.²⁴ Under the proposed regulations apartments are a permitted use.²⁵ Manufactured home parks are a conditional use.²⁶ So the claim that the densities are lower is wrong. The EIS needs to acknowledge that the densities are higher.

Further, nowhere in the DEIS are the impacts of apartments and manufactured home parks with densities of five dwelling units per acre throughout large areas of unincorporated Okanogan County analyzed.²⁷ This analysis is required. As the Court of Appeals held in the *Ullock* decision, “an EIS is adequate in a nonproject zoning action where the environmental consequences are discussed in terms of the maximum potential development of the property under the various zoning classifications allowed.”²⁸ This is also a nonproject zoning action.²⁹

The DEIS’ claims Chapter 15.02 Okanogan County Code (OCC) “requires the applicant to demonstrate ... a lawful source of water” is incorrect.

The DEIS on page 9 also claims that Chapter 15.02 Okanogan County Code (OCC) “requires the applicant to demonstrate ... a lawful source of water (Planning Department) ...” While OCC 15.02.050B does require approval by the Planning Department, we have not been able to find any development regulation that authorizes the Planning Department to deny approval of a building permit if the applicant does not demonstrate a lawful source of water. Chapter 15.02 OCC certainly does not include this requirement.³⁰ The EIS needs to identify this development regulation, or if this is a mitigation measure being proposed by the EIS, to clearly identify it as such.

²³ Prior OCC 17.05.070B from Appendix 6: Prior Zoning Map and Text.

²⁴ Proposed Okanogan County Code (OCC) 17A.220.010, Proposed OCC 17A.030.060A (Minimum Requirement [RM] Zone); Proposed OCC 17A.040.060B (Rural 1 [R1] Zone); proposed OCC 17A.050.060B (Rural 5 [R5] Zone); proposed OCC 17A.060.060B (Rural 20 [R20]).

²⁵ Proposed OCC 17A.220.010.

²⁶ *Id.*

²⁷ *Okanogan County-2016 Zoning Ordinance [Draft] EIS* Appendix 7: Proposed Zoning Map.

²⁸ *Ullock v. City of Bremerton*, 17 Wn. App. 573, 581, 565 P.2d 1179, 1184 (1977) underlining added.

²⁹ *Okanogan County-2016 Zoning Ordinance [Draft] EIS* p. i.

³⁰ Chapter 15.0 OCC accessed on March 30, 2016 at:

<http://www.codepublishing.com/WA/OkanoganCounty/#/OkanoganCounty15/OkanoganCounty1502.html#15.02.050>

The proposed development regulations will disperse population and development into the Wildland-Urban Interface, but the DEIS does not analyze these impacts or the impacts of proposed development on public safety under the anticipated wildfire regime.

Fire services and police services are elements of the environment that must be evaluated in the DEIS because the proposed zoning regulations will have a significant impact on fire responses.³¹

The DEIS on page 9 describes how population and development is going to be disbursed around the county. Unfortunately, the areas the county is proposing to zone Minimum Requirement, Rural 1, Rural 5, and Rural 20 are all in the wildland-urban interface.³² The firefighters available to Okanogan County already cannot adequately protect the wildland-urban interface. Allowing more people into the areas of wildland-urban interface away from towns and cities at the high densities allowed in the proposed zoning will make this problem worse and increase fire dangers. As the *Okanogan County, Washington Community Wildfire Protection Plan* stated:

One challenge Okanogan County faces is the large number of houses in the urban/rural fringe compared to twenty years ago. Since the 1970s, a segment of Washington's growing population has expanded further into traditional forest or resource lands and other rural areas. The "interface" between urban and suburban areas and unmanaged forest and rangelands created by this expansion has produced a significant increase in threats to life and property from fires and has pushed existing fire protection systems beyond original or current design or capability. Many property owners in the interface are not aware of the problems and threats they face and owners have done very little to manage or offset fire hazards or risks on their own property. Furthermore, human activities increase the incidence of fire ignition and potential damage.³³

The fire danger is heightened because the county is allowing these high densities in areas served by one-lane roads and roads with only one-way out. Some examples of dead-end roads serving R-1 zoning are Otto Road, Alta Lake Road/NF-2917, Lookout Lane, Eagle Crest Drive, Kamsak Road, Mountain Point Road, and the roads east and southeast of Reesas Basin

³¹ WAC 197-11-444(2)(d)(i); WAC 197-11-444(2)(d)(ii); WAC 197-11-440(6).

³² *Okanogan County-2016 Zoning Ordinance [Draft] EIS* Appendix 7: Proposed Zoning Map; *Okanogan County, Washington Community Wildfire Protection Plan* Figure 4.2. *Wildland-Urban Interface Map in Okanogan County, Washington* p. 39 (2013) accessed on March 24, 2016 at: http://file.dnr.wa.gov/publications/rp_burn_okanogan_cvpp_2013update.pdf and enclosed with the paper original of this letter.

³³ *Okanogan County, Washington Community Wildfire Protection Plan* p. 88 (2013) underlining added.

Road.³⁴ The value of a second way to access homes is shown by one of the 2014 fires where the Sheriff had to turn back from giving evacuation notices in a residential development when “flames closed over the hood of his patrol car, and he was forced to retreat ...”³⁵

The high-density R-1 zoning and R-5 zoning is also applied to areas served by one lane roads. One example is the North Fork of Gold Creek, south of Carlton in the Methow Valley, which is a US Forest Service road accessing Foggy Dew Campground and several trailheads. Development along the North Fork road is planned in the Interim-Zone map as R-1, with a one-acre minimum lot size.³⁶ The North Fork road is a poorly maintained one lane U.S. Forest Service road with no constructed turnouts, a steep cut bank on one side, and a steep drop-off into the North Fork of Gold Creek on the other side.³⁷ “In one section, very sharp turns skirt steep cliffs on one side and a deep drop-off into the creek on the other. During the previous two fires (Buckhorn Fire, 2012; Carlton Complex, 2014) fire crews or residents had to pull over onto the narrow shoulder in order to pass by each other.”³⁸

Wildfires that require evacuation orders occur regularly in Okanogan County. In an interview, Okanogan County Sheriff Frank Rogers said that Okanogan County has huge fires every year and every year the county must do evacuation notifications.³⁹ This requires the Sheriff, his deputies, and any available state patrol officers to drive every road in the evacuation area and stop at every house.⁴⁰ This is time consuming, resource intensive, and the Sheriff has very limited resources, 20 to 30 officers, to do this important work.⁴¹ The Carlton Complex Fire this year burned 400 square miles.⁴² If just eight square miles zoned R-1 were to burn, the zoning update would allow over 5,000 homes on that land. Sheriff Rogers said his office could not notify 5,000 homes.⁴³

A 2014 study calculated that each new dwelling in Okanogan County only generates “about 7% of the cost to provide services to the new dwelling” each year.⁴⁴ So the county will not be able to afford to hire Sheriff Deputies to serve these new homes.

³⁴ *Okanogan County-2016 Zoning Ordinance [Draft] EIS Appendix 7: Proposed Zoning Map*, Google Earth 2013 Aerial Images showing Alta Lake, Eagle Crest Drive, Harmony Heights Road, Highway 20, Patterson Creek Road enclosed with the paper original of this letter.

³⁵ Ann McCreary, *Methow Valley News Online* *No relief: Valley copes with impact of new fires, storms, outages and evacuations* p. 3 of 5 (Aug 7, 2014) enclosed with the paper original of this letter.

³⁶ *Okanogan County-2016 Zoning Ordinance [Draft] EIS Appendix 7: Proposed Zoning Map*; Email from Isabelle Spohn to Tim Trohimovich (Sept. 5, 2014) enclosed with the paper original of this letter.

³⁷ Email from Isabelle Spohn to Tim Trohimovich (Sept. 5, 2014).

³⁸ *Id.*

³⁹ Transcript of KUOW “The Record” *One Wildfire Victim Never Got an Evacuation Notice, Here's Why* p. 3 (July 21, 2014) enclosed with the paper original of this letter.

⁴⁰ *Id.* at p. 2.

⁴¹ *Id.* at pp. 2 – 3.

⁴² InciWeb – Incident Information System Carlton Complex and enclosed with the paper original of this letter.

⁴³ Transcript of KUOW “The Record” *One Wildfire Victim Never Got an Evacuation Notice, Here's Why* pp. 2 – 3 (July 21, 2014) and enclosed with the paper original of this letter.

⁴⁴ Julie Ann Gustanski, Ph.D., LL.M. and David Scarsella, M.S., *Economic Analysis of Conservation Efforts in Okanogan County* p. 44 (2014) accessed on March 31, 2016 at: <http://wdfw.wa.gov/publications/01605/> and enclosed with the paper original of this letter.

Another impact ignored by the DEIS is that the *Community Wildfire Protection Plan* recommends that the zoning and subdivision regulations should “[a]dopt stringent regulations to insure fire-safe development of rural subdivisions (see FIREWISE or similar programs for specific recommendations).”⁴⁵ See the enclosed *Firewise Toolkit A Guide to Firewise Principles* enclosed with this letter and downloaded on March 22, 2016 at: <http://www.firewise.org/wildfire-preparedness/firewise-toolkit.aspx> The Firewise Communities Program is a nationally recognized program to reduce the risk of damage from wildfires.⁴⁶

The Firewise Principles recommend “‘two ways out’ of the neighborhood for safe evacuation during a wildfire emergency.”⁴⁷ So does the U.S. Fire Administration.⁴⁸ Two ways out is important to protect the safety of property owners, residents, and firefighters. The three firefighters who died in Twisp River Fire in Okanogan County this last summer died on a relatively short dead end road serving six houses.⁴⁹ A fourth firefighter was severely injured in the fire and a three-person bulldozer team was trapped on the same road.⁵⁰ If the area had two ways out, it is possible the firefighters would not have had to drive down a road in zero visibility⁵¹ and would not have crashed.

Some argue that the county should not require wildfire safety measures, it should be a personal choice. But the local, state, and federal firefighters have no choice. They are ordered in to save the structures whether the property owners or the county chose to undertake Firewise fire safety measures or not. And the federal government pays \$3 billion a year fighting these fires,⁵² not the property owners or counties that fail to take common sense steps to protect property owners and firefighters. As economist Ray Rasker said “[w]hen you read in the news that the federal agencies are spending up to \$3 billion a year fighting fires, what they’re really spending money on is defending private property from fires. Another way to say that is that the federal taxpayer pays for the land use decisions of local government.”⁵³ And sometimes the firefighters pay for the land use decisions of local government too.

⁴⁵ *Okanogan County, Washington Community Wildfire Protection Plan* p. 97 (2013).

⁴⁶ About Firewise webpage accessed on March 24, 2016 at: <http://www.firewise.org/about.aspx>

⁴⁷ *Firewise Toolkit A Guide to Firewise Principles* p. *2 enclosed with the paper original of this letter.

⁴⁸ FEMA U.S. Fire Administration, *Wildfires: Protect Yourself and Your Community* enclosed with the paper original of this letter and accessed on March 24, 2016 at:

http://www.usfa.fema.gov/downloads/pdf/publications/wildfires_protect_yourself_and_your_community.pdf

⁴⁹ Washington State Department of Natural Resources, *Twisp River Fire Fatalities and Entrapments Interagency Learning Review Status Report* pp. 8 –9 & pp. 15 – 18 of 24 (18 November 2015) accessed on March 24, 2016 at: http://wildfiretoday.com/documents/Twisp_River_Fire_Status_Report.pdf and enclosed with the paper original of this letter.

⁵⁰ *Id.*

⁵¹ *Id.* at p. 15 of 24.

⁵² Rowan Moore Gerety, *After A Bad Fire Season, Okanogan County Looks The Other Way On Land Use* *Northwest Public Radio* website (Dec 10, 2015) accessed on March 24, 2016 at: <http://nwpr.org/post/after-bad-fire-season-okanogan-county-looks-other-way-land-use> and enclosed with the paper original of this letter.

⁵³ *Id.*

These are not hypothetical impacts. Okanogan County has experienced Washington State's two largest wildfires in history back to back.⁵⁴ But the DEIS never describes the existing environment for wildfires including that the firefighter cannot protect all of the houses now in the wildfire interface, how the proposed development regulations will increase wildfire danger, or potential mitigating measures even though wildfire protection was raised as an issue during scoping.⁵⁵ The failure to include this information and analysis means that the DEIS fails the test for adequacy for a nonproject EIS under the SEPA.⁵⁶

The DEIS' assertion that the county has undertaken the responsibility to assure that new lots created by subdivisions have a legal source of water is not substantiated as SEPA requires.⁵⁷

The DEIS on page 10 claims that that for subdivisions the county has undertaken the responsibility for assuring the new lots created by divisions have a legal source of water. However, the DEIS does not cite to any development regulation that includes this requirement. In the past, Okanogan County has not required compliance with the Washington Water Codes.⁵⁸ The EIS needs to identify this development regulation, or if this is a mitigation measure being proposed by the EIS, to clearly identify it as such.

The DEIS' fails to analyze the impacts of conditional uses on wildfire hazards and firefighting services as SEPA requires.

The conditional use standards in proposed OCC 17A.310.080, 17A.310.090, and 17A.310.100 do not require consideration of whether the project can be protected from wildfire, whether adequate and legal water sources are available, and whether the allowed uses will adversely impact nearby allowed uses including their water sources. The DEIS on page 11 and elsewhere does not disclose this important information or analyze the environmental impacts of the county's failure to consider these potential impacts. This is especially important because the Minimum Requirement, Rural 1, Rural 5, and Rural 20 zones allow such potentially damaging uses as acid manufacturing, explosive manufacturing and storage, asphalt batch plants, petroleum bulk plants, auto wrecking yards, and junk yards as conditional uses.⁵⁹

⁵⁴ Gary DeVon, *Largest Fire in State History* Gazette-Tribune (Aug. 26, 2015) accessed on March 22, 2016 at: <http://www.gazette-tribune.com/news/largest-fire-in-state-history/70863/> and enclosed with the paper original of this letter.

⁵⁵ *Okanogan County-2016 Zoning Ordinance [Draft] EIS* first unnumbered page.

⁵⁶ *Ullock v. City of Bremerton*, 17 Wn. App. 573, 580, 565 P.2d 1179, 1184 (1977).

⁵⁷ *Id.*

⁵⁸ Department of Ecology News Release - March 26, 2010 10-054 *Water concerns prompt appeal of subdivision approval* enclosed with the paper original of this letter; Okanogan County Resolution 10 – 201 Approving the Development Agreement for Silver Spur North Ranch and Adopting Findings of Fact and Conclusions of Law p. *2 – 3; Development Agreement by and Between Okanogan County and Caribou LLC, for the Silver Spur North Ranch Development pp. 8 – 9; Washington State Department of Ecology Letter to Okanogan County Planning Re: Eagle Canyon Estates pp. 1 – 2 of 2 (March 23, 2009) all enclosed with the paper original of this letter.

⁵⁹ Proposed OCC 17A.220.010.

How would firefighters protect neighboring properties from a fire breaking out in an explosive manufacturing or storage facility or a petroleum bulk plant in these remote areas given that the firefighters already cannot protect the existing development?⁶⁰ The answer is we do not know because the DEIS never analyzed these impacts or even mentions that these uses are allowed. This violates SEPA. As the Court of Appeals held in the *Ullock* decision, “an EIS is adequate in a nonproject zoning action where the environmental consequences are discussed in terms of the maximum potential development of the property under the various zoning classifications allowed.”⁶¹

Further, WAC 197-11-440(6)(e) provides in part that an EIS must include “discussion of significant impacts shall include the cost of and effects on public services, such as utilities, roads, fire, and police protection, that may result from a proposal.” The DEIS does not include a word on the cost and effects on public services including fire and police protection.

The DEIS fails to disclose and analyze the dramatic Neighborhood Commercial (NC) zone expansions and their environmental impacts

The proposed Okanogan County Zoning – Draft – 10/15/2015 map dramatically expands the Neighborhood Commercial (NC) zones, which allow high-density apartments and commercial use beyond the existing commercial areas. The *Methow Valley Citizens' Council* estimates these expansions as follows:

- Loomis—4 square miles
- Chesaw—more than 2 square miles
- Molson—1 square mile
- Monse and Malott— ½ mile by 1 mile
- Methow—almost 80 acres on each side of highway

Okanogan County lacks the water to serve these areas. It also lacks the sewer services these densities require. The DEIS fails to disclose and analyze these expansions. That violates SEPA.⁶²

The DEIS fails to disclose that special development provisions currently in the Methow planning area zones are being planned for repeal and fails to analyze the impacts of repealing these provisions

The proposed zoning code includes repealing some of the special development provisions currently in effect in the Methow planning area. These provisions have been in place for years and have made the Methow a popular outdoor recreation area and protected its agricultural industry. The existing provisions have contributed to the county's economy and tax base.

⁶⁰ *Okanogan County, Washington Community Wildfire Protection Plan* p. 88 (2013).

⁶¹ *Ullock v. City of Bremerton*, 17 Wn. App. 573, 581, 565 P.2d 1179, 1184 (1977) underlining added.

⁶² *Id.*

Outdoor recreation brings \$222 million and 1,819 jobs to the Okanogan County economy.⁶³ Keeping the Methow attractive and functional for agriculture and outdoor recreation is important to maintain this income and these jobs. The DEIS fails to disclose and analyze the adverse impacts of repealing these provisions. This violates SEPA.

Section V.A Air Quality

This section contains no description of the existing environment.⁶⁴ The DEIS does not disclose, for example, that smoke from fires burning in Okanogan County and surrounding counties can result in air quality in Okanogan County “at the hazardous level.”⁶⁵ Nor does Section V.A disclose or discuss the mitigation of one of the most serious impacts of new development on air quality, the fact that more people living in rural areas increases the likelihood of wildfires. As the *Okanogan County, Washington Community Wildfire Protection Plan* stated:

One challenge Okanogan County faces is the large number of houses in the urban/rural fringe compared to twenty years ago. Since the 1970s, a segment of Washington's growing population has expanded further into traditional forest or resource lands and other rural areas. The “interface” between urban and suburban areas and unmanaged forest and rangelands created by this expansion has produced a significant increase in threats to life and property from fires and has pushed existing fire protection systems beyond original or current design or capability. Many property owners in the interface are not aware of the problems and threats they face and owners have done very little to manage or offset fire hazards or risks on their own property. Furthermore, human activities increase the incidence of fire ignition and potential damage.⁶⁶

The failure to include this information and analysis means that the DEIS fails the test for adequacy for a nonproject EIS under the SEPA.⁶⁷

Section V.B Noise

This section contains no description of the existing environment.⁶⁸ The DEIS indicates that “WDOE noise limits ... are sufficient to address noise related issues ...”⁶⁹ But the

⁶³ Tania Briceno and Greg Schundler, *Economic Analysis of Outdoor Recreation in Washington State* p. 83 (Earth Economics, Tacoma, WA: 2015) accessed on April 1, 2016 at: <http://www.rco.wa.gov/documents/ORTF/EconomicAnalysisOutdoorRec.pdf> and cited page enclosed with the paper original of this letter.

⁶⁴ *Okanogan County-2016 Zoning Ordinance [Draft] EIS* p. 13.

⁶⁵ Okanogan County Public Health *Forest Fire Public Service Announcement (PSA)* p. * 1 (Aug. 20, 2015) accessed on March 29, 2016 at: http://www.okanogancounty.org/ochd/air_advisory2.pdf enclosed with the paper original of this letter.

⁶⁶ *Okanogan County, Washington Community Wildfire Protection Plan* p. 88 (2013).

⁶⁷ *Ullock v. City of Bremerton*, 17 Wn. App. 573, 580, 565 P.2d 1179, 1184 (1977).

⁶⁸ *Okanogan County-2016 Zoning Ordinance [Draft] EIS* p. 13.

⁶⁹ *Id.*

Washington State Department of Ecology (Ecology) does not enforce those noise limits. And the DEIS does not state that Okanogan County will enforce the model regulations or the rules that have been adopted by Ecology although the county has the authority to enforce Ecology's rules.⁷⁰ The DEIS should specify that as a mitigation measure Okanogan County will enforce the noise rules or remove the discussion of Ecology's noise rules from the DEIS.

Section V.C Water Quality Ground Water

This section contains no description of the existing environment as to groundwater quality.⁷¹ It also substantially undercounts the number of new septic systems approved over the last five years. It is 202.6 systems a year, not 175.⁷²

Equally importantly, the DEIS does not analyze the impact of the high densities allowed in county on ground water quality. Large areas of the county are zoned for densities of two housing units per acre.⁷³ Large areas are also zoned for one housing unit per 2.5 acres.⁷⁴ Most of the rural zones allow apartments and mobile home parks with densities of five dwelling units per acre outside parts of the Methow Valley.⁷⁵ The apartments are permitted uses in the Minimum Requirement, Rural 1, Rural 5, and Rural 20 zones.⁷⁶ Marylynn Yates, in a peer reviewed scientific journal, analyzed data and cases of ground water pollution from septic tanks. She concluded that septic tanks are major contributors of waste water, septic tanks are the most frequently reported cause of ground water contamination, and the most important factor influencing ground water contamination from septic tanks is the density of the systems.⁷⁷ Lot sizes associated with ground water contamination cases ranged from less than a quarter acre to three acres.⁷⁸ More recent studies support these conclusions. For example, an "observational study identified septic system density as a risk factor for sporadic cases of viral

⁷⁰ State of Washington Department of Ecology "Noise Pollution" webpage accessed on March 30, 2016 at: <http://www.ecy.wa.gov/laws-rules/noise.html> and "Noise Pollution Frequently Asked Questions for Local Government" webpage accessed on March 30, 2016 at: http://www.ecy.wa.gov/laws-rules/noise_local_gov.html

⁷¹ Okanogan County-2016 Zoning Ordinance [Draft] EIS pp. 14 – 16.

⁷² *Okanogan County-2016 Zoning Ordinance [Draft] EIS* Appendix 10: Population Information p. *6. The annual totals in the table add up, but the Total for 2010 through 2016 does not. We use the correct values based on the annual data and shown on the spreadsheet Septic Permits by Type and Year. The use of this erroneous data is another example of the reason the DEIS is inadequate under SEPA.

⁷³ Okanogan County Zoning – Draft – 10/15/2015 map; proposed OCC 17A.030.060A (Minimum Requirement [RM] Zone); Proposed OCC 17A.040.060A (Rural 1 [R1] Zone).

⁷⁴ Okanogan County Zoning – Draft – 10/15/2015 map; proposed OCC 17A.050.060A (Rural 5 [R5] Zone).

⁷⁵ Proposed OCC 17A.030.060A (Minimum Requirement [RM] Zone); Proposed OCC 17A.040.060B (Rural 1 [R1] Zone); proposed OCC 17A.050.060B (Rural 5 [R5] Zone); proposed OCC 17A.060.060B (Rural 20 [R20]).

⁷⁶ Proposed OCC 17A.220.010.

⁷⁷ Marylynn V. Yates, *Septic Tank Density and Ground-Water Contamination* 23 GROUND WATER 586, p. 590 (1985). Accessed most recently on March 23, 2016 at: <http://info.ngwa.org/gwol/pdf/852537546.PDF> and enclosed in with the paper original of this letter. Ground Water is a peer-reviewed scientific journal. See the Ground Water Peer Review webpage enclosed with the paper original of this letter and accessed on March 23, 2016 at: <http://www.ngwa.org/pubs/GW/Pages/Ground-Water-Peer-Review.aspx>

⁷⁸ Marylynn V. Yates, *Septic Tank Density and Ground-Water Contamination* 23 GROUND WATER 586, p. 590 (1985).

and bacterial diarrhea in central Wisconsin children.”⁷⁹ The greater the density of septic tanks the greater the likelihood of diarrheal disease.⁸⁰ And the highest septic tank densities were one septic tank per 11 acres.⁸¹ A study of the potential for nitrate pollution of ground water in Cedar Valley, Iron County, Utah lead to a recommendation that the minimum lot size for septic systems should be five acres in one part of the valley and 15 acres in three other parts.⁸² So houses and apartments allowed by the proposed zoning will pollute the groundwater drinking water sources.

In addition to urban density apartments, other uses with a high potential to pollute ground water are allowed in unincorporated Okanogan County. Aircraft sales, repair, service and aircraft salvage, just to name a few, are permitted uses in the Minimum Requirement, Rural 1, Rural 5, and Rural 20 zones.⁸³ Acid manufacturing, explosive manufacturing or storage, asphalt batch plants, petroleum bulk plants, auto wrecking yards, junk yards, cement and lime manufacturing, just to name a few, are conditional uses in the Minimum Requirement, Rural 1, Rural 5, and Rural 20 zones.⁸⁴ These are all potential sources of ground water contamination.⁸⁵ None of these impacts were analyzed in the DEIS. The failure to include this information and analysis means that the DEIS fails the test for adequacy for a nonproject EIS under the SEPA.⁸⁶

Section V.D Water Quality Surface Water

This section contains no description of the existing environment as to surface water quality.⁸⁷ The DEIS, for example, does not disclose that the Methow River does not meet the water

⁷⁹ Mark A. Borhardt, Po-Huang Chyou, Edna O. DeVries, and Edward A. Belongia, *Septic System Density and Infectious Diarrhea in a Defined Population of Children* 111 ENVIRONMENTAL HEALTH PERSPECTIVES 742, p. 745 (2003). Accessed most recently on March 23, 2016 at:

<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1241485/pdf/ehp0111-000742.pdf> and enclosed with the paper original of this letter. Environmental Health Perspectives is a peer reviewed scientific journal. See the Environmental Health Perspectives Journal Information accessed on March 23, 2015 at: <http://ehp.niehs.nih.gov/journal-information/> and enclosed with the paper original of this letter.

⁸⁰ Mark A. Borhardt, Po-Huang Chyou, Edna O. DeVries, and Edward A. Belongia, *Septic System Density and Infectious Diarrhea in a Defined Population of Children* 111 ENVIRONMENTAL HEALTH PERSPECTIVES 742, pp. 745 – 47 (2003).

⁸¹ *Id.* at 747.

⁸² Mike Lowe, Janae Wallace, and Walid Sabbah, and Jason L. Kneedy, *Science-Based Land-Use Planning Tools to Help Protect Ground-Water Quality, Cedar Valley, Iron County, Utah Special Study 134* pp. 27 – 28 (Utah Geological Survey, a Division of Utah Department of Natural Resources: 2010). Most recently accessed on March 23, 2016 at: <http://geology.utah.gov/online/ss/ss-134/ss-134text.pdf>

⁸³ Proposed OCC 17A.220.010.

⁸⁴ Proposed OCC 17A.220.010.

⁸⁵ Laurie Morgan, *Critical Aquifer Recharge Areas Guidance Document* pp. 37 – 41 (Washington State Department of Ecology, Water Quality Program: Jan. 2005, Publication Number 05-10-028) enclosed with the paper original of this letter and accessed on March 23, 2016 at:

<https://fortress.wa.gov/ecy/publications/publications/0510028.pdf>

⁸⁶ WAC 197-11-440(6)(a); *Ullock v. City of Bremerton*, 17 Wn. App. 573, 580, 565 P.2d 1179, 1184 (1977).

⁸⁷ Okanogan County-2016 Zoning Ordinance [Draft] EIS pp. 14 – 16.

quality standards for temperature, pH, bacteria, or Ammonia-N.⁸⁸ The DEIS also fails to disclose that Okanogan River does not meet the water quality standards for temperature and a long list of chemicals.⁸⁹ Because of this failure to consider existing conditions and the fact that the DEIS failed to consider that county does not have impervious surface or vegetation removal limits for most zones, the DEIS ignores that fact that continuing development will make these conditions worse. This violates SEPA.⁹⁰

The DEIS, on page 15, states that the shoreline master “program has a complex permitting process administered by the County, but subject to override by WDOE in the event the agency determines a permit is not adequately protective, and subject to oversight by the Shoreline Hearings Board.” But Ecology only can approve, deny, or condition conditional use permits and variances not substantial development permits or exemptions.⁹¹

The DEIS, on page 15, also states that “[a]ll plats, short plats, conditional uses and other projects undergoing detailed County review are reviewed for surface water protection.” We have not be able to find the development regulations that contain this requirement. The EIS needs to cite to the development regulations that contain this requirement or clarify if the provision is a proposed mitigation measure that will be adopted as part of the comprehensive plan or development regulations.

Section V.E Water Quantity

Water resources are elements of the environment that must be evaluated in the EIS because the proposed zoning regulations will have a significant impact on water resources.⁹² This section of the DEIS contains no description of the existing environment as to water quantity.⁹³ Given the lack of available water, this is a major violation of SEPA.

RCW 36.70.330(1) requires that “[t]he land use element shall also provide for protection of the quality and quantity of groundwater used for public water supplies . . .” In the Order Denying Cross Motions for Summary Judgment and/or Dismissal in *Methow Valley Citizens’ Council and Futurewise v. Okanogan County*, the Honorable Judge Culp observed that “the trier of fact will have to determine whether the final zoning ordinance protects [county property owners] rights by including provisions adequate to protect the quality and quantity of ground water.”⁹⁴

⁸⁸ State of Washington Department of Ecology Water Quality Assessment for Washington lower Methow River screenshot enclosed with the paper original of this letter.

⁸⁹ State of Washington Department of Ecology Water Quality Assessment for Washington Okanogan River near Malott screenshot enclosed with the paper original of this letter.

⁹⁰ WAC 197-11-440(6)(a).

⁹¹ RCW 90.58.140.

⁹² WAC 197-11-444(1)(c); WAC 197-11-440(6).

⁹³ Okanogan County-2016 Zoning Ordinance [Draft] EIS pp. 16 – 17.

⁹⁴ *Methow Valley Citizens’ Council and Futurewise v. Okanogan County*, Okanogan County Superior Court Case No. 15-2-00005-7 Order Denying Cross Motions for Summary Judgment and/or Dismissal p. 4 (March 11, 2016) enclosed with the paper original of this letter.

The level of development allowed by the proposed development is not matched to the available water resources. This is particularly important because a significant number of Okanogan County's subbasins and streams are already overappropriated.⁹⁵ The Washington State Department of Ecology has also concluded that "most if not all of the available water has already been allocated" in Water Resource Inventory Areas (WRIAs) 48 and 49, the Methow and Okanogan River Watersheds.⁹⁶ As the *Level 1 Watershed Technical Assessment Final Report: Okanogan River Watershed Resource Inventory Area 49* concluded:

The Joseph and Osoyoos subbasins appear to be overappropriated for both surface and ground water, while the Salmon subbasin appears to be overappropriated only for ground water. Projecting appropriations to meet water demand to 2026, the Salmon subbasin would also become overappropriated for surface water in 20 years, but appropriations in the Sinlahihin and Omak subbasins would remain well below the available surface and ground water.⁹⁷

Streams are also overappropriated:

ENTRIX summarized data for the 23 named streams that have more than 1 cfs of flow appropriated (Appendix A-1.2b); of these we have flow data for only 13. Flow data for 9 of the 13 suggest that these streams may be overappropriated (Table ES-1), and part of a tenth stream (Lower Salmon Creek) is dewatered by irrigation diversions every summer. In addition, unquantified water claims could affect a much longer list of streams.⁹⁸

Cities in the county lack needed water either for current users or future growth. "Brewster has already fully used its existing water right of 1,205 acre-feet per year (AFY), and by 2026 is projected to need an additional water right of 887 AFY ... Oroville (279 AFY), Riverside (227 AFY), Okanogan (137 AFY), and Tonasket (78 AFY) would also need additional annual water rights."⁹⁹

⁹⁵ ENTRIX, Inc., *Level 1 Watershed Technical Assessment Final Report: Okanogan River Watershed Resource Inventory Area 49* p. ES-3 (Okanogan Watershed Planning Unit: Sept. 2006) accessed on March 23, 2016 at: http://www.okanogancd.org/sites/default/files/programs/owp/24_Technical%20Assessment.pdf and enclosed with the paper original of this letter.

⁹⁶ State of Washington Department of Ecology Water Resources Program, *Focus on Water Availability for the Methow Watershed, WRIA 48* p. 2 (Publication Number: 11-11-052, Revised August 2012) accessed on March 23, 2015 at: <https://fortress.wa.gov/ecy/publications/summarypages/1111052.html> and enclosed with the paper original of this letter; State of Washington Department of Ecology Water Resources Program, *Focus on Water Availability for the Okanogan Watershed, WRIA 49* p. 2 (Publication Number: 11-11-053, Revised August 2012) accessed on March 23, 2015 at: <https://fortress.wa.gov/ecy/publications/summarypages/1111053.html> and enclosed with the paper original of this letter.

⁹⁷ ENTRIX, Inc., *Level 1 Watershed Technical Assessment Final Report: Okanogan River Watershed Resource Inventory Area 49* p. ES-3 (Okanogan Watershed Planning Unit: Sept. 2006). According to the Okanogan Conservation District's Okanogan Watershed Plan webpage the "Okanogan County Commissioners approved the plan as presented in April 2010." A copy of this webpage is enclosed with the paper original of this letter.

⁹⁸ *Id.* at p. ES-8.

⁹⁹ *Id.* at p. ES-5.

Water is in such short supply that:

Ecology regularly sends out Administrative Orders under RCW 90.03 alerting water right holders they will be curtailed in favor of instream flows for the Methow and Okanogan Rivers. This has been a common occurrence in Okanogan County where users were curtailed or shut off four out of the last five years on the Methow and three out of the last five years on the Okanogan during times of low flow.¹⁰⁰

Ecology also explained that:

Demands of new water use reduce water legally available for existing, senior water rights including instream flows. Where hydraulic continuity is shown with surface water, new domestic uses established under RCW 90.44.050 are subject to curtailment to meet the needs of more senior water rights in water short years. If water supply becomes limited, water use could be curtailed by those with senior water rights, which includes instream flows established in Chapters 173-548, 173-549 and 173-563 WAC.

[The] Department of Health does not consider interruptible water rights an adequate and reliable water source consistent with WAC 246-290-420. For these reasons, future water source plans will likely not be a reliable supply for year round residential use and may be subject to interruption due to conflict with instream flows. As such, it will be questionable whether a plan would provide an appropriate provision for potable water supply under RCW 58.17.¹⁰¹

The very limited water availability is confirmed by the Methow Watershed Council. When Ecology adopted the instream flow rule for the Methow River, water was reserved for permit-exempt wells. The council states that to their knowledge, this is the only non-interruptible water available in the Methow Sub basin.¹⁰² The Council has projected that:

¹⁰⁰ Letter from Washington State Department of Ecology to Perry Huston Okanogan County Planning p. 3 of 5 (April 7, 2011) enclosed with the paper original of this letter.

¹⁰¹ *Id.* While Ecology's quote states that a determination that surface and ground water are in continuity must be made for ground water to be subject to the instream flow rules, in the closed portions of the Methow Basin the Washington State Department of Ecology must determine that the ground water is not hydraulically connected. WAC 173-548-050(4), part of the Methow Basin instream flow rule, provides that: "(4) If the groundwater being sought for withdrawal has been determined by the department not to be hydraulically connected with surface waters listed as closed, the department may approve a withdrawal. When insufficient evidence is available to the department to make a determination that ground and surface waters are not hydraulically connected, the department shall not approve the withdrawal of groundwater unless the person proposing to withdraw the groundwater provides additional information sufficient for the department to determine that hydraulic continuity does not exist and that water is available."

¹⁰² Methow Watershed Council Letter to the Okanogan County Commission Re: Okanogan Comprehensive Plan and watershed planning p. 1 (June 14, 2011) and enclosed with the paper original of this letter.

Assuming future build-out with no new parcels and existing parcel size regulations, 6 reaches would have water remaining in their reserves. The Lower Methow would exceed its reserve, leaving 1,092 presently existing parcels out of a total of 2,913 presently existing parcels unable to be supplied by a well.

Assuming full build-out of all possible parcels under present zoning, 5 reaches would have water remaining in their reserve. The Upper Methow and Lower Methow would exceed their reserves. The Upper Methow would have 127 parcels unable to be supplied by permit-exempt wells out of a total of 1,948 possible parcels. The Lower Methow would have 24,313 parcels out of a total of 26,133 possible parcels unable to be supplied by wells.¹⁰³

The proposed zoning applies a "Rural 1" zone, which allows one-acre lots and apartments at densities of five dwellings per acre, along many Okanogan County streams that are already over appropriated.¹⁰⁴ The one acre lots and apartments are permitted uses in the Rural 1 zone.¹⁰⁵ These streams include Bonaparte Creek in the Osoyoos basin, 41,188 percent over appropriated in the summer; Johnson Creek in the Salmon basin, 2,913 percent over appropriated in the summer; the lower part of Sinlahekin Creek in the Sinlahekin basin, 3,015 percent over appropriated in the summer; Tonasket Creek in the Osoyoos basin, 54,143 percent over appropriated in the summer; and Tunk Creek in the Omak basin, 1,300 percent over appropriated in the summer.¹⁰⁶ In the Osoyoos and Salmon basins the 2006 ground water appropriations exceeded ground water recharge as it did for WRIA 49 as a whole.¹⁰⁷ "Groundwater and surface water interact throughout the [Okanogan River] watershed."¹⁰⁸ Allowing high densities along the over allocated creeks with a hydrologic connection to ground water will result in loss of water available to senior water rights holders that rely on these streams for irrigation and other uses.

Okanogan County had more permit-exempt wells drilled, 1,275, than any other county in the state between January 1, 2008 and September 4, 2014.¹⁰⁹ "There are many reasons for the large increase in [permit-exempt wells in] Okanogan County, including that it is the largest county in the state and nearly all growth is occurring in rural areas outside of municipal supplies."¹¹⁰

¹⁰³ *Id.* at p. 2.

¹⁰⁴ Okanogan County Zoning – Draft – 10/15/2015 map; proposed OCC 17A.040.060A & B; ENTRIX, Inc., *Level 1 Watershed Technical Assessment Final Report Okanogan River Watershed Resource Inventory Area 49* p. ES-9 & WRIA 49 Stream Monitoring Locations map (Sept. 2006).

¹⁰⁵ Proposed OCC 17A.220.010.

¹⁰⁶ ENTRIX, Inc., *Level 1 Watershed Technical Assessment Final Report Okanogan River Watershed Resource Inventory Area 49* p. ES-9 & WRIA 49 Stream Monitoring Locations map (Sept. 2006).

¹⁰⁷ *Id.* at ES-4.

¹⁰⁸ *Id.* at 2-24.

¹⁰⁹ Tom Culhane and Dave Nazy, *Permit-Exempt Domestic Well Use in Washington State* p. 7 & p. 22 (Water Resources Program Washington State Department of Ecology, Olympia, Washington: Feb. 2015: Publication No. 15-11-006) accessed on March 23, 2016 at: <https://fortress.wa.gov/ecy/publications/documents/1511006.pdf> and enclosed with the paper original of this letter.

¹¹⁰ *Id.* at p. 22.

April 1, 2016

Page 19

The Washington State Department of Ecology had to appeal a county subdivision approval because the County's SEPA determination failed to require the subdivision to comply with the requirements for permit exempt wells.¹¹¹ The Silver Spur North Ranch originally proposed to create 220 individual lots, a 15-site recreational vehicle park, an equestrian center, and recreational center with swimming pools that would withdraw 18,800 gallons of water per day from permit-exempt wells.¹¹² "That is well in excess of 5,000 gallons of water per day, the limit allowed by common subdivisions without water rights, as confirmed by the state Supreme Court's opinion in the 'Campbell and Gwinn' case."¹¹³ In response to Ecology's appeal, the Silver Spur North Ranch was limited to 5,000 gallons a day from one permit-exempt well serving eleven housing units.¹¹⁴ Any addition development will require "an off-site source of water ..."¹¹⁵ There have been other cases where Okanogan County's planning decisions disregarded these requirements.¹¹⁶

"Maintaining minimum streamflow is necessary to sustain anadromous fish populations."¹¹⁷ The county will not be able to allow development of 24,440 parcels because they lack an adequate supply of potable water. If development is allowed, the anadromous fish will be impacted. But the new zoning regulations do not include any requirement that new lots, new buildings, or new uses must be served by a water source that has a legal water supply and an actual water supply. Allowing the creation of so many lots beyond what the available water supplies can support is a serious adverse impact that must be analyzed in the DEIS. Mitigation measures need to be included to address these impacts. However, these impacts were ignored in the DEIS.

Failing to require that new developments have both legal water and an actual water supply will adversely impact senior water rights holders because the county will apparently continue to allow permit-exempt wells to be used for new developments despite the fact that all, or nearly all, of the water in the Okanogan and Methow basins in the county is already allocated. So this water will have to come from either instream flows or senior water rights holders or both. These impacts need to be analyzed in the DEIS and mitigating measures developed.

¹¹¹ Department of Ecology News Release - March 26, 2010 10-054 *Water concerns prompt appeal of subdivision approval* accessed on Jan. 28, 2015 enclosed with the paper original of this letter.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ Okanogan County Resolution 10 – 201 Approving the Development Agreement for Silver Spur North Ranch and Adopting Findings of Fact and Conclusions of Law p. *2 – 3; Development Agreement by and Between Okanogan County and Caribou LLC, for the Silver Spur North Ranch Development pp. 8 – 9 accessed on March 23, 2016 at

<http://www.okanogancounty.org/planning/Docs%20and%20PDFs/Development%20Agreement-Silver%20Spur%20NR.pdf> and cited pages enclosed with the paper original of this letter.

¹¹⁵ Development Agreement by and Between Okanogan County and Caribou LLC, for the Silver Spur North Ranch Development pp. 8 – 9.

¹¹⁶ Washington State Department of Ecology Letter to Okanogan County Planning Re: Eagle Canyon Estates (March 23, 2009) enclosed with this letter and the paper original of this letter.

¹¹⁷ Expert Testimony of Laura Strauss, Hydrogeologist p. 12 (May 6, 2014) enclosed with the paper original of this letter.

None of this information on the existing environment and the impacts of development is disclosed in the DEIS. This violates SEPA.¹¹⁸

On page 16, the DEIS claims the "County has a multi-layered approach to water quantity protection" and then lists several requirements. We have been unable to find the development regulations that contain these requirements. The EIS must cite to the development regulations that contain these requirements or if the provisions are a proposed mitigation measure that will be adopted as part of the comprehensive plan or development regulations the EIS should state that they are proposed mitigation measures.

On page 17, the DEIS claims that "[w]hile the Department of Ecology has identified a potential for water shortages in Eastern Washington and Okanogan County, the Agency has not yet imposed limits on exempt wells in applicable WRIA regulations where the issue of available water is specifically addressed." This is not true. The streams and lakes closed to further appropriation by WAC 173-548-050 are also closed to permit-exempt wells. The minimum flows set by WAC 173-548-020 apply to all "rights" and "future appropriations."¹¹⁹ There is no exception for permit-exempt wells nor are the minimum flows applicable only to water right permits.

On page 17, the DEIS states that the "County has examined the gauging stations on both the Methow and the Okanogan Rivers to assess whether any impact to mean average flows have been demonstrated as the County development has occurred over the past 30 years. To date, no such impact has been identified."

The County assesses the quantity of water available for appropriation in the Methow Watershed based upon historical gauge readings at the mouth of the Methow River. This approach ignores the Instream flow Rule (IFR) for the Methow, Chapter 153-548 WAC, and the work done after the adoption of and pursuant to the *Methow Basin Watershed Plan* (Plan).

The IFR established seven separate reaches for the Methow River and tributaries for purposes of water management. The rule further established a reservation of 2 cubic feet per second (cfs) of water in each of the seven reaches available for future single domestic and stockwater uses. The 2 cfs reservation in each reach would be a reduction in streamflow from the consumptive use of all the withdrawals authorized under the IFR.

The Watershed Plan was the result of almost five years of work by the Methow Basin Planning Unit. Okanogan County was one of three initiating governments on the Planning Unit. The Board of County Commissioners approved the Plan on June 20, 2005. Watershed planning addresses current water use and estimates potential future use. The Plan recognizes that "[w]hat is possible with regard to growth or development is a planning and zoning

¹¹⁸ WAC 197-11-440(6)(a).

¹¹⁹ WAC 173-548-020(4) and (5).

issue.”¹²⁰ Significantly, “[t]he recommendations in the plan are designed to promote the best planning and zoning decisions to preserve the quality of life people in the valley want.”¹²¹

The Plan identified as a high priority the development of estimates of water use to quantify how much of the 2 cfs reservation in each reach remains unallocated. This information is necessary for the County to meet one of its obligations under the Plan. Table 12 of the Plan lists the obligations for various implementing entities, including Okanogan County. Item 5 on the County’s list is “[c]ease issuance of water adequacy certificate for a sub-basin dependant [sic] on the 2 cfs reservation as a source of water if notified that the sub-basin limit has been reached.”¹²²

As part of Phase 4, Watershed Plan Implementation, the Methow Watershed Council (MWC), the successor to the Methow Basin Planning Unit, directed a study for quantifying the consumptive use of single domestic homes on exempt wells for tracking allocation against the reservation of 2 cfs. The study was conducted by Aspect Consulting, *Water Withdrawal Study Water Resource Inventory Area 48* (Aspect, 2011a).¹²³ Aspect also developed a water withdrawal tracking system, *Instream Flow Reservation Tracking Database* (Aspect, 2011b).¹²⁴ This database estimated the current number of residential parcels subject to the IFR (served by permit-exempt wells and developed after adoption of the IFR) and the potential number of parcels that could be developed in each reach under two different development scenarios. Given the standard in *Ulloch* that “environmental consequences are discussed in terms of the maximum potential development of the property” (emphasis added), the appropriate scenario for consideration of impacts from zoning is full build-out under the proposed zoning.

Applying the water withdrawal study results to full buildout conditions, two of the reaches in the Methow have already exceeded the allowable withdrawals under the reserve. For the watershed as a whole, there would be 19,883 parcels that would not have a legal source of water under the IFR and the reservation at full buildout.¹²⁵

In sum, for the County to base its decisions regarding water adequacy based upon gauge readings at a single site while ignoring all the actual work done in the Methow Basin is indefensible.

¹²⁰ Methow Basin Planning Unit, *Methow Basin (WRLA 48) Watershed Plan* p. 3 (Approved by the Okanogan County Board of County Commissioners June 20, 2005) accessed on April 1, 2016 at: <http://okanogancounty.org/water/Documents%20on%20Site/Methow%20Basin%20plan%20text.pdf> and enclosed with the paper original of this letter.

¹²¹ *Id.*

¹²² *Id.* at p. 48.

¹²³ Accessed on April 1, 2016 at: <http://www.methowwatershed.com/documents/WaterWithdrawalReport-Draft5-10-2011-1.pdf> and enclosed with the paper original of this letter.

¹²⁴ Accessed on April 1, 2016 at: <http://www.methowwatershed.com/documents/WRLA48IFRDatabaseReportDRAFTrev105-24-11.pdf> and enclosed with the paper original of this letter.

¹²⁵ Memorandum from Aspect Consulting to the MWC, June 16, 2011. See also Methow Watershed Council Letter to the Okanogan County Commission Re: Okanogan Comprehensive Plan and watershed planning pp. 1 – 2 (June 14, 2011) enclosed with the paper original of this letter.

Relying on mean average flows in the Okanogan basin is also indefensible. The adopted minimum instream flows on the Okanogan control the available water.¹²⁶ And as we have seen, Ecology has to curtail existing water rights holders in both the Methow and Okanogan basins because the adopted minimum instream flows are not being met. All of this the DEIS fails to disclose, violating SEPA.

In addition to the failure to describe existing conditions and the environmental impact of development provided for under the proposed zoning regulations, the text of the water quantity section contains numerous errors. For example, the exempt well statute is correctly cited initially as RCW 90.44.050, but the following several times the citation is incorrect. The DEIS also refers to the exempt well "regulations" when it is discussing the statute. These errors should be corrected.

The DEIS, on pages 16 and 17, mentions the need to prohibit "daisy chaining" to comply with state law. "Daisy chaining" occurs when a project is divided into separate "developments" and each of the developments is allowed to use a permit-exempt well. This violates state law.¹²⁷

We appreciate that Okanogan County recognizes the need to prohibit daisy chaining. Unfortunately, there are no regulations in DEIS Appendix 8: Proposed Zoning Text that prohibit daisy chaining. The new definitions of exempt well and projects are not used in the zoning text. There are no zoning provisions that require building permits, developments, and land divisions to comply with the definitions of exempt well and project. The EIS needs to disclose the lack of adequate regulations.

In addition, the definitions need to be clearer. The definition of exempt well implies that a permit-exempt well does not have to comply with the water codes, which is not the case. So we recommend it be called permit-exempt well. We suggest the following revised language:

"Permit-exempt well" - the uses should be described as they are in the statute followed by "The limitations as to authorized uses and quantity in the statute apply to individual parcels and to a 'project' as required by the court decision in *Campbell and Gwinn v. Ecology*."

"Project" A project for exempt well purposes is any building permit, development, or division of land by short subdivision, subdivision, or segregation of lands for purposes of development, which occurs at one time or as part of a common scheme or plan of development. Such building permit, development, or division of land is subject to the exempt well statute if it occurred after adoption of the statute in 1945. In such cases, consistent with the court decision in *Campbell and Gwinn v. Ecology*, all properties within the "project" combined are subject to the limitations of a single exemption, i.e., 5,000 gallons per day.

¹²⁶ WAC 173-549-020.

¹²⁷ *State, Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn. 2d 1, 21, 43 P.3d 4, 15 (2002); *Kittitas Cty. v. E. Washington Growth Mgmt. Hearings Bd.*, 172 Wn. 2d 144, 180, 256 P.3d 1193, 1210 (2011).

The zoning regulations must then prohibit the issuance of buildings permits, short and long subdivision approvals, and the approval of other divisions of land that do not comply with the definitions of project and permit-exempt well.

Section V.F Wildlife and Habitat

Plants, animals, their habitats, and their migration routes are elements of the environment that must be evaluated in the DEIS because the proposed zoning regulations will have a significant impact on these resources.¹²⁸ This section contains no description of the existing environment as to plants or wildlife habitats.¹²⁹ Nor does the DEIS disclose that Okanogan County has missed its deadline to update its critical areas regulations for fish and wildlife habitats as required by the Growth Management Act.¹³⁰ So this section violates SEPA.¹³¹

Section V.G Salmon and Endangered Fish

This section contains no description of the existing environment as to salmon or other endangered, threatened, or sensitive species, priority habitats and species, and habitats and species of local importance which are among the species and habitats that Okanogan County is required to designate and protect.¹³² Nor does the DEIS disclose that Okanogan County has missed its deadline to update its critical areas regulations for fish and wildlife habitats as required by the Growth Management Act.¹³³ The DEIS also does not disclosed that the Shoreline Master Program proposed by Okanogan County does not designate any of the rivers, streams, and lakes that are the habitat of threatened, endangered, or sensitive species as fish and wildlife habitat conservation areas.¹³⁴ So this section violates SEPA.¹³⁵

Section V.H Public Facilities

This section contains no description of the existing environment as to public facilities and services.¹³⁶ In addition, the DEIS on page 18 claims that “[g]iven the slow pace of growth throughout the county, the wide spread dispersion of growth across the county and the long term planning processes of the county's cities and districts within the county to plan for such changes, the County has identified no need to adjust the zoning ordinance to address this issue.” This statement has two problems. First, as we documented above, the conclusion that there is a slow pace of growth is based on population numbers that ignore a recent study and

¹²⁸ WAC 197-11-444(1)(a)(ii); WAC 197-11-444(2)(b)(vii); WAC 197-11-440(6).

¹²⁹ *Okanogan County-2016 Zoning Ordinance [Draft] EIS* pp. 17 – 18.

¹³⁰ RCW 36.70A.130.

¹³¹ WAC 197-11-440(6)(a).

¹³² *Okanogan County-2016 Zoning Ordinance [Draft] EIS* p. 18.

¹³³ RCW 36.70A.130.

¹³⁴ Proposed Okanogan County Shoreline Master Program Update (SMP Update) p. 38 in proposed OCC 14.15.110(D)(1) and (2).

¹³⁵ WAC 197-11-440(6)(a).

¹³⁶ *Okanogan County-2016 Zoning Ordinance [Draft] EIS* p. 18.

vacation homes. These homes must be provided with public facilities and services such as fire stations and fire services. Second, as we also documented above,

One challenge Okanogan County faces is the large number of houses in the urban/rural fringe compared to twenty years ago. Since the 1970s, a segment of Washington's growing population has expanded further into traditional forest or resource lands and other rural areas. The “interface” between urban and suburban areas and unmanaged forest and rangelands created by this expansion has produced a significant increase in threats to life and property from fires and has pushed existing fire protection systems beyond original or current design or capability.¹³⁷

So growth has gone beyond the capacity of the existing fire protection systems to protect. The DEIS fails to disclose this serious lack of public facilities and services and fails to identify potential mitigation. This violates SEPA.¹³⁸

Section V.I Resource Lands

Soils and agricultural crops are elements of the environment that must be evaluated in the Draft EIS because the proposed zoning regulations will have a significant impact on these resources.¹³⁹ Okanogan County had 1,205,229 acres of land in farms.¹⁴⁰ This includes farm and ranch land and lands in the Colville Indian Reservation, but does not include federal grazing allotments. As the Census of Agriculture explains: “All grazing land, except land used under government permits on a per-head basis, was included as “land in farms” provided it was part of a farm or ranch.”¹⁴¹ So the land in farms is land in a farm or ranch.

In 2012, Okanogan County farmers and ranchers sold \$37.2 million worth of livestock.¹⁴² The DEIS seems to indicate that state and federal grazing land and forest land is designated as agricultural lands of long-term commercial significance, but privately owned grazing land and forest land is not.¹⁴³ Given the \$37.2 million worth of livestock sales, this is not rational.

¹³⁷ *Okanogan County, Washington Community Wildfire Protection Plan* p. 88 (2013) underlining added.

¹³⁸ WAC 197-11-440(6)(a).

¹³⁹ WAC 197-11-444(1)(d); WAC 197-11-440(6).

¹⁴⁰ United States Department of Agriculture, National Agricultural Statistics Service, *2007 Census of Agriculture, Washington State and County Data Volume 1 Geographic Area Series • Part 47* Chapter 2: County Level Data, Table 8. Farms, Land in Farms, Value of Land and Buildings, and Land Use: 2007 and 2002 p. 293 (February 2009) accessed on March 24, 2016 at:

http://www.agcensus.usda.gov/Publications/2012/Full_Report/Volume_1_Chapter_2_County_Level/Washington/wav1.pdf A copy of Chapter 2 and the appendices are enclosed with the paper version of this letter.

¹⁴¹ United States Department of Agriculture, National Agricultural Statistics Service, *2007 Census of Agriculture Washington State and County Data Volume 1 • Geographic Area Series • Part 47* Appendix B pp. B-14 – B-15 (February 2009). See also the definition of “woodland pastured” in Appendix B on p. B-25.

¹⁴² United States Department of Agriculture, National Agricultural Statistics Service, *2012 Census of Agriculture County Profile Okanogan County, Washington* p. *2 accessed on March 30, 2016 at:

http://www.agcensus.usda.gov/Publications/2012/Online_Resources/County_Profiles/Washington/cp53047.pdf and enclosed with the paper original of this letter.

¹⁴³ *Okanogan County-2016 Zoning Ordinance [Draft] EIS* pp. 20 – 21.

But more importantly from the perspective of an EIS, the EIS does not analyze the impacts of failing to designate and protect these lands. This is one of the key purposes of an EIS.¹⁴⁴ One impact is that federal grazing land is not available when the farmers and ranchers may need it and consequently, at least one county producer is having to graze some of their cattle out of the county.¹⁴⁵ But this impact is not disclosed in DEIS.

Another undisclosed impact is that over the last ten years, Okanogan County lost 36,031 acres of land in farms, the eleventh highest loss in Washington State.¹⁴⁶ Okanogan County did experience a small increase in land in farms in the last five years, but the increase was much smaller than the increase in the market value of agricultural products sold which increased from \$209 million in 2007 to \$287 million in 2012.¹⁴⁷

Further, the DEIS believes that federal grazing land can be used for "very limited crop utilization." But federal grazing land can only be used grazing and only part of the year.¹⁴⁸ No crops can be grown on the land.

The DEIS claims on pages 21 and 22 that the agriculture industry views the existing protections for agricultural land as adequate and appropriate. But a farmer has requested better protection and shown how nearby residential uses can adversely affect agricultural operations even in the absence of nuisance lawsuits.¹⁴⁹ The American Farmland Trust's Farming on the edge study, enclosed with the paper original of this letter, shows large area of Okanogan County with prime farmland and relatively rapid loss of high-quality farmland to development. Professor Tom Daniels also discusses how residential development can adversely impact farmers and ranchers without nuisance suits.

Newcomers to the countryside often have little understanding of the business of farming or forestry. The conflicts between farmers and non-farm neighbors

¹⁴⁴ WAC 197-11-440(6)(a).

¹⁴⁵ Dan Wheat, *Okanogan ranchers looking for Grazing Capital Press* pp. 2 – 3 of 6 (Dec. 18, 2015) accessed March 25, 2016 at: <http://www.capitalpress.com/Washington/20151218/okanogan-ranchers-looking-for-grazing> and enclosed with the paper original of this letter.

¹⁴⁶ *Washington State Counties Ranked by Decline in Land in Farms 2002 to 2012* enclosed with the paper original of this letter.

¹⁴⁷ United States Department of Agriculture, National Agricultural Statistics Service, 2012 *Census of Agriculture Washington State and County Data Volume 1 • Geographic Area Series • Part 47 AC-12-A-47* Chapter 2: County Level Data, Table 2. Market Value of Agricultural Products Sold Including Direct Sales: 2012 and 2007 p. 244 (May 2014).

¹⁴⁸ *Forest Plan Revision, Colville & Okanogan-Wenatchee National Forests May 2009 Briefing: Rangelands and Forest Plan Revision* p. 2 of 2 accessed on April 1, 2016 at: http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5324062.pdf and enclosed with the paper original of this letter; Julia Haggerty and Patty Gude, *Land Ownership Change and the Ranching Economy in the Okanogan Valley and Eastern Okanogan County, Washington* pp. 9 – 12 (Headwaters Economics, Bozeman, Montana: Nov. 12, 2008) accessed on April 1, 2016 at: http://headwaterseconomics.org/wphw/wp-content/uploads/HeadwatersEconomics_OkanoganLandStudy.pdf and enclosed with the paper original of this letter.

¹⁴⁹ John Sylvester letter to Okanogan County Planning (Feb. 221, 2008) and enclosed with the paper original of this letter.

are well-known. Neighbors typically complain about farm odors, noise, dust, crop sprays, and slow moving farm machinery on local roads. Farmers point to crop theft, vandalism, trash dumping, and dogs and children trespassing and harassing livestock. In forested areas, the increase in residents bring a greater likelihood of fire. In short, farming and forestry are industrial uses. They should be kept as separate as possible from rural residential development.¹⁵⁰

And contrary to the assurances in the DEIS which contain no citation to authority, right to farm laws will not protect the farmers and ranchers from complaints and lawsuits. As Professor Nelson writes:

Suits and the threat of suits can threaten viable commercial farming (Hagman and Juergensmeyer 1987). Right-to-farm laws prevent urban residents from filing nuisance complaints against farmers. All states have right-to-farm laws. At best, they give short-term protection to farmers at the urban-rural fringe. But a farmer could win all the legal battles in court only to lose the proverbial war to expense and wariness. Moreover, the law of trespass has so evolved as to potentially undermine right-to-farm legislation altogether (Leutwiler 1986; Bradbury 1986). The problem is that farmers and urban residents do not coexist. Right-to-farm laws are not likely to be effective in preserving farmland in the long term (Leutwiler 1986; Hagman and Juergensmeyer 1987; Lapping and Leutwiler 1987; Rose 1984; Bradbury 1986; Nelson 1990a).¹⁵¹

The DEIS argues on page 22 some farmland should be put to non-agricultural uses. But these is a need for more farmland and plenty of non-farmland to put to non-agricultural uses.¹⁵²

The DEIS argues on page 22 that farmers could not get loans for their farms if they are protected from non-agricultural uses. But there are many agricultural lenders willing to loan on protected agricultural land.¹⁵³ Protecting land for agriculture also allows farmers and ranchers to acquire additional land at farmland prices.

The DEIS argues on page 22 that it is expensive and time consuming to modify farm practices to achieve higher yields. But it takes more time and money to subdivide land for non-agricultural uses.

¹⁵⁰ Professor Tom Daniels, *What to Do About Rural Sprawl?* p. 1 Paper presented at the American Planning Association Conference, Seattle, Washington (April 28, 1999) accessed most recently on April 1, 2016 at: <http://mrsc.org/getmedia/40790EA0-E824-4F83-939E-C06A3AB1056D/ruralsprawl.aspx> and a differently formatted version enclosed with the paper original of this letter.

¹⁵¹ Arthur C. Nelson, *Preserving Prime Farmland in the Face of Urbanization: Lessons from Oregon* 58 JOURNAL OF THE AMERICAN PLANNING ASSOCIATION 467, p. 470 (1992) (footnotes omitted) enclosed with the paper original of this letter. As enclosed "Instructions for Authors" documents, the Journal of the American Planning Association is a peer reviewed scientific journal.

¹⁵² Dan Wheat, *Okanogan ranchers looking for Grazing Capital Press* pp. 2 – 3 of 6 (Dec. 18, 2015).

¹⁵³ See for example, Northwest Farm Credit Services, a Farm Credit cooperative that serves the northwest, accessed on April 1, 2016 at: <https://www.northwestfcs.com/>

Mr. Perry Huston, Director of Planning Okanogan County Re: Zoning DEIS
April 1, 2016
Page 27

The DEIS argues on page 23 that water is the lifeblood of many agricultural activities. But the proposed development regulations have designed the agricultural land in the county irrigation districts not for agriculture, but high density residential development.¹⁵⁴ How will the farmers and ranchers replace this lost water? The DEIS is wrong that to claim that an agriculture zone limits the transfer of water from one parcel to another. They do not include any such prohibition.¹⁵⁵

The Okanogan County *Community Wildfire Protection Plan* explains that in their natural condition the county's existing agricultural lands had some of the highest risk for wildland fires.¹⁵⁶ Converting "much of the landscape historically prone to frequent fires" to agriculture has lowered the risk of wildland fires.¹⁵⁷ The *Community Wildfire Protection Plan* states "[t]he preservation of a viable agricultural economy in Okanogan County is integral to the continued management of wildfire risk in this region."¹⁵⁸ The impacts on community fire safety of converting this farmland to rural residential development as provided for in the proposed zoning regulations should have been analyzed in the DEIS and mitigation measures identified. But this analysis was not done in violation of SEPA.

The DEIS is mistaken that the Census of Agriculture is "published annually."¹⁵⁹ It is conducted and published every five years.¹⁶⁰

The DEIS on pages 23 and 24 fail to analyze the environmental impacts of failing to designate any forest lands of long-term commercial significance. The DEIS's failure to do so violated SEPA.

WAC 197-11-440(4) requires an EIS to include a summary with specific requirements, but the DEIS does not include that information

The DEIS, on pages 24 through 28, does include the material required by WAC 197-11-440(4). WAC 197-11-440(4) requires that

¹⁵⁴ *Okanogan County-2016 Zoning Ordinance [Draft] EIS Appendix 7: Proposed Zoning Map; Okanogan County Irrigation* accessed on April 1, 2016 at:

http://www.okanogancounty.org/planning/Docs%20and%20PDFs/IRRIGATION_DISTRICTS.pdf and enclosed with the paper original of this letter.

¹⁵⁵ See for example Douglas County Code Chapter 18.36 AC-10 Commercial Agriculture District and Douglas County Code Chapter 18.40 A-D Dryland Agriculture District both accessed on April 1, 2016 at:

<http://www.codepublishing.com/WA/DouglasCounty/>

¹⁵⁶ *Okanogan County, Washington Community Wildfire Protection Plan* p. 98 (2013).

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Okanogan County-2016 Zoning Ordinance [Draft] EIS* p. 20.

¹⁶⁰ United States Department of Agriculture, National Agricultural Statistics Service, 2012 *Census of Agriculture Washington State and County Data Volume 1 • Geographic Area Series • Part 47 AC-12-A-47* Introduction p. vii (May 2014).

Mr. Perry Huston, Director of Planning Okanogan County Re: Zoning DEIS

April 1, 2016

Page 28

The summary shall briefly state the proposal's objectives, specifying the purpose and need to which the proposal is responding, the major conclusions, significant areas of controversy and uncertainty, if any, and the issues to be resolved, including the environmental choices to be made among alternative courses of action and the effectiveness of mitigation measures. The summary need not mention every subject discussed in the EIS, but shall include a summary of the proposal, impacts, alternatives, mitigation measures, and significant adverse impacts that cannot be mitigated.

This information is missing. And for the reasons explained above, many of conclusions are incorrect or missing. For example, the air quality issues bullet ignores the impacts of development on causing wildfires and the air pollution generated by wildfires.¹⁶¹ So the conclusion should be rewritten after the DEIS deficiencies identified above are corrected.

Perhaps the greatest shortcoming of the summary and conclusion is conclusion that the proposed regulations will not have substantial adverse environmental impacts. As this letter has shown, that conclusion is just plain wrong.

Thank you for considering our comments. If you require additional information please contact me at 206-343-0681 Ext. 118 or tim@futurewise.org.

Very Truly Yours,



Tim Trohimovich, AICP, WSBA No. 22367

Director of Planning & Law &

Attorney for Futurewise and the Methow Valley Citizens' Council

Enclosures

¹⁶¹ Okanogan County Public Health *Forest Fire Public Service Announcement (PSA)* p. * 1 (Aug. 20, 2015); *Okanogan County, Washington Community Wildfire Protection Plan* p. 88 (2013).

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Tonasket, Wa
98855

April 4, 2016

Patrick & Jody Davisson
41 Rooster Flats Rd
Oroville, Wa
98844

Dear commissioner's,

This letter is in protest of the Pot Farms currently being zoned into Okanogan County. Somewhere a long the way we have had a huge injustice bestowed upon the long term citizens of Okanogan County. Marijuana was legalized in the state of Washington, and are lifestyle's were sold out and set to the side of the road. My family purposefully chose Okanogan county to plant our feet, build a career, raise our family and eventually one day retire here. We have been long time residents of Okanogan County. My husband and children have lived here all their life, myself 31 years. We are property owners and business owners, are kids graduated from and currently attend the schools, we reside and vote in Okanogan County. Every decision and every choice we make, we know will directly affects us and our neighbors who live here. I am not against The medicinal purpose of marijuana. I am against the very loose zoning locations and rules and regulations accepted by our county. I live in a subdivision of 5 home owners and 4 close residential neighbors. We recently discovered this past fall our County had approved a Pot Farm to go in right up against our subdivision and small community. Could you not see there were long term families established here? Did you not take the time to look at the assets and property values of where you were permitting an outsider to come in and set up shop or even care? My husband and I have worked so hard to build our lives and a retirement here in this county, as did our neighbors. "We", are your store owners, ranchers, teachers, boarder patrol, landscaping, secretaries and home care providers. We are all very well established, successful, citizens making a contribution to this county. If anyone is going to have a voice in the zoning of these farms don't you think it should be the long term residence who have been living here and supporting this area? In whole our small community consist of 18 kids 17 adults who are all directly effected by the approved location of Permit #412244. I want my voice to be heard, I am against the current zoning rules and regulations set up for theses farms. I will not stand by and watch the lives we've built go down the

drain. Our quality of life and property values are being diminished and we have got to reverse the injustice that has been done to so many. Please submit my letter for the upcoming meeting to be held on April 11th at the Okanogan Agrplex.

Sincerely yours,

Patrick and Jody Davisson

Apposed Pot Farm Zoning

Permit #412233

Greg & Wendy Griffiths

23 Thayer Rd S

Oroville, Wa 98844

Property Owners effected by this farm

#8870670402

#8870670300

#8870670200

#8889200400

#8870670100

#8845700200

#8845700100

#8889200100

#8889200200

#8889200300
