

Lauren Davidson

From: MVCC <methowcitizens@gmail.com>
Sent: Friday, March 25, 2016 11:45 AM
To: albert_roberts@hotmail.com; mcmlandco@live.com; sigurdoshea@yahoo.com; prdart11@gmail.com; Lauren Davidson
Cc: Perry Huston
Subject: Comments for March 28, 2016 public hearing on the "Zoning OCC Title 17A" Code Amendment 2015-1
Attachments: MVCC-Zone-Code-Comments-032416.pdf

Dear Sirs and Madams,

Please find attached the Methow Valley Citizens Council's comments for the Planning Commission's March 28, 2016 public hearing on the "Zoning OCC Title 17A" Code Amendment 2015-1. We plan to send someone to the hearing who will also provide a hard copy with our verbal testimony.

Confirmation of receipt of this email and the attached document is appreciated.

The entire document including all appended references is quite long, and we do not expect that it should be printed in its entirety for the hearing. Rather we recommend printing only the cover letter and comments, and maintaining the electronic file for your reference and records.

Can you please see to it that Commissioners Rawley and Schulz also receive copies of the attached comments today, if possible? I can't locate their email addresses, and we'd like them to have the opportunity to review the documents before their meeting on Monday.

Feel free to contact our office if you have any questions.

Sincerely,

Lorah Super
MVCC Communications

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Methow Valley Citizens Council

From:

MVC <matthew@johnston.com>

Sent:

Friday, March 25, 2016 11:49 AM

To:

Johnston, Matthew <matthew@johnston.com>

@johnston.com

Re:

Johnston, Matthew

Subject:

Comments for item: 2016-03-25-11:49:00 AM

Attachment: 2016-03-25-11:49:00 AM

MVC <matthew@johnston.com>

Attachments

Johnston, Matthew

From: Johnston, Matthew <matthew@johnston.com> [mailto:matthew@johnston.com] Sent: Friday, March 25, 2016 11:49 AM To: Johnston, Matthew <matthew@johnston.com> Subject: Comments for item: 2016-03-25-11:49:00 AM

Attachment of receipt in this email is the attached of receipt of approval.

The receipt is attached to this email. It is a receipt for the amount of \$100.00. The receipt is dated 3/25/2016. The receipt is for the amount of \$100.00. The receipt is for the amount of \$100.00. The receipt is for the amount of \$100.00.

Can you please see that I have attached a receipt for the amount of \$100.00. The receipt is dated 3/25/2016. The receipt is for the amount of \$100.00. The receipt is for the amount of \$100.00. The receipt is for the amount of \$100.00.

Best regards, Matthew

Matthew

Johnston, Matthew

MVC <matthew@johnston.com>

Johnston, Matthew <matthew@johnston.com>

The Methow Valley Citizens' Council

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March 17, 2016

To: Perry Huston, Director of Planning

CC: Okanogan County Regional Planning Commission Chair Albert Roberts and Commissioners Phil Dart, Dave Schulz, Marlene Rawley, Tamara Porter, Mark Miller

Okanogan County Office of Planning and Development
123 Fifth Avenue North, Suite 13
Okanogan, WA 98840

Re: Draft Zoning and Zoning Code Maps, Okanogan County Code Title 17A —issued October 16, 2015

Dear Director Huston and Planning Commission,

Thank you for this opportunity to comment on the draft Zoning Code and Zoning Map. As you know, the Methow Valley Citizens Council (MVCC) and Futurewise have challenged Okanogan County over whether the Comprehensive Plan complies with state law. However, given that the Planning Commission is proceeding to examine the draft Zone Code, MVCC wishes to offer constructive suggestions on ways to improve the proposal. MVCC will provide separate comments on the Draft Environmental Impact

Statement.

Rather than repeat arguments and issues raised in documents previously submitted to the county and to Superior Court, we are including those documents as attachments to our comments. All comments and arguments made in attached documents are relevant to our concerns regarding the draft Zone Code and zone maps.

SUMMARY OF COMMENTS AND RECOMMENDATIONS

Density

The draft Zone Code seems to be driven by an assumption that because of projections for slow population growth for the County, impacts of zoning that allow greater density are insignificant. Projections for slow growth at the macro (county) level are one thing, but when developers concentrate growth in a rural zone, the effect at the micro (neighborhood) level will be dramatic and, in many instances, negative. This is especially true given the permissive number of housing units in R1, R5, and R20 zones.

Further, there is strong evidence that the county's claims of slow growth omit second and retirement homes. The *Okanogan County Shoreline Characterization* report documented that residential development in the county is "significant" and "[m]uch of that development is

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attributable to non-resident landowners building vacation houses, and so is not reflected in population statistics.”¹ This conclusion is consistent with the *Environmental Impact Statement (Draft)* for Code Amendment 2015-1 OCC 17A Zone Code Appendix 10: Population Information which shows that between 2010 and January 26, 2016, Okanogan County issued 1015 new septic system permits.² 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 time period. Nor does it include the permitted holding tanks, chemical toilets, privies, and repaired systems.

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.³ This was more than any other county.⁴ 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.”⁵

Recommendations:

1. Provisions allowing development of multifamily housing and mobile home parks at densities of five units per acre in rural zones (including R1, R5, and R20) should be removed.
2. Accessory housing units should not be allowed on legal pre-existing lots less than one acre in area.
3. Most one acre zoning should be reexamined in light of available water resources, water quality, and demand for public services. (Also, if it arguably takes two acres to accommodate a septic system, why not zone for two acres instead of one?)

Water Resources

We have addressed the issue of over-allocation of water resources for some time, noting that the Methow Water Rule places severe restrictions on use of water reserves and that the Methow Watershed Council predicts that thousands of existing lots will be without water. Senior water right holders will assert those rights when new or existing users adversely impact their water. Yet the draft Zone Code appears to be in denial of these facts and plans to rely on the permitting process to deal with water issues. This places the landowner and developer in the untenable position of proving the availability of legal water in a highly complex system. The goal should be full disclosure of the coming water shortages and to enhance predictability for landowners. Waiting for permitting decisions for individual development is not planning.

¹ 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>

² *Environmental Impact Statement (Draft) Code Amendment 2015-1 OCC 17A Zone Code 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.

³ 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>

⁴ *Id.*

⁵ *Id.* at p. 22.

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Recommendations:

1. Reduce densities in closed basins, areas where water shortages occur, where aquifers are susceptible to contamination, and where wildfire risks are higher.
2. The Zone Code should, as a minimum, show that water restrictions are in place in the District Use Chart and under zone categories for the Methow Valley.
3. Reduce density allowances for R1, R5, and R20 zones (as above).

Wildfire

We are extremely disappointed with the lack of consideration of zoning as it applies to wildfire. Appropriate county responses to the threat of wildfire should include planning for risk mitigation and prevention as well as preparation, suppression and emergency response improvements. There continues to be a lack of recognition of the link between local land use planning and the vulnerability of residents and first responders to wildfire. Proper zoning and building codes can save the lives of future residents and first responders. The Zone Code (and Subdivision Ordinance) should require new construction and subdivisions to adhere to well-known standards for building materials, access, and water availability that have proven effective in mitigating the risk of wildfire.

The county's own *Community Wildfire Protection Plan*, on page 88, documents these hazards:

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.⁶

We support voluntary, education-based programs like Firewise and Fire Adapted Communities for bringing existing homes and neighborhoods into a safer condition and preparing communities to live in wildfire-prone areas. Still, regulation is the best tool for ensuring that future developments are planned with safety as a first priority.

Recommendations:

1. High density rural designations (R1) should be re-examined in light of wildfire risk, and the ability of local fire districts to provide protection.
2. Adopt the *standards* contained in the 2013 Community Wildfire Protection Plan (CWPP), not just the goals.
3. Follow through on the recommendation in the CWPP to adopt the Wildland Urban Interface Code for new building construction and subdivisions.
4. Adopting the Subdivision Ordinance concurrently with the Zone Code would facilitate consistent application of the WUI Code to the relevant sections.

⁶ Emphasis added. Accessed on March 21, 2016 at:

<http://okanogandem.org/documents/AHMP/Okanogan%20County%20CWPP.pdf>

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Conditional Use Permits

The draft code states that conditions should not be “unnecessarily onerous” but does not explicitly place the burden on the applicant to justify the project. The CUP chapter lacks clear criteria and standards (see “Lack of tools” below) and exhibits a bias in favor of the applicant rather than neighboring properties.

Recommendations:

1. Include the following in 17A.310.08: *The Hearing Examiner or board of adjustment shall consider that the project is compatible with surrounding development and any impacts on surrounding properties and community services will be mitigated by development conditions imposed.*
2. Remove the “Unnecessarily onerous” language and replace with: *The hearing examiner or board of adjustment shall consider that no conditions beyond those deemed necessary to mitigate impacts on surrounding properties and community services shall be imposed.*

Okanogan County Lacks Adequate Tools to Mitigate Adverse Impacts of CUP Development

The reliance on CUPs and permitting as a means of mitigating adverse impacts is severely hampered by the lack of standards and authorities, and by standards and authorities that are too vague. For example, there are no ordinances for grading, drainage, or signage and the draft Zone Code proposes to eliminate the landscape ordinance—one of the few chapters in the current code with development standards that are good, specific and enforceable. In addition, the Critical Areas Ordinance has not been updated as required by state law, and the Shoreline Master Program uses the same dependence on “permitting,” when evidence abounds that permit requirements are not adequately enforced. Taken together, this lack of authority makes it difficult or impossible to mitigate impacts.

A note on enforcement:

We are heartened to hear that there are discussions about adding a civil penalty provision to the county code. This is long overdue. There are too many instances of code violations being ignored and permits issued retroactively. Misdemeanor criminal proceedings should be a last resort, not the only option, especially given the full docket for serious criminal cases.

Recommendations:

1. Retain the landscape ordinance.
2. Develop clear and specific standards and mitigations options in the Zone Code for the Hearing Examiner to apply.
3. Request that the Planning Department begin developing ordinances for regulation of grading, drainage, and signage.
4. Add a provision in the Zone Code which empowers the Planning Director to assess civil penalties for code violations.

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Nightly Rentals

Nightly rentals offer the opportunity for property owners to supplement their incomes and to accommodate tourists wishing to enjoy what the county has to offer. The downside is that property owners may not be around to supervise unruly renters, and an imbalance of nightly rentals can impact the quality of life and property values for full time residents in some neighborhoods. Conditional Use Permits provide neighbors with an opportunity to weigh in and protect their interests, preventing future conflict. Nightly Rentals also should not cause the unintended consequence of further restricting the supply of long term rentals and inflating the cost of existing rentals. The County needs a consistent approach to this issue that applies countywide.

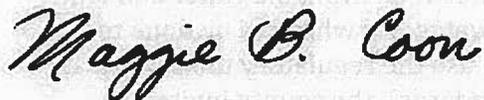
Recommendation:

1. All nightly rentals in the entire Methow Valley, including the area outside of School District 350, should be subject to a Conditional Use Permit.
2. The County should require a CUP for nightly rentals countywide, in the interest of fairness and administrative consistency. Requiring adequate insurance for nightly rentals county-wide would also mitigate risk and liability for all parties.

Further observations and suggestions are included in the following, more detailed comments on the draft Zone Code. MVCC is committed to working with the Planning Commission to support its efforts in preparing a sound Zoning Code.

Please let us know if you have questions about anything we have said or would like more information.

Sincerely,



Maggie Coon, Chair
Methow Valley Citizens Council

MVCC Comments and Recommendations on the Draft Zone Code and Maps

1. Development should be limited and zoned densities lowered in Closed Basins, areas where water shortages occur, where aquifers are susceptible to contamination and where wildfire risks are higher.

We have addressed the issue of protecting Okanogan's water resources many times over in previous comments on the Comprehensive Plan and Interim Zoning and referred the county to scientific studies regarding water resources. A principal contention in all of our comments has been that the densities proposed in the plan and now in the draft zoning will threaten water quality due largely to: 1) the impact of septic system discharge, and 2) the fact that the county's most productive aquifers are "water table" or "unconfined" aquifers which highly susceptible to contamination.¹ We have also been concerned about how much water is available for the future. We asked the county to consider studies conducted by the Methow Watershed Council and others indicating that in many areas of the county there is not enough groundwater to support the level of development proposed.

Over-allocation of water is a pressing issue in the county. We once again highlight our concern for the lower Methow valley's lower reach, stretching from Beaver Creek to Pateros. Hydrological studies indicate there is not enough water for the existing number of lots that have been created—let alone the number of additional lots under the R1 one-acre zoning and provisions for multifamily and mobile home park development at five units per acre. According to Methow Watershed Council (MWC) reports, 1,092 existing lots and 24,313 potential lots will be without water in this area. The continued subdivision of land at one-acre densities will only increase the number of lots that will never get water, profoundly lowering property values.

The county must address this serious imbalance between available water and land use planning. We need to know who will get the water and what can be done to make the most of the water we have. By failing to use the regulatory tools it has at its disposal (zoning, subdivision and building standards), the county invites eventual intervention by the state. This could include additional basin closures, building moratoria and other actions similar to those taken in Kittitas County. We urge the county to continue to work with the Methow Watershed Council (MWC) to address these issues and to coordinate development with the management of water resources.

In the interest of the safety and welfare of our community, we also once again urge the county to re-examine its designation of R1 zoning in light of wildfire risks and to incorporate the recommendations of the *Okanogan County Community Wildfire Protection Plan*, including the recommendation to adopt the Wildland Urban

¹ See appended document. Expert testimony of Laura Strauss, Hydrogeologist. Review of Okanogan County documents regarding water quantity and water, May 6, 2014

Interface (WUI) Code. R1 zoning should be removed from all remote areas of the county with narrow, unpaved and inadequate road networks (including dead-end roads and narrow, unpaved roads) far from arterials, police and fire services.

2. Provisions for multifamily and mobile home park development at densities of 5 units per acre should be removed from the rural zones (R1, R5, R20).

Provisions allowing for dense concentrations of multifamily and mobile home parks in the rural zones undermine the purpose of zoning and the orderly management of growth. These kinds of development require urban services—public sewer and water as well as road networks that ensure residents and first-responders have the kind of access and egress they need during wildfires or other hazard events. It is nothing short of a nightmare imagining hundreds of people attempting to flee a wildfire along narrow dead-end roads (such as Otto Road, Alta Lake Road, Lookout Lane, Eagle Crest Drive, Kamsak Road, Mountain Point Road) where, under the draft Zone Code, this kind of development could happen.

3. The Zoning Code should acknowledge the limitations imposed by the Methow Water Rule on uses permitted in the Methow valley.

Under the current Methow Water Rule (WAC 173-548), water reserves in the Methow Valley are to be allocated solely for single-family homes and agricultural stock watering. Water may not be allocated for other uses, such as multifamily homes or manufacturing plants. This rule was adopted in 1976 and has been under revision for a number of years. The county is working to revise the rule with the Methow Watershed Council, but it is uncertain when or if a new rule will be adopted.

In the interest of transparency, we believe the rule should be referenced in the code—given that most of the uses listed as being allowed outright or as a conditional use permit (CUP) on the district use chart would not qualify for water under the current Methow rule. It would make sense, at a minimum, to include a note to this effect on the District Use Chart and under zone categories designated in the Methow valley.

4. The Zoning Code and Subdivision Ordinance should be issued simultaneously in order to evaluate density bonuses and conditions for achieving bonuses under the new “cluster plat” provision and to ensure that design standards for wildfire protection in the Wildland-Urban Interface (WUI) are incorporated.

The draft code adds new language to almost all zones (except UR, C, IN and AD) allowing cluster plats which may develop at higher densities than ordinarily permitted in the zone. Cluster plats are an alternative form of subdivision, similar to the type of development encouraged under the current Planned Development (PD) ordinance, where higher densities are achieved by meeting certain design

standards. Unlike the PD, cluster plats would be processed through a conditional use permit (CUP) rather than a rezone.²

Requirements for achieving bonuses and the maximum housing units that would be allowed with cluster platting are not identified in the Zoning Code but will, according to planning staff, be included in the revised Subdivision Ordinance (under OCC Title 16) which has yet to be issued to the public. Early indications from staff are that bonuses up to 100% would be allowed. So a housing project in the R1 zone, with one-acre base density, could get two houses per acre if bonus requirements are met. As with the current PD, planning staff has suggested 75% of a project would have to be kept in open space, but this remains to be determined.

While these appear to reasonable standards so far, the Zoning Code and Subdivision Ordinance should be issued simultaneously in order to evaluate conditions for achieving bonuses and other factors, such as design standards for wildfire safety. As a starting point, current PD conditions specific to the Methow planning area³ should be included in the new cluster plat division chapter and be made applicable countywide.

Finally, provisions for wildfire protection based on standards outlined in the *Okanogan County Community Wildfire Protection Plan* and other sources should be made mandatory and not available for density bonuses.

5. Chapter (17A.310), Conditional Use permit (CUP) should incorporate stronger language and guidelines to protect neighboring properties from the negative impacts of conditional uses.

Under the proposed code, two major changes are made: 1) the current PD chapter is revised and rewritten as the planned unit development (PUD) chapter—with most

² Base densities for cluster plats are generally the same as zoned lot size limits: base density in the R1 zone is one dwelling per acre and in the R5 zone it is one per five acres. A notable exception is R20 with a base density of one unit per five acres—the same base density as for R5.

³ Throughout this document, reference to the “Methow planning area” is used as shorthand for the Methow More Completely Planned Area, generally encompassing the area from just south of Carlton northward to Mazama and beyond.

development conditions removed,⁴ and 2) all development formerly requiring a PD rezone or a binding site plan is required to apply for a CUP instead.⁵

With regard to the proposed CUP, we have three concerns: 1) lack of clear criteria and development standards upon which to evaluate and condition proposals, 2) language that could result in bias toward applicants rather than neighboring property owners, and 3) lack of an adequate means for ensuring conditions are disclosed to new purchasers of a property.

A conditional use permit process works best with consistent evaluation and clear criteria on which to base decisions. We don't think the county has the necessary development standards or criteria in place for this to happen. This is important because the wide-ranging and incompatible mix of uses allowed outright or permitted by a CUP under county zoning designations means that the potential for conflict between uses is extraordinarily high—especially in R1, R2, R20 and the Minimum Requirement District. Under these zones everything from single-family homes to heavy manufacturing operations could occur side-by-side. A strong set of conditions will be needed to mitigate impacts. But the list of “potential” conditions that might be imposed on a project described under the CUP⁶) is generic⁷ and nonspecific. In addition, the county code as a whole has few standards or guidelines against which a proposal can be judged or modified—and now proposes dropping the landscaping ordinance and design criteria outlined in the PD as well as some of the special conditions listed under the MRD, RR and LDR zones. The county does not have a clearing and grading ordinance, a drainage ordinance, a sign ordinance, an updated Critical Areas ordinance or, as of yet, an adopted Shoreline Master Program. In addition, Zone Code standards for building height, property line setback and lot

⁴ The proposed Planned Unit Development (PUD) chapter (17A.200) is a reduced version of the current Planned Development (PD) chapter (17.19). Seven pages of conditions are removed, though some may be included under new cluster plat provisions in the Subdivision Ordinance. PD conditions removed include the following: Maximum density limits identified; list of bonus incentive features (including wildfire protection design measures); projects in VF5, UL20, RR, LDR PDS zones required to have twice minimum lot area of underlying district; projects in VF 1, VF 12,500 required to have a min lot area of 5 acres; base density at 150% of underlying zone; 75% of project required as open space; special conditions in MRD zones addressing water use, deer passage.

⁴ For example, the R zones' 5-foot side yard and 25-foot front yard building setback requirement is the same as urban neighborhoods in Seattle.

⁵ Within the Methow planning area, multifamily housing will now be allowed subject to a conditional use permit (CUP) rather than a planned development (PD) in MRD, LDR and RR zones. Also, manufactured home parks are now allowed as a conditional use, where previously not a permitted use, in the LDR zone. Outside the Methow planning area, manufactured home parks were formerly allowed subject to a binding site plan but will now require a CUP.

⁶ See draft Zone Code 17A.310.100

⁷ Oddly however, standards are very detailed for “Kennels, business or commercial,” and “septic lagoons.”

coverage are equivalent to standards for urban areas, setting a very low bar as a starting point for defining development conditions.⁸

Under a CUP process, the burden is normally on the applicant to provide justification for a CUP request. However, as written,⁹ the standards and criteria for approval of a CUP specifically acknowledge the interests of the CUP applicant but not neighboring properties.¹⁰ The hearing examiner is directed to consider whether the application is consistent with the Comprehensive Plan, zoning, current and future uses of the property and whether conditions imposed will “protect the public health, morals and general welfare.” The bias toward the CUP applicant comes with language that states that conditions should not be “unnecessarily onerous.” There is no statement asking the hearing examiner to consider whether impacts on neighboring properties would be mitigated. At a minimum, the following statement should be included under 17A.310.08 to remedy this imbalance:

The hearing examiner or board of adjustment shall consider: That the project is compatible with surrounding development and any impacts on surrounding properties and community services will be mitigated by development conditions imposed.

In addition, because the primary consideration for the hearing examiner should be compatibility and whether or not impacts of the proposal can be mitigated, we recommend the statement regarding “unnecessarily onerous” conditions be revised. We suggest the following as a more appropriate acknowledgement of the applicants’ interests:

The hearing examiner or board of adjustment shall consider: That no conditions beyond those deemed necessary to mitigate impacts on surrounding properties and community services shall be imposed.

Finally, a requirement that conditions imposed through a CUP be recorded with the title of the property (appearing in earlier drafts of the zoning) should be put back. Conditions of approval go with the property and should be recorded as such. This is the best way to ensure that new owners of a property are fully aware of the conditions that have been placed upon its use. Failure to reinstate this requirement will invite future violation of permit conditions.

6. Neighborhood commercial areas are expanded far beyond current areas of commercial use and should be reduced.

⁸ For example, the R zones’ 5-foot side yard and 25-foot front and back yard building setback requirement is the same as urban neighborhoods in Seattle.

⁹ See draft Zone Code, 17A.320.080.

¹⁰ See draft Zone Code, 17A.310.080 Standards and Criteria

The draft Zone Code dramatically expands neighborhood commercial (NC) zones, which allow high-density residential and commercial use. Rough estimates of land area shown with this designation on the zoning maps are 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

As a basis of comparison, consider that most of the areas listed above are larger than the current municipal area of Pateros (about 0.5 square miles). The area designated in Molson is about equal to the current town of Brewster. And the area designated in Loomis is similar to the town of Okanogan. The uses allowed in the NC zone generally require urban services, such as public sewer and water, which are not fully available in these areas. Consequently, the expansion of NC zoning, as shown on the zoning maps, is unjustified as well as unsupportable and should be reduced.

7. A variety of changes under the draft Zone Code would substantially increase density in the former Molson Overlay and should be revised.

The draft Zone Code proposes the R20 zone classification to areas within the former Molson Overlay, which presently limits lot sizes to 20 acres with no other provisions for denser development. Multifamily housing and mobile home parks¹¹ at five units per acre are to be permitted—subject to meeting health department standards. So a 20-acre lot could, in theory, qualify for 100 housing units. This is hard to imagine and certainly inappropriate for a low-density rural zone and for this very rural part of the county. In addition, it raises serious concerns when considering the need to evacuate this number of residents during wildfire. As recommended elsewhere, this provision should be dropped from the R20 zone.

Cluster development is also to be allowed with a base density of one home per five acres. In the R20 zone, a 20-acre lot has a base density of four units. So potentially eight units per 20 acres would be allowed with cluster development. Finally, a one-time “limited division” will be allowed on any lot created prior to January 2016. These provisions should be removed. (See also comment 14 regarding limited divisions below.)

8. Landscaping requirements removed under the proposed code should be reinstated.

The entire chapter on landscaping (OCC 17.27) is removed, as are all other references in the draft Zoning Code to required landscaping. Under Chapter 17A.25 Off-Street Parking and Loading, requirements to screen parking and loading areas abutting residential uses have been eliminated. In addition, language regarding

¹¹ Mobile home parks would be permitted subject to a CUP.

landscape requirements to visually buffer lower density from higher density uses has been removed from zone designations in the Methow planning area.¹²

The original chapter on landscaping and screening was thoughtful and fairly good, detailing five different screening and landscaping types. It applied to all new development other than single family and any agricultural uses permitted outright.

The draft Zone Code retains a general unspecified requirement for “screening” for inns, lodges or guest ranches, campgrounds and RV parks, but only for MRD, RR and LDR zones in the Methow planning area. Under potential conditions that could be imposed during a CUP process, the code simply states the conditions *could* include “requiring suitable landscaping.”

Landscaping is an important means of buffering development and softening visual impacts. We see no reason to eliminate these good standards and replacing them with less substantial requirements. The landscaping ordinance and all references to landscaping in the existing code should be restored.

9. Accessory housing units should not be allowed on legal pre-existing lots less than one acre in area.

Changes under the draft Zone Code will make it easier to build accessory dwelling units on lots in most zones, including legal pre-existing lots. Prior to adoption of the Interim Zoning, accessory dwelling units were allowed on lots within most zones—but only for extended family members or employees of a farm. Under the draft Zone Code, accessory units are allowed on all lots, including legal pre-existing lots—subject only to water and septic requirements and the same setback and lot coverage standards that apply to the primary residence.¹³

In the Methow planning area, little is changed with respect to accessory units. Accessory units will be allowed on all lots meeting minimum zone requirements and legal pre-existing lots will continue to be limited to units for family members under hardship conditions, as under the original code. The primary change is that size and location conditions for accessory units are slightly modified under the draft Zone Code.¹⁴ All accessory units in legal pre-existing lots will continue to require an

¹² Neighborhood use (NU), Urban Residential (UR), Special Review Commercial (SRC), Commercial (C), Industrial (IN), Airport Development (AD).

¹³ Though the current code does not state that accessory housing units are allowed on nonconforming lots under the accessory use sections of Zone Code definitions, under OCC Chapter 17.36.010 Nonconforming Lots, the code states: “That a single-family dwelling and customary accessory buildings may be erected on any lot legally created before the effective date of this chapter. This provision shall apply even though such lot fails to meet the density requirements of the zone district, providing the lot meets current health district requirements for water and sewer.”

¹⁴ Under UL20, VF5, VF1, FV 1250 and RR, original code language limited accessory units to 50% of the primary structure’s floor area but would now be limited to a maximum floor area of 1500 square feet. Language requiring accessory units to be clustered “near” the primary structure is changed giving specific distances—no more than 100 feet from the primary structure in VF5, VF1 and RR

administrative conditional use permit (17A310.060) approved by the zoning adjuster.¹⁵ Once the period of hardship is over, the zoning administrator may terminate the permit and require structure removal within 90 days.

Our primary concern regarding accessory new accessory housing provisions is the following: The county is aware that under state health department regulations (WAC 246-272A) septic systems are not allowed on less than one acre when water is supplied by a private water source.¹⁶ In addition, under the Methow rule (WAC 173-548) water may not be used for public water supplies (outside existing areas served by public water systems—primarily the towns of Twisp and Winthrop). Based on the state health department regulations and the Methow Rule, it will not be possible to build accessory housing units on pre-existing legal lots on less than one acre in the Methow valley. This would also be true over most of the county. Yet the code states that accessory housing units are allowed on legal pre-existing lots that the county already knows won't meet health department standards. This would include lots in the R1, MR, MRD-VF1 and MRD-12,500 zones.¹⁷

This provision should be removed from these zones. In the interests of providing property owners with correct rather than misleading information, the following should be included in the above Zone Code descriptions as well as under chapter 17A.330 (Legal Pre-existing Uses and Lots):

Accessory housing units on septic systems will not be allowed on legal pre-existing lots less than one acre when served by a private water supply.

10. New permitted uses on legal pre-existing lots should be limited to accessory housing units.

Under the proposed code, all permitted and conditional uses are now to be allowed on legal pre-existing lots (17A.320) throughout the county, provided the lot meets setback and health district requirements for water and sewer. Previously, only single family dwellings, customary accessory buildings (including dwelling units) and any pre-existing uses were allowed. This change allows the full range of uses permitted in a zone (e.g. asphalt batching plants, etc.) on nonconforming lots throughout the county. For Methow planning area zones, special conditions superseding legal pre-existing lot provisions prohibit multifamily housing, mobile

zones and no more than 400 feet in UL20 and RR. However, language limiting accessory units in RR zones to lots exceeding 5 acres and requiring submittal of a site plan remains removed.

¹⁵ Changes in the draft Zone Code clarify that the zoning adjuster is also the zoning administrator and the planning director. See new language (117A.010.040 Authority) defining the planning director as the administrator also recognized as the zoning adjuster pursuant to RCW 36.70.200, who shall decide on administrative orders in accordance with OCC 17A.310 "Conditional Use Permits" and OCC 17A.320 "Variances."

¹⁶ A private water source, under WAC 246-292-010 is any system providing water to a single residence or up four residences on the same farm.

¹⁷ The draft Zone Code limits accessory units in MRD VF 1 and MRD 12,500 on legal pre-existing lots to family members under hardship conditions.

home parks, inns, lodges, guest ranches, campgrounds and RVs on legal pre-existing lots.

These reasonable restrictions, which currently apply only to the Methow planning area under the draft Zone Code, should be made to apply county-wide. In general, the expansion of uses allowed on legal pre-existing lots needs further review to consider possible impacts and the need for additional conditions. It may be reasonable to allow a broader range of uses for pre-existing legal lots, but only for lots over a certain minimum lot size—such as lots five acres or more. However, as discussed in the preceding comment, no accessory housing units on septic systems or other uses other single family residential should be allowed on lots smaller than one acre when served by a private water supply.¹⁸

11. Boundary line adjustments (BLA)¹⁹ that reduce the size of legal pre-existing lots should not be allowed.

New language under 17A.330.010 Legal Pre-existing Lots regarding boundary line adjustments is confusing and should be clarified. According to what is written, “legal pre-existing lots which do not meet lot area and width requirements may be reduced in size by use of the boundary line adjustment process.”

The purpose of allowing a lot that is already too small to be made even smaller is unclear. We assume, for example, it means a person owning eleven acres in two parcels, one three acres and one eight acres, in a five acre minimum zone would be allowed to create a ten and one-acre parcel through a boundary line adjustment. At a later date, the ten acres could then be divided into two fives. Three building lots rather than just two out of the original eleven acres would be created. We object to any unjustified provision subverts the purpose of zoning and allows the proliferation nonconforming lots in the county.

12. The county should designate agricultural zoning to agricultural lands.

The only zone category in the county’s existing code that comes close to being an agricultural zone is the Agricultural District (AD). The stated purpose of the classification is to “protect land and water resources for production of food, feed, fiber and to protect agricultural uses and facilities....and establish use requirements so that the utilization of lands...will not occur in such a way as to decrease their importance and economic value as agriculture”. In the proposed code, that zone is renamed Agriculture (AG) and the purpose statement has been changed to read “to provide development options, within agricultural areas, which are consistent with Okanogan County’s Comprehensive Plan. Cluster land division is allowed at base densities of 1 du per 20 acres.

¹⁸ See MVCC Comments on Comprehensive Plan and Interim Zoning Code, June 16, 2014.

¹⁹ Under OCC 16.040.080, a BLA may only be used to adjust a lot line between two parcels ,not to create a third parcel. But nothing in the code restricts a land owner from subdividing a parcel at a later date.

In other words, the County proposes that agriculture be a use in most zones, but offers no protections for those lands. Instead, agricultural land not in the Ag zone may be developed subject to the underlying zoning. This seems perverse in a County that professes to value agriculture.

13. Special development provisions listed under the Methow planning area zones should be restored.

A number of important conditions are removed from the special provisions sections of Methow planning area zones under the draft Zone Code. These include Methow Review District zones (MRD UL20, VF5, VF1 and VF 12,500), the Rural Residential District (RRD) zone, the Urban Residential (UR) zone, and the Low Density Residential (LDR) zone. Conditions dropped are virtually identical under all zones and include conditions limiting sign size, disallowing density bonuses under short subdivision, restricting sewage disposal facilities from the 100 year floodplain and requiring a minimum of 20 to 35 acres for inns, lodges, guest ranches, campgrounds, and RV parks. We see no reason for removing these important conditions from the code that have worked well for our community and strenuously object to sewage disposal facilities being allowed in the 100-year floodplain.

In addition, landscaping requirements for inns, lodges, guest ranches, campgrounds and RV parks in the special conditions sections of the above zones are less well-defined and we fear will be less effective. Under the existing code these types of development must provide screening by Type II visual buffer—as specified in the landscape ordinance. The draft Zone Code eliminates the landscape ordinance and only asks that “screening of parking areas within 100 feet of the property line of adjacent residential properties shall be required.” The previous more specific requirements for landscaping and the landscaping ordinance should be restored.

Finally, a new provision has been added to which we have no objections clarifying that when a pre-application consultation with a community group is required (a Sub-Unit A requirement), vesting²⁰ is to occur at the time the pre-application is requested.

14. Residential transient tourist accommodations (nightly rentals) are allowed in all zones but are more restricted in the Methow planning area. The County should adopt a consistent approach countywide.

Under a new chapter, 17A.270, nightly rentals will be allowed in all zones in the county, rather than only in the Methow planning area. Over most of the county, nightly rentals are permitted outright but must obtain a nightly rental permit. The only other condition is that nightly rentals look like a residence.

Nightly rentals in the Methow planning area must obtain a conditional use permit and comply with more substantial conditions—most taken from current code

²⁰ The legal right to a specific set of densities and development regulations current at the time.

conditions outlined under the MRD zone.²¹ Conditions requiring neighborhood notification of a nightly rental permit application and a sunset clause limiting new nightly rentals are omitted. A new requirement for annual renewal of conditional use permits is added.

Nightly rentals offer the opportunity for property owners to supplement their incomes and to accommodate tourists wishing to enjoy what the county has to offer. The downside is that property owners may not be around to supervise unruly renters. And, the unintended consequence of nightly rentals should not be to further restrict the supply of long-term rentals and drive up rents further. As is true for the Methow Review District, all nightly rentals in the Methow watershed and throughout the county should be subject to a Conditional Use Permit. This will provide neighbors a chance to weigh in and protect their interests, while improving administrative efficiency, consistency and fairness.

15. New provisions allowing for “limited divisions” in R5 and R20 zones and permitting the creation of nonconforming lots should be removed.

New language under the R5 and R20 zones provides for “limited divisions.” Lots within the R5 and R20 zones may be divided allowing one additional lot smaller than the minimum zone requirements with the exception that no lots smaller than one acre may be created. So a four-acre lot in an R5 zone may be divided once creating a one-acre lot and a three-acre lot. Or an eight-acre lot in an R5 zone could be divided into a five-acre lot and a three-acre lot. A limited division may occur only once on each lot, as it existed on January 1, 2016. Ostensibly, this provision eases the impact of “downzoning” on owners of property that has changed from one-acre to five- and 20-acre lot sizes. Our concern is that too many new non-conforming lots would be created, which are already a problem for the county.

It is important to point out that no new areas of privately owned land are zoned for 20-acre lots under the draft Zone Code. The Molson Overlay, where private lands are designated R20, was already zoned for 20-acre minimums and so was not downzoned. In fact, this area has been up-zoned when you consider new provisions allowing for multifamily housing and mobile home parks at five units per acre and cluster platting with density bonuses in the R20 zone.

16. Setback requirements in the rural zones (R1, R5, R20) should not be reduced, as outlined under the proposed code. Zoning Code setback requirements and lot coverage limits should be reviewed for all zones to better conform to rural conditions and mitigate impacts to groundwater recharge.

²¹ Under OCC 17.14.115, current residential transient tourist accommodations, current conditions include: limit of one dwelling unit rented per owner, must look like a residence, sign restrictions, no mobile homes, manufactured housing, travel trailers or RVs, maximum occupancy of 10 persons, valid health district permit, operation must be compatible with neighborhood, a valid UBI number.

Outside the Methow planning area, manufacturing, commercial and industrial structures over 35 feet in height would be required to set back only one foot for every foot in height rather than the current two feet. For example, a 60-foot commercial structure adjacent to a residential structure will have a 60-foot rather than a 120-foot setback requirement. The two-foot setback for one foot of height requirement was not reduced for zones in the Methow planning area and remains at two feet of setback for one foot of height.

The current setback and lot coverage limits in the Zoning Code deserve more scrutiny and are generally inappropriate within a rural context. Standards in the existing and proposed code are similar to those for urban areas. For example, the setback requirements in the rural zones, R1, R5 and R20, are: front yard 25 feet, side yard 5 feet, backyard 25 feet. These are the same setbacks required in dense single-family neighborhoods in Seattle. What is even more concerning is that there are no lot coverage limits for these zones.

It is important to point out that the county's Zoning Code allows almost every conceivable use, from heavy manufacturing to single family housing, to occur within its rural zones. Granted, many uses would be allowed subject only to a CUP, but these setback and lot coverage standards set a very low bar as a starting point for negotiating CUP conditions. In addition, the lack of lot coverage limits poses a threat to the county's groundwater resources. The potential for large expanses of impervious surfaces associated with a manufacturing facility or a packing plant under these zones could have significant impacts on aquifer recharge and groundwater quality.

17. Outside Methow planning area, density of RV parks, campgrounds, hotels, motels, etc. is determined by Okanogan County Health District standards for on-site treatment.

The provision in the minimum requirement district stating that "density of RV parks, campgrounds, hotels, motels, etc. shall be determined by Okanogan County Health District standards for on-site treatment" has been added to the R1, R5, R20, AR, SR zones. This is a standard long overdue for revision. First, "etc." should be removed or defined. Guidelines and conditions similar to those included under special provisions for MRD zones should be added and require development by CUP permit on lots which meet or exceed minimum lot size requirements.

18. Development standards and conditions should be developed to govern marijuana operations.

Under the draft Zone Code, marijuana operations are allowed as a conditional use in all zones with few development conditions or standards specified (17A.280). There are almost no conditions included in this chapter on how these operations should occur, other than meeting state-mandated requirements. The county should look at model ordinances for marijuana operations and refine this chapter of the code.

19. New uses added and other changes made to the District Use Chart (Chapter 17 A.220) raise concerns. Agricultural related industry should be made a conditional use.

The proposed code makes a variety of changes to the District Use Chart including a smattering of new uses. Some uses that were conditional are now permitted outright. All references to binding site plans and planned developments (PD) have been removed. Uses formerly permitted only with a PD now require a conditional use permit (CUP). Campgrounds and RV parks, event centers, marijuana operations are allowed as CUP in all zones. Nightly rentals are permitted outright in most of the county (subject to a nightly rental permit) but require a conditional use permit in the Methow planning area.

We've already addressed concerns with some of these changes. We are also concerned about: 1) a new provision under the district use chart for "agricultural related industry"²² which is to be permitted outright in almost all zones,²³ and 2) new language in height limit sections of zone classifications permitting agricultural commodity storage²⁴ at heights up to 100 feet—equivalent to a nine or ten story building.

Based on these changes, agricultural storage facilities up to 100 feet in height would be permitted outright in almost all residential zones throughout the county. These are potentially structures of enormous height and size and should only be permitted with a conditional use permit.

Attachments

1. MVCC Comments on the Draft Zone Code, February 26, 2016
2. MVCC Comments on Determination of Significance and Scope of EIS for the Okanogan County Zoning Update, November 12, 2015
3. Futurewise Comments on Determination of Significance and Scope of EIS for the Okanogan County Zoning Update, November 12, 2015
4. Methow Valley Citizens' Council and Futurewise v. Okanogan County, Petitioners/Plaintiffs' Opening Brief

²² Under definitions, 17A.020.055, agricultural related industry defined as "those industrial uses directly related to the sorting, grading, packaging, storage, of agricultural products and/or physical or chemical alteration of agricultural products. Such industries include, but are not limited to: cold storage plants, controlled atmosphere, produce packing and processing facilities, and their accessory uses."

²³ Including minimum requirement, R1, R5, R20, C, IN, MRD, RR and LDR. Oddly required as a conditional use in Agricultural Residential (AR) and neighborhood commercial (NC).

²⁴ Under definitions, 17A.020.050), agricultural commodity storage is defined as "storage for agricultural product's to be sold or processed at a later time" and would fall under "agricultural related industry" on the district use chart.

5. Methow Valley Citizens' Council and Futurewise v. Okanogan County, Proposed Findings of Fact, Conclusions of Law, and Order. Judge Culp did not approve this order.
6. State of Washington, Department of Ecology's Amicus Curiae Brief, Oct 6, 2015
7. MVCC Comments on Comprehensive Plan Determination of Nonsignificance, June 16, 2014
8. MVCC Comments on Comprehensive Plan and Interim Zoning Code, June 16, 2014
9. Expert testimony of Laura Strauss, Hydro geologist. Review of Okanogan County documents regarding water quantity and water, May 6, 2014
10. MVCC Comprehensive Plan and EIS Comments, June 20, 2013

The Methow Valley Citizens' Council

February 26, 2016

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To: Okanogan County Regional Planning Commission Chair and Commissioners
Phil Dart, Dave Schulz, Marlene Rawley, Tamara Porter, Mark Miller

CC: Ben Rough, Perry Huston

Re: Draft Zone Code

Dear Mr. Chairman,

The purpose of this letter is to provide information to the Planning Commission (PC) regarding the proposed Zone Code that is now before you. We recognize that the official public comment period has not yet been announced. However, we want to ensure that the PC receives the full range of information regarding the potential consequences if the proposed Zone Code is adopted as written. To that end, we are enclosing the comments from the Methow Valley Citizens Council (MVCC) in response to the Planning Department's request issued in the fall of 2015 for Scoping comments on the proposed Environmental Impact Statement (EIS). This letter summarizes and updates some of the main points of that earlier letter and we ask that you give both documents your careful attention. We also enclose the Scoping comments submitted by Futurewise, because they are relevant to your deliberations and we support the contentions therein.

While we are not aware of any changes that may have been suggested since the version of the Zone Code sent out for EIS scoping, we believe that "tweaking" the code will not be adequate because of fundamental flaws in the document that will have far-reaching and negative consequences for Okanogan County.

What follows are the key points from our scoping letter. Our primary recommendations are shown in bold.

TIMING

As you know, MVCC and Futurewise have brought a legal challenge on the Okanogan County Comprehensive Plan upon which the Zone Code is based. Judge Culp has indicated that he will render his decision by the end of February or soon thereafter. While no one can predict the outcome of that decision, should MVCC/Futurewise prevail on all or some of the issues under contention, the Comprehensive Plan could be remanded to the County for revisions. This would potentially put a hold on your work, or require substantial revisions. If either Okanogan County or MVCC/Futurewise appeal the Superior Court decision, that would also prolong the uncertainty surrounding adoption of the Zone Code.

The Methow Valley Citizens' Council

One of the key contentions of the plaintiffs in the lawsuit is that an EIS on the Comprehensive Plan is far preferable to an EIS on the Zone Code. The purpose of the EIS should be to inform the PC and decision makers of the environmental consequences and trade-offs among one or more alternatives. The aggressive timeline for the PC hearing (now scheduled for March 30, 2016) suggests that either: (1) the EIS will be rushed, incomplete, or fail to evaluate viable alternatives in a good faith manner; or (2) that the PC recommendations will be disregarded in the first instance.

In addition to the EIS, the draft Cluster Land Division/Subdivision code is not available to review at this time; the Shorelines Master Program has yet to be approved by the Department of Ecology; and the Critical Areas Ordinance update is far behind schedule. How can Zone Code maps be produced without these underlying elements in place? And how can the public (or the PC or BOCC) have a complete picture of what development is or is not allowed? The current timetable for the Zone Code update will not facilitate good planning. ***We ask that the PC recommend a delay until greater clarity is available from the other ordinances mentioned above.***

DENSITY AND WATER RESOURCES

Densities allowed under the draft Zone Code are completely inconsistent with available water resources. Rural 1 (high density rural) provides for one primary residence, one accessory dwelling, or five apartment units on a one acre lot. Rural 5 allows up to 25 apartment units, while Rural 20 allows up to 100 apartment units. The data clearly shows that there is insufficient water to accommodate such development, not to mention being out of scale and character for a rural area. Further, if the underlying zoning is intended to guide development in the areas regulated by the Shoreline Master Program, then the future of our shorelines will include a high likelihood for dense housing development along the Lower Methow and Okanogan rivers, and other drainages in Okanogan County.

The basis of good planning is to consider the resource availability for development *before* zoning. The County seems to defend the draft Zone Code by contending that development pressure is low, and therefore these densities will never be realized. We have also heard "we'll deal with water on a case by case basis during permitting." We challenge both of these statements. First, the growth projections for Okanogan County do not include second homes. Second, the county has a poor track record on coordinating and enforcing permitting across departments. We are also very concerned about the Commissioners' current pursuit of legislative strategies to undermine State Public Health regulations on potable water supply.

We envision the potential for lawsuits as buyers of property learn that they are denied building permits because of the inability to document the availability of legal water. Or, if a building permit is issued, the water may be curtailed if the domestic well infringes on a senior water right or in-stream flow.

We ask that the Planning Commission insist on the application of the most current information about water availability to determine allowable densities throughout Okanogan County.

WILDFIRE

We are extremely disappointed to note the lack of consideration of wildfire danger in the Zone

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Code. We have recommended that the Comprehensive Plan incorporate the 2013 Community Wildfire Protection Plan in the Comprehensive Plan. Instead, we have been told that "fire would be handled through zoning". However, the draft Zone Code appears to be virtually silent on the topic of fire. We therefore assume the County will rely on future individual homeowners and developers of subdivisions to voluntarily do the right thing to protect their families and first responders.

Surely we have learned from the past two tragic fire seasons that reliance on purely voluntary fire prevention measures can lead to very tragic consequences. There is a critical connection between local planning, zoning, and building codes in lessening the effects of wildfire in the future. **The PC should insist that the Zone Code include provisions that account for wildfire hazard.** Such provisions are readily available, and have already been adopted by a number of counties in Washington and across the West.

WATER QUALITY

MVCC believes that the densities proposed, especially in the Rural High Density zone, will pose a risk of too many septic systems on one acre lots that threaten to contaminate groundwater needed for domestic drinking water wells. This groundwater contamination will inevitably negatively affect surface water quality.

SUMMARY

In conclusion, **we ask that the PC obtain answers to the issues we raise from the Planning Department.** MVCC believes that there is considerable support in Okanogan County and the Methow Valley for a Zone Code that enables future development to occur in keeping with the ability of our natural resource base to sustain it.

Thank you for the time and effort each of you put into the important work of the Planning Commission.

Sincerely,



Maggie Coon, Board Chair
Methow Valley Citizens Council

Enclosure (Zone Code Scoping comments from Methow Valley Citizens Council and Futurewise)

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November 13, 2015

Mr. Ben Rough, Senior Planner

Okanogan County Office of Planning and Development

123-5th Ave North, Suite 130

Okanogan, Washington 98840

Re: Determination of Significance and Request for Comments on Scope of the EIS for the Okanogan County Zoning Update.

Dear Mr. Rough:

Thank you for the opportunity to comment on the Scope of the proposed Environmental Impact Statement (EIS) for the Okanogan County Zone Code Update, pursuant to the State Environmental Policy Act (SEPA). The Methow Valley Citizens' Council (MVCC) offers the following comments for your consideration:

TIMING

The draft Zone Code and the EIS come at an inopportune time. As you know, the Futurewise/MVCC lawsuit against Okanogan County regarding the

Comprehensive Plan is scheduled for a hearing in Superior Court on November 23, 2015. It would seem both fiscally prudent and good policy to delay further expenditure of dollars, staff resources and the involvement of the Planning Commission until the Court has offered guidance to all parties in its decision. MVCC is unaware of any legal deadlines that would drive the self-imposed schedule that Okanogan County has undertaken.

No one can predict the outcome of the court action. However, should Futurewise/MVCC prevail in the lawsuit, the Court may well remand the Comprehensive Plan on which the draft Zone Code is based, thereby putting a hold on the Zone Code and the EIS. One of the key contentions of the plaintiffs is that there should have been a lasting Determination of Significance and EIS on the Comprehensive Plan, not on the Zone Code. Furthermore, the purpose of an EIS should be to inform the decision makers of the environmental consequences of one or more alternatives. The aggressive timeline for the Planning Commission to hold hearing on the draft Zone Code in January 2016 suggests that either (1) the proposed EIS will be rushed, incomplete, or fail to evaluate viable alternatives in a good faith manner, or, (2) that the Planning Commission recommendation will be disregarded in the first instance.

Similarly the draft Cluster Land Division/Subdivision code is not available for review by the public at this time, and it represents a key provision of development and growth regulation. How can the

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public reasonably be expected to see the complete picture of what is allowed and not allowed with this missing piece? (See comment 11 below)

We note that the Critical Areas Ordinance update is far behind schedule, and the county's Shorelines Master Program has yet to be approved by Ecology. How can Zone Code maps be produced without these underlying requirements in place?

For these reasons, MVCC suggests that the draft Zone Code, EIS, and Planning Commission hearings be put on hold until there is greater clarification on the status of the Comprehensive Plan. If Okanogan County prevails on all counts, then the clock can be started again.

SCOPING

If Okanogan County persists in proceeding with the EIS, we offer the following suggestions and comments:

1. The Methow Valley Citizens' Council supports the County's Determination of Significance for the draft Zone Code.

While MVCC believes that the Determination of Significance should have been retained for the Comprehensive Plan, we have no quarrel with the County's determination that "...this proposal (the draft Zone Code) is likely to have a *significant adverse impact* (emphasis added) on the environment."

2. The No-Action alternative should be to retain the existing Zone Code.

The impacts of the draft Zone Code should be compared to the existing Zone Code in terms of density, water supply and quality, transportation, air quality, public services and safety, Critical Areas, Shorelines, and Resource Areas. Other alternatives to be comparatively analyzed for environmental consequences include the draft Zone Code included in the Comprehensive Plan update dated June 15, 2005, and the October 16, 2009 draft Zone Code.

3. Project Review and Enforcement:

- **The EIS should fully examine the authorities and describe the regulatory timing and process gaps among the Planning, Building, and Health Departments for project applications, review and enforcement, especially as they relate to water quantity and water quality.**
- **The EIS should include a description of the authorities and practices of the Health Department regarding their process for determining "The adequacy and availability of lawful water supplies."**

Appendix A of the Scoping Notice purports to describe the project review process in Okanogan County. One question is whether the County has the process in place to adequately mitigate the consequences of this draft Zone Code. A more pertinent question is whether Okanogan County has

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the authorities in place and the will to require and enforce those mitigation measures. MVCC is aware of a number of past and present developments that indicate a lack of coordination among departments. The EIS should fully examine the authorities and gaps for land use regulation that lie within the Planning, Building, and Health Departments, especially as they relate to water quantity and water quality (see comment 5 below). We suggest that the EIS include a description of the authorities and practices of the Health Department regarding : "The adequacy and availability of lawful water supplies is required for the issuance of any subdivision conditional use permit and building permit under the requirements of state law and implementing cases." (see June 21, 2015 letter from Ecology to Mr. Huston.)

4. Impacts of high-density development in Rural Zones:

- **The full build-out allowed under the draft Zone Code should be analyzed relative to density, uses, transportation, public services, public safety, Critical Areas, Shorelines, Resource Areas, air quality, water supplies and water quality.**

The densities allowed by the draft Zone Code in rural areas are simply stunning. Rural 1 (High density rural, an oxymoron if there ever was one) provides for one primary residence, one accessory dwelling, or five apartment units on a one acre lot. Rural 5 Zone allows up to 25 apartment units, while Rural 20 allows up to 100 apartment units.

5. Air quality:

- **The EIS should carefully evaluate and model the impacts of increased density, outdoor burning, and in indoor wood stove heating.**

Air quality is of significant concern in parts of Okanogan County, especially for PM 2.5 caused by outdoor and indoor burning during times of air stagnation. Presumably, a significant portion of new homes will heat with wood burning stoves. Given the densities allowed by the Comprehensive Plan and draft Zone Code, air quality could suffer to the point that the County could reach non-attainment status sometime in the future. We ask that the EIS carefully evaluate and model the impacts of increased density, outdoor burning, and in indoor wood stove heating. If the County intends to offer the requirement for certified stoves in new construction as mitigation, then the County needs to enforce that provision rigorously.

6. Water Resources:

- **The EIS of zone designations should analyze the likely impacts of the development allowed within that zone, to include impacts on senior water right holders and users and instream flows for the Okanogan and Methow Rivers.**
- **The EIS should consider an alternative which relies on studies (such as the Aspect study) that document lack of water availability in the Methow Valley.**

We understand that interruptible water rights are not allowable for residential development. Given that some permit exempt wells in some areas may be required to cease pumping to protect senior water rights and insteam flows, **we ask that the County describe the authorities and**

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procedures to identify and notify these users and to inform future purchasers of land of the risk they take. *Caveat emptor* is not an adequate policy given the complexity of the water resources situation in Okanogan County. The EIS should consider an alternative which relies on studies (such as the Aspect study) that document lack of water availability in the Methow Valley.

7. Water quality:

- The EIS should explain what ordinances or other regulations are in place, and how they are enforced, in order to mitigate the risk of groundwater contamination from on-site septic systems in higher density zones.
- The EIS should clarify how ordinances or other regulations will be developed and enforced to mitigate the risk of surface water contamination from development activities and/or installation of on-site septic systems in higher density zones.

Groundwater: Given the densities possible, especially in the Rural High Density zone, it is of paramount importance that Okanogan County has the staff, expertise, and authorities to regulate well drilling and septic systems on one acre properties. The risk of too many septic systems on smaller lots poses a greater threat of contaminating groundwater needed for domestic drinking water wells and for degradation of surface water quality. As stated in Ecology's June 21, 2013 letter to Mr. Huston, "In higher density zones, the County will need to describe how areas of higher risk to ground water contamination from on-site septic systems will be identified based on geology, soil types, water table characteristics, proximity to water bodies, groundwater monitoring, etc...". We ask that the EIS explain what ordinances are in place to mitigate these risks.

Surface Water: Again, as stated in Ecology's June 21, 2015 letter to Mr. Huston, "Within the high density zone designations, please describe how areas of higher risk to surface water contamination from development activities and/or installation of on-site septic systems will be identified, based on geology, soil types, water table characteristics, proximity to water bodies, etc. Please explain how ordinances will be developed to mitigate the risk by specifying stormwater construction requirements or best management practices, required septic system type or technology, location, etc.

8. Agriculture:

- The EIS should examine how much agricultural land could be lost to other uses under the draft Zone Code.

It appears that the Ag zoning description exists, but we are unable to find any ag land designated on the zone maps. If Ag has been converted to Rural 20, then existing ag land could then have one primary and one accessory dwelling, or five apartment units per acre for a total of 100 units.

9. Methow Review District "Hardship" Conditional Use Permits (CUP):

- The EIS should evaluate the visual impacts and impacts on adjacent property values of such hardship dwellings, as well as the availability of water and septic.

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The Draft Zone Code allows an administratively granted CUP on non-conforming lots for "demonstrated family hardship" (undefined) cases in the MRD in all zone classes. Unlike other CUPs, this hardship is granted at the discretion of the Planning Director nee Zoning Administrator nee Zoning Adjustor. No advance notice of application to adjacent property owners would be provided. It is apparently the intent of this CUP to allow a temporary dwelling to be installed on properties in addition to the primary residence. Since the hardship dwelling would have to be removed after some time limit, it can be assumed that the only practical dwelling would be a mobile home, single wide or double wide. There appears to be no requirement for a Health Department determination of adequate water and septic, unlike accessory dwellings. The EIS should evaluate the visual impacts and impacts on adjacent property values of such hardship dwellings, as well as the availability of water and septic.

10. Wildfire:

- **The EIS should evaluate the impact of what the draft Zone Code does and fails to do in wildfire prevention, preparation and response, and how inadequate planning for new developments in WUI areas may place homeowners and responders at greater risk.**
- **The EIS should evaluate the additional risk to future property owners of failing to plan adequately for flash flood events in known at-risk areas.**
- **The EIS should describe the current progress in accomplishing those policy action items, and plans for completion if the CWPP is to be used as a legitimate tool for review of development proposals.**

Like the Comprehensive Plan, the draft Zone Code is virtually silent regarding wildfire. Other than noting that building permits, subdivisions, and minor land use applications would be reviewed against "wildfire protection policies," there is no mention of wildfire prevention, preparation or protection measures in the draft Zone Code. There is also no reference to the county's Community Wildfire Protection Plan (CWPP), which should form the foundation for good policies such as those found in the Wildland Urban Interface (WUI) Code. Given the devastating fires in Okanogan County in the past two years and the lessons that should have been learned following the loss of hundreds of homes in both events and three firefighter fatalities in 2015, it is difficult to understand the County's resistance to acknowledging the relationship between land use planning and fire prevention and response. Setting up a situation in which future housing developments can be built in the WUI without specific requirements to allow for the safe ingress and egress of residents and equipment, and without ensuring adequate water for initial attack is a hazard to future homeowners as well as first responders. The EIS for the draft Zone Code should evaluate not only what is in the draft, but what is lacking. In this case, we ask that the EIS evaluate the impact of what the draft Zone Code does and fails to do in wildfire prevention, preparation and response, and how inadequate planning for new developments in WUI areas may place homeowners and responders at greater risk.

Similarly, the well-established relationship between severe wildfires and subsequent flash flood/debris flow events needs to be acknowledged, and is not. Adequate measures that should be in place to prevent or mitigate building in areas that have been identified as at-risk for such events

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are not found in the draft Zone Code. There are several studies completed or underway in the burned areas of the Carlton Complex and the 2015 wildfires that identify areas at risk of damage to "life and property" for 5 – 7 years following a fire; at a minimum these locations should be incorporated into the draft Zone Code. Since this has not been done, the EIS should evaluate the additional risk to future property owners of failing to plan adequately for flash flood events in known at-risk areas.

Appendix A of the scoping notice mentions "wildfire protection policies" several times. Apparently this refers to the 2013 Community Wildfire Protection Plan (CWPP). A quick examination of the mitigation measures in the CWPP shows that Okanogan County is the lead agency on a number of high priority measures, yet only a few of those measures have actually been completed, and many have been deleted. For example, the CWPP has not been incorporated into the Comprehensive Plan and the WUI standards that would apply to buildings, roads and subdivisions have not been adopted. If the 2013 CWPP is the "wildfire protection policy" on which the County will rely in the review process for proposed development, then it is inadequate until the high priority action items related to Policy are implemented and functioning. The EIS should describe the current progress in accomplishing those policy action items, and plans for completion if the CWPP is to be used as a legitimate tool for review of development proposals.

11. Planned Unit Developments (PUDs):

- **It is not possible to assess the full effect of the draft Zone Code without having the Cluster Land Division/Subdivision ordinance to review, nor is it possible to suggest the full range of scoping comments and alternatives given this lack.**

A major issue of concern for the Methow More Completely Planned Area (MCPA) is associated with Planned Developments (PD) now called planned unit developments (PUD). The new PUD chapter remains a much-reduced version of the original PD. However, PD permits will no longer be required in the MCPA—the draft code effectively makes the PUD process optional. Development activities that used to require a PD permit in the MCPA will now be processed as Conditional Use Permits (CUP), and when appropriate, will be subject to the new Subdivision Ordinance—to be called the "Cluster Land Division" ordinance. However, there is no assurance the good standards and density bonus requirements of the original PD will be included. Again, it is not possible to assess the full effect of the draft Zone Code without having the Cluster Land Division/Subdivision ordinance to review, nor is it possible to suggest the full range of scoping comments and alternatives given this lack.

12. Visual Impacts:

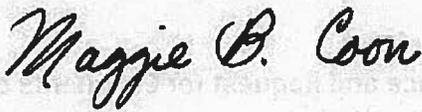
- **The EIS should examine the visual impacts of allowing 9 or 10 story agricultural commodity storage buildings in the zones where they are to be allowed.**

Of particular concern is Agricultural Commodity Storage, with height limits up to 100 feet (about 9 to 10 stories)—a new use to be allowed in most zones throughout the County including the MCPA. Under Definitions (17A.020.050), the use is defined as "storage for agricultural products to be sold

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or processed at a later time." Agricultural commodity storage does not show up on the District Use Chart but in the zone sections defining height limits. The EIS should examine the visual impacts of allowing 9 or 10 story agricultural commodity storage buildings in the zones where they are to be allowed. Such buildings would be out of scale even in Okanogan County's industrial areas, and grossly inappropriate in other rural zones.

Thank you again for the opportunity to comment.



Maggie Coon
Board Chair
Methow Valley Citizens' Council

Cc: Tim Trohimovich, Futurewise Director of Planning & Law



November 12, 2015

Mr. Ben Rough, Senior Planner
Okanogan County Office of Planning & Development
123 5th Ave. N, Suite 130
Okanogan, Washington 98840

Dear Mr. Rough:

Subject: Comments on the Determination of Significance and Request for Comments on Scope of the EIS for the Okanogan County Zoning Update

Sent via email to: brough@co.okanogan.wa.us

Thank you for the opportunity to comment on the Determination of Significance and request for comments on scope of the environmental impact statement (EIS) on the Okanogan County Zoning Update. We agree with Okanogan County that an EIS should be prepared on the zoning code update. We generally concur with the areas identified for analysis and the preparation of mitigating measures in the scoping notice. We also have additional comments in the scope of the EIS.

Futurewise is working throughout Washington State to create livable communities, protect our working farmlands, forests, and waterways, and ensure a better quality of life for present and future generations. We work with communities to implement effective land use planning and policies that prevent waste and stop sprawl, provide efficient transportation choices, create affordable housing and strong local businesses, and ensure healthy natural systems. We are creating a better quality of life in Washington State together. We have members across Washington State including Okanogan County.

The EIS must analyze the impacts of zoning code update on fire services and fire hazards

Fire services and police services are elements of the environment that must be evaluated in the Draft EIS because the proposed zoning regulations will have a significant impact on fire responses.¹ For the second year in a row, Okanogan County has experienced a record breaking fire. In 2014, Okanogan County endured the largest fire in Washington history. In 2015, Okanogan County had to endure an even larger fire.

The Okanogan County *Community Wildfire Protection Plan* has identified residential growth as having a serious impact on fire hazards and fire response. As the *Community Wildfire Protection Plan* states:

¹ WAC 197-11-444(2)(d)(i); WAC 197-11-444(2)(d)(ii); WAC 197-11-440(6).

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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.²

These serious impacts need to be evaluated in the Draft EIS and mitigation measures identified.

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.³ 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.⁴ This is time consuming, resource intensive, and the Sheriff has very limited resources, 20 to 30 officers, to do this important work.⁵ The Carlton Complex Fire this year burned 400 square miles.⁶ If just eight square miles zoned R-1 where 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.⁷

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.⁸ So the county will not be able to afford to hire Sheriff Deputies to serve these new homes.

² *Okanogan County, Washington Community Wildfire Protection Plan* p. 88 (2013) accessed on Nov. 12, 2015 at: http://file.dnr.wa.gov/publications/rp_burn_okanogan_cwpp_2013update.pdf and in the record of the comprehensive plan update. If the county would like a copy of any of the documents referenced in this letter and not provided with the letter, please contact the author and we will furnish the county with a copy.

³ Transcript of KUOW "The Record" *One Wildfire Victim Never Got an Evacuation Notice, Here's Why* p. 3 (July 21, 2014) enclosed with this letter and in the record of the comprehensive plan update.

⁴ *Id.* at p. 2.

⁵ *Id.* at pp. 2 - 3.

⁶ InciWeb - Incident Information System Carlton Complex in the record of the comprehensive plan update.

⁷ Transcript of KUOW "The Record" *One Wildfire Victim Never Got an Evacuation Notice, Here's Why* pp. 2 - 3 (July 21, 2014).

⁸ Julie Ann Gustanski, Ph.D., LLM and David Scarsella, M.S., *Economic Analysis of Conservation Efforts in Okanogan County* p. 44 (2014) accessed on Nov. 12, 2015 at: <http://wdfw.wa.gov/publications/01605/> and in the record of the comprehensive plan update.

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The proposed zoning applies the high-density R-1 zone to several areas that are served by dead-end roads. 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 Road.⁹ The Firewise Principles recommend “‘two ways out’ of the neighborhood for safe evacuation during a wildfire emergency.”¹⁰ So does the U.S. Fire Administration.¹¹ The value of a second way to access homes is shown by one of last year’s 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 ...”¹²

The high density R-1 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.¹³ 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. 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.

Five acre zoning is also served by narrow one-lane roads. Private land in an inholding on the Middle Fork of Gold Creek within the National Forest boundaries is zoned Rural 5, with a five-acre minimum lot size.

The former Okanogan County *Community Wildfire Protection Plan* recommended “[i]ncorporat[ing] the Okanogan County Community Wildfire Protection Plan into the Okanogan County Comprehensive Plan, where applicable.”¹⁴ The current *Community Wildfire Protection Plan* reiterates this recommendation.¹⁵ But the comprehensive plan and

⁹ Google Earth 2013 Aerial Images showing Alta Lake, Eagle Crest Drive, Harmony Heights Road, Highway 20, Patterson Creek Road in the record of the comprehensive plan update.

¹⁰ *Firewise Toolkit A Guide to Firewise Principles* accessed on Nov. 12, 2015 at: <http://www.firewise.org/wildfire-preparedness/firewise-toolkit.aspx> and in the record of the comprehensive plan update.

¹¹ FEMA U.S. Fire Administration, *Wildfires: Protect Yourself and Your Community* *2 accessed on Nov. 12, 2015 at: https://www.usfa.fema.gov/downloads/pdf/publications/wildfires_protect_yourself_and_your_community.pdf and in the record of the comprehensive plan update.

¹² 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) in the record of the comprehensive plan update.

¹³ Email from Isabelle Spohn (Sept. 5, 2014) enclosed with this letter.

¹⁴ *Okanogan County, Washington Community Wildfire Protection Plan* p. 199 (Jan. 30, 2009) in the record of the comprehensive plan update and accessed on Nov. 12, 2015 at: http://file.dnr.wa.gov/publications/rp_burn_cwppokanogan.pdf

¹⁵ *Okanogan County, Washington Community Wildfire Protection Plan* p. 97 (2013).

proposed zoning do not include any provisions from the *Community Wildfire Protection Plan*.¹⁶ For example, the *Community Wildfire Protection Plan* recommended the adoption of “stringent regulations to insure fire-safe development of rural subdivisions (see FIREWISE or similar programs for specific recommendations).”¹⁷ There is no comprehensive plan policy calling for implementation of this recommendation and no zoning regulations that would implement the recommendation that we can find. In fact, the Planning Commission rejected the *Community Wildfire Protection Plan* recommendations.¹⁸ The Draft EIS needs to analyze these failures to protect people and property and how the proposed zoning will address them. The Draft EIS must also identify measures to mitigate these impacts.

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.¹⁹ Converting “much of the landscape historically prone to frequent fires” to agriculture has lowered the risk of wildland fires.²⁰ 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.”²¹ The impacts of converting this farmland to rural residential development on community fire safety as provided for in the proposed zoning regulations must be analyzed in the Draft EIS and mitigation measures identified.

The EIS must analyze the impacts of the zoning code update on senior water rights holders, ground water resources, stream flows, and lake levels

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.²² Water resources are very limited in Okanogan County. Within the Methow Watershed, Water Resource Inventory Area (WRIA) 48, and the Okanogan Watershed, WRIA 49, “most if not

¹⁶ Okanogan County Resolution 119-2014 *Comprehensive Plan of 2014* pp. 4 – 36.

¹⁷ *Okanogan County, Washington Community Wildfire Protection Plan* p. 88 (2013) accessed on Nov. 12, 2015 at: http://file.dnr.wa.gov/publications/rp_burn_okanogan_cwpp_2013update.pdf and in the record for the comprehensive plan update; Okanogan County Resolution 119-2014 *Comprehensive Plan of 2014* pp. 4 – 36. A guide to Firewise principles can be found here: <http://www.firewise.org/wildfire-preparedness/firewise-toolkit.aspx>.

¹⁸ Okanogan County Resolution 119-2014 Attachment D Finding of Fact 12.

¹⁹ *Okanogan County, Washington Community Wildfire Protection Plan* p. 98 (2013).

²⁰ *Id.*

²¹ *Id.*

²² WAC 197-11-444(1)(c); WAC 197-11-440(6).

all of the available water has already been allocated.”²³ Parts of the water basins in the county are closed to new water appropriations.²⁴ Water is in such short supply that:

[The Washington State Department of] 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.²⁵

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 [the proposed comprehensive] plan would provide an appropriate provision for potable water supply under RCW 58.17.²⁶

The very limited water availability in Okanogan County is confirmed by the Methow Watershed Council. When the instream flow rule for the Methow was adopted, 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.²⁷ The bedrock deposits that

²³ 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) in the record of the Comprehensive Plan Update; 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) in the record of the Comprehensive Plan Update.

²⁴ *Id.*

²⁵ Letter from Washington State Department of Ecology to Perry Huston Okanogan County Planning p. 3 of 5 (April 7, 2011) enclosed in a separate email.

²⁶ *Id.*

²⁷ Methow Watershed Council Letter to the Okanogan County Commission Re: Okanogan Comprehensive Plan and watershed planning p. 1 (June 14, 2011) enclosed in a separate email.

underlie the aquifers subject to the instream flow rule “yield little water and are not considered a significant source of domestic water.”²⁸ The Council has projected that:

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.²⁹

The comprehensive plan and proposed zoning do not change the Methow Valley Planning Area Sub Unit A subarea plan. The proposed zoning does not appear to reduce the allowed densities. So the new zoning will allow the creation of 24,440 parcels without a potable water supply. These impacts must be analyzed in the Draft EIS.

“Maintaining minimum streamflow is necessary to sustain anadromous fish populations.”³⁰ 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 draft EIS. Mitigation measures need to be included to address these impacts.

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 water 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 draft EIS and mitigating measures developed.

²⁸ Expert Testimony of Laura Strauss, Hydrogeologist p. 4 (May 6, 2014) enclosed in a separate email.

²⁹ Methow Watershed Council Letter to the Okanogan County Commission Re: Okanogan Comprehensive Plan and watershed planning p. 2 (June 14, 2011) enclosed in a separate email.

³⁰ Expert Testimony of Laura Strauss, Hydrogeologist p. 12 (May 6, 2014).

Okanogan County has applied a Rural 1 zone along many streams that are already over appropriated.³¹ 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.³² In the Osoyoos and Salmon basins the 2006 ground water appropriations exceeded ground water recharge as it did for WRIA 49 as a whole.³³ “Groundwater and surface water interact throughout the [Okanogan River] watershed.”³⁴ Allowing high densities along the over allocated creeks with a hydrologic connection to ground water is a significant adverse impact that must be analyzed in the draft EIS.

Okanogan County had more permit-exempt wells drilled, 1,275, than any other county in the state between January 1, 2008 and September 4, 2014.³⁵ “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.”³⁶ The Draft EIS must analyze the impacts of these permit-exempt wells, the county’s practice of allowing these wells to be used for new development without a showing that the water is legally and actually available, and the county’s practice of encouraging growth in the rural area.

The EIS must analyze the impacts of the zoning code update on farmland

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.³⁷ In 2012, Okanogan County had 1,205,285 acres of land in farms, a broad category that includes the land owned or rented by a farming operation but not federal or state grazing

³¹ Okanogan County Resolution 119-2014 Map 1 – Comprehensive Plan Overlay (3/5/2014); 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) accessed on Nov. 12, 2015 at: http://www.okanogancd.org/sites/default/files/programs/owp/24_Technical%20Assessment.pdf and in the record of the comprehensive plan update.

³² 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).

³³ *Id.* at ES-4.

³⁴ *Id.* at 2-24.

³⁵ Tom Culhane, John Rapp, and Dave Nazy, *Permit-Exempt Domestic Well Use in Washington Final Draft* p. 10 (Water Resources Program, Washington State Department of Ecology Olympia, Washington: Nov. 25, 2014) in the record of the comprehensive plan update.

³⁶ *Id.* at p. 21.

³⁷ WAC 197-11-444(1)(d); WAC 197-11-440(6).

allotments.³⁸ The Washington State Department of Agriculture Crop Distribution Geodatabase identifies those sections, generally 640 acre squares, of land that have crops growing in 2014 and the characteristics of those crops.³⁹ Unfortunately, the zoning code update zones most of the farmland for rural residential development. This is a significant adverse impact that must be analyzed in the Draft EIS.

The EIS must analyze the impacts of the zoning code on plants and animals and their habitats

Plants, animals, their habitats, and their migration routes 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.⁴⁰ The zoning code update zones many habitats, such as riparian areas and others, for high rural densities. The Washington State Department of Fish and Wildlife's "PHS on the Web" website can help the county identify these habitats. The department can also provide the county with GIS data layers of these habitats. The impacts of the zoning code on these habitats and species must be analyzed in the Draft EIS and mitigating measures developed. The Washington State Department of Fish and Wildlife's *Landscape Planning for Washington's Wildlife: Managing for Biodiversity in Developing Areas*⁴¹ and *Land Use Planning for Salmon, Steelhead and Trout: A land use planner's guide to salmonid habitat protection and recovery*⁴² contain information that can help the county analyze these impacts and develop mitigation measures to include in the Draft EIS.

The EIS must analyze the impacts of missing the update deadlines for the critical areas regulation update and the shoreline master program update and the zoning's failure to address critical areas such as landslide hazards

The scoping notice, on pages 2 and 3, indicates that the Draft EIS will take into account the county's critical areas regulations and shoreline master program. But the county has failed to update the critical areas regulations by the deadline in the Growth Management Act. The county also failed to meet the contractual deadline to update the shoreline master program.

³⁸ US Department of Agriculture National Agricultural Statistics Service, *2012 Census of Agriculture County Profile Okanogan County, Washington* p. *1 accessed on Nov. 12, 2015 at: http://www.agcensus.usda.gov/Publications/2012/Online_Resources/County_Profiles/Washington/cp53047.pdf; 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 Appendix B* p. B-13 (May 2014) accessed on Nov. 12, 2015 at: http://www.agcensus.usda.gov/Publications/2012/Full_Report/Volume_1_Chapter_2_County_Level/Washington/ and both documents in the record for the comprehensive plan update.

³⁹ Available at: <http://agr.wa.gov/PestFert/NatResources/AgLandUse.aspx>

⁴⁰ WAC 197-11-444(1)(a)(ii); WAC 197-11-444(2)(b)(vii); WAC 197-11-440(6).

⁴¹ Accessed on Nov. 12, 2015 at: <http://wdfw.wa.gov/publications/00023/>

⁴² Accessed on Nov. 12, 2015 at: <http://wdfw.wa.gov/publications/00033/wdfw00033.pdf>

To date, neither the critical areas regulations nor the shoreline master program have been updated. So the Draft EIS must take into account that these regulations are out of date and will not protect critical areas.

The recent Oso tragedy has drawn attention to the risk to lives and property of natural hazards such as landslides, which are a type of critical area.⁴³ Areas within Okanogan County are at significant risk for damage from natural hazards including landslides.⁴⁴ The *Okanogan County, Washington All Hazards Mitigation Plan* recommends that:

Land-use planning is one of the most effective and economical ways to reduce landslide losses by avoiding the hazard and minimizing the risk. This is accomplished by removing or converting existing development or discouraging or regulating new development in unstable areas. Buildings should be located away from known landslides, debris flows, steep slopes, streams and rivers, intermittent-stream channels, and the mouths of mountain channels. In the State of Washington, restrictions on land use generally are imposed and enforced by local governments by land-use zoning districts and regulations.⁴⁵

However, the proposed zoning fails to require or encourage development to avoid landslide hazards, allowing apartment buildings with densities of five apartments per acre throughout much of unincorporated Okanogan County. The Draft EIS must analyze the proposed zoning's failure to follow the recommendations of the *Okanogan County, Washington All Hazards Mitigation Plan* and recommend mitigating measures.

We recommend that the draft EIS not be prepared until the Okanogan County superior court decides the pending SEPA appeal

The appeal of Okanogan County's withdrawal of the determination of the significance for the comprehensive plan update will be heard on November 23, 2015 and will be decided soon after the oral argument. We recommend that the Draft EIS not be prepared until this appeal is decided by the superior court as the scope of the EIS may change if the appeal is granted.

⁴³ Washington State Department of Natural Resources, Significant Deep-Seated Landslides in Washington State – 1984 to 2014 p. 1 of 5 (2/10/2015) accessed on Nov. 12, 2015 at:

http://www.dnr.wa.gov/Publications/ger_list_large_landslides.pdf; RCW 36.70A.030(5) & (9).

⁴⁴ Okanogan County All Hazards Mitigation Plan Committee, *Okanogan County, Washington All Hazards Mitigation Plan* Volume I pp. 145 – 158 (Jan. 30, 2009) accessed on Nov. 11, 2015 at:

<http://okanogandem.org/documents/AHMP/Okanogan%20County%20AHMP.pdf>.

⁴⁵ *Id.* at p. 160.

Mr. Ben Rough, Senior Planner Okanogan County

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Thank you for considering our comments. If you require additional information please contact me at telephone 206-343-0681 and email tim@futurewise.org

Very Truly Yours,



Tim Trohimovich, AICP
Director of Planning & Law

Enclosures

Transcript of KUOW "The Record" *One Wildfire Victim Never Got an Evacuation Notice, Here's Why* Mon July 21, 2014

Accessed on August 27, 2014 at: <http://kuow.org/post/one-wildfire-victim-never-got-evacuation-notice-heres-why>

Ross Reynolds: I'm Ross Reynolds this is the Record on KUOW. As you heard, good news from the wildfire front. Cooler weather is helping firefighters control those rampaging fires in eastern Washington. But for residents the long aftermath has just begun. Brenda Reagan of Brewster, Washington was able to see her home. The structure is still standing but it's not safe for her to stay there so she stayed with 15 others at her sister's house. Brenda spoke with KUOW's Bill Radke this morning. She and her husband had very little time to get out.

Brenda Reagan: Well my husband manages an apple packing warehouse in the Town of Pateros where they were, hum, experiencing the fire. I called him and asked him if everything was alright, if it was OK and then this huge funnel cloud came down over the hill at Pateros. Since it takes us over 20 minutes to get to the city of Pateros we did not think we had anything to worry about at our house. Unfortunately, after the funnel cloud came down into Pateros, it turned around and went back up the hill to our house. This all happened within a matter of minutes. My husband got home. We threw a few things in our vehicles and we could hear the fire roaring towards us like a freight train. It came over the hill and we barely were able to escape. The unfortunately thing is so many of our friends lost their homes and there was no notification of any kind. We didn't get any evacuation order, we didn't get a warning. Everyone was just left to fend for themselves. And I am just very grateful that everyone was able to get out safely. Um, there were a lot of people who were injured trying to leave. We just really would have appreciated some kind of notice in enough time so we could be safe or maybe try to save some homes.

Bill Radke: What shape is your property in today and what is your neighborhood like as you look around you and look and hear and smell?

Brenda Reagan: Um, the smell is awful. I have terrible breathing problems, I'm having a really hard time I know others are as well. Smoke is thick and hazy. There was ash falling for days. When we left we turned around and there were two funnel clouds one went behind our house and one went in the front twirling and swirling and devouring everything that was there. There is really no other reason that our house is standing but that lord blessed it. And we are very grateful and we have a bit of damage, but when we came back the next morning we were amazed to see the miracle of our house standing there. There isn't anything left. We lost our outbuilding, all of our fence, all of the vegetation, every tree around our house, the trees that are up against our house, the landscaping, the shrubbery is all burnt. It's all gone, destroyed. We have so much work to do. We don't have any power, um we don't have any telephone lines. We have nothing. Um and if you turn and look around, it looks like you have been dropped on another planet there is nothing left. Its white ash, black soot, and the fire just raged in such a way that it is just unlike anything you can imagine. It's just very devastating.

Bill Radke: How are you feeling about that lack of warning that you talked about?

Brenda Reagan: I am just in awe that no one was hurt. Because, it's very frustrating, I don't want to wait until someone does end up dying or many people do until something changes. I do not like the excuses that I have heard about it being just part of the system it takes money and it takes all of this effort, but you know we are talking about people's lives here, it shouldn't matter. It should be something that should be in place before something tragic happens. I know we don't have the population here in our rural communities, but every life is so precious and everyone deserves to be warned.

Bill Radke: Brenda Reagan Brewster, Washington. Brenda best of luck to you, we are glad you are OK, and thank you for talking with us.

Brenda Reagan: Thank you very much, I just hope that everyone keeps us in their thoughts and prayers there are a lot of people that would really appreciate their prayers.

Ross Reynolds: Brenda spoke to KUOW's Bill Radke this morning. Frank Rogers is Brenda's local sheriff in Okanogan County. This morning we asked him why Brenda never received a notification to evacuate.

Sheriff Rogers: Here is the other side you need to understand. Her house was not in that, where she was living was not in any notification at that time. We hadn't been advised by fire that any of these areas were in a trigger spot because the trouble was the fire was burning so fast that nobody knew how far ahead it was.

Ross Reynolds: So there was no evacuation notice to be issued to Brenda Reagan in Brewster?

Sheriff Rogers: Correct. She wasn't on our list yet. When we do an evacuation notice what we physically do is we physically drive every road in that area and we physically stop at every house. The trouble we had on this fire, where you got to understand, where this fire was covering over 100 square miles and there is only, I mean we only had ten of us, ten cops, we had state patrol we had everybody out there but you are talking hundreds and hundreds of miles of roads and, you know, thousands of homes. So it is so time consuming, I mean it was blowing so fast, there is no human way we could, there is just no way you're going to get to 5,000 homes, but you know just I am sorry. I mean I don't know.

Ross Reynolds: So it wasn't that Brenda did not get a notification that had gone out, no notification had gone out yet to where she was.

Sheriff Rogers: Correct. We were not told go to Brewster and start. And here is the other side of this too, I mean. We do this for a living. While we're in the fire and watching it, my guys are very good at this. It worked. The system worked. It's worked for 30 years. It worked. It is just sometimes you are going to get caught off guard. I mean it is no

different than those poor communities with tornadoes. You know, you notify, they send it but you know what, there is still destruction.

Ross Reynolds: Yea.

Sheriff Rogers: I mean is just, [where] we live we do not have tornadoes, we have wildfires. I have been a cop here for 30 years and I have never seen this, where this many homes uh, we have massive fires every year and we do not lose homes, all the time. So this is just one of those things. And I know she is frustrated and I sympathize with her 100 percent. But on this one there, it wouldn't have mattered.

Ross Reynolds: Well, is this the best system? I mean it sounds as though you weren't able to get to her and to perhaps others. Does there need to be a better system so that people get a notification to evacuate?

Sheriff Rogers: Yea, but I wish somebody, I don't know how you do it. I mean, we can go to the reverse 911 eventually, we hope.

Ross Reynolds: What is reverse 911 because some people may not know what it is? What is that?

Sheriff Rogers: It is basically a phone system where you set it up and it will dial, it's a reverse dial. It dials you, it's your house and tells you, you know whatever. You have a wildfire, you've got this. So that would be a great way.

Ross Reynolds: So if this had been in operation this past week instead of going to Brenda Reagan's house she would have gotten a phone call?

Sheriff Rogers: No. No. On evacuation notices we have to go to the house. You remember the other problem we have in this area is that we're so rural no cell coverage. I mean, I understand the frustration but when the fire was going at the same time let's say we had the 911 service in place, well when this fire blew-up we lost power, they lost phone lines. Well, once power goes out and you lose phone lines we can dial all of the 911s we want, there not going anywhere so we can't comfortably say you know we got a 911 reverse, send it out we're good. We're are trying to evacuate 600 people, there is only, you know, 20 – 30 cops now, trying to get everybody out of town. I mean you understand where I am going? I am sorry.

Ross Reynolds: It sounds extremely difficult and complicated and I can hear the frustration in your voice about being able to use the best means.

Sheriff Rogers: Well, well, I will tell you, we have huge fires every year and every year we do notifications. We've done notifications for dozens of years and we've never had a problem. Because there is no way you will ever get everybody a notification. I mean all we are trying to do is we are trying to save lives, trying to do the best we can. If you get the 911 thing working, that will help a little, but we're still going to physically drive, I

mean that just the way it's done. So, I mean we do what we can, I don't know how to improve it anymore it is just so difficult.

Ross Reynolds: Okanogan County Sheriff Frank Rogers. We also reached out to Washington's Department of Natural Resources for comment on the notification when a wildfire is coming. We will let you know what we find out. This is the Record on KUOW.

Tim Trohimovich

To: Isabelle Spohn
Cc: Ruth Dight
Subject: RE: Isabelle's Comments on 9/10/14 Comp Plan SEPA brief

From: Isabelle Spohn
Sent: Friday, September 05, 2014 2:28 PM
To: Tim Trohimovich
Cc: Isabelle Spohn; Ruth Dight
Subject: Re: Isabelle's Comments on 9/10/14 Comp Plan SEPA brief
Importance: High

I. Areas with one-acre zoning: One example would be the North Fork of Gold Creek, south of Carlton in the Methow Valley, which is a USFS road accessing Foggy Dew Campground and several trailheads. Development along the North Fork road is planned in the Interim Zoning ordinance for 1 acre minimum lot size. But the North Fork is a poorly maintained one lane U.S. Forest Service road with no constructed turnouts, a steep cutbank on one side, and a steep drop-off into the North Fork of Gold Ck on the other side. 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.

5-acre zoning: Private land in an inholding on the Middle Fork of Gold Creek (total of 71.06 Acres) within the National Forest boundaries is classified in the interim zoning ordinance as 5-acre minimum lot size. With no boundary line adjustments or consolidation of properties under one ownership, at least 11 five-acre parcels could be permitted along this dead-end, narrow one-lane dirt road under the interim zoning ordinance. With boundary line adjustments and/or consolidation of properties under one ownership, at least 14 five-acre parcels could be built upon. This bottle-neck, with no possible second exit from the drainage due to the narrow structure of the valley, could be disastrous in either wildfire or the resultant mudslides, especially if fire traffic is attempting to enter while residents are attempting to leave. During the two recent fires above, residents had to either pull over into the brush to pass each other or one of the vehicles had to back up several hundred yards.

******Note: Tim** - I say "at least" because all but one of these parcels recently purchased a "Tract C" parcel, which bisected all of the properties, from the US Forest Service. That means that a couple of the properties could now legally have more parcels. I am unable to find the exact acreages of the segment of Tract C that cut across these properties which now adds to their total acreages.

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BEFORE THE HEARING EXAMINER FOR OKANOGAN COUNTY,
WASHINGTON

In Re APPEAL OF THE MAY 9, 2014
DETERMINATION OF
NONSIGNIFICANCE ON THE
OKANOGAN COUNTY
COMPREHENSIVE PLAN UPDATE AND
THE WITHDRAWAL OF THE
DETERMINATION OF SIGNIFICANCE
FOR THE PROPOSED REVISIONS TO
THE COMPREHENSIVE PLAN,
SHORELINE MASTER PROGRAM,
CRITICAL AREAS ORDINANCE,
ZONING CODE, AND SUBDIVISION
REGULATIONS.

No.: _____

**FUTUREWISE'S AND THE METHOW
VALLEY CITIZENS' COUNCIL'S
OPENING BRIEF**

I. INTRODUCTION

As authorized by Okanogan County Code (OCC) 14.04.220A.1, Futurewise and the
Methow Valley Citizens' Council filed a timely appeal of the May 9, 2014, Washington State
Environmental Policy Act (SEPA) Checklist and Determination of Nonsignificance (DNS) on
the Okanogan County Comprehensive Plan Update and Interim Zoning and the withdrawal of the
Determination of Significance (DS) for the proposed revisions to the Comprehensive Plan,
Shoreline Master Program, Critical Areas Ordinance, Zoning Code, and Subdivision

Opening Brief



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1 Regulations. As the argument and evidence cited below show, the SEPA Checklist and the DNS
2 fail to comply with SEPA. The appellants respectfully request that the Hearing Examiner reverse
3 the Responsible Official on both actions and remand the decision for the preparation of an
4 environmental impact statement (EIS). A copy of the SEPA Checklist, the DNS, and the
5 withdrawal of the Determination of Significance (DS) being appealed are attached as Exhibit A
6 to the Declaration of Tim Trohimovich enclosed with this Opening Brief.
7

8 II. STANDARD OF REVIEW

9 Washington State Environmental Policy Act (SEPA) environmental review is required
10 for any local government decision that is not categorically exempt including approval of new or
11 amended comprehensive plans, amendments to shoreline master programs, amendments to
12 critical areas regulations, most zoning code amendments, and most subdivision regulation
13 amendments.¹ “Under SEPA, a county must include an environmental impact statement with any
14 proposal the lead agency’s responsible official decides would ‘significantly affect[] the quality
15 of the environment.’ RCW 43.21C.030(2)(c); WAC 197–11–330(1).”²
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18 SEPA requires the disclosure and full consideration of environmental impacts in
19 governmental decision-making.³ The Court of Appeals in *Moss v. Bellingham* restated the
20 longstanding rule that the purpose of SEPA is to function “as an environmental full disclosure
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23 ¹ WAC 197-11-704(a).

24 ² *Spokane County v. Eastern Washington Growth Management Hearings Bd.*, 176 Wn. App. 555, 578, 309
25 P.3d 673, 684 (2013) review denied *Spokane County v. Eastern Washington Growth Management Hearings Bd.*, 179
26 Wn.2d 1015, 318 P.3d 279 (2014). A copy of the *Spokane County* decision is included in Exhibit H of the
Declaration of Tim Trohimovich enclosed with this Opening Brief.

³ *Polygon Corp. v. City of Seattle*, 90 Wn.2d 59, 63–64, 578 P.2d 1309, 1312 (1978), citing *Norway Hill
Preservation & Protection Ass'n v. King County Council*, 87 Wn.2d 267, 552 P.2d 674 (1976).

1 law....”⁴ Agency decisions must consider more than the narrow, limited environmental impact of
2 the immediate, pending action and cannot close their eyes to the ultimate probable environmental
3 consequences of the proposed action.⁵

4 SEPA required the County to conduct a detailed and comprehensive review, rather than
5 take a “lackadaisical approach.”⁶ SEPA provides that the agency’s threshold determination is
6 entitled to deference,⁷ “but the agency must make a showing that ‘environmental factors were
7 considered in a manner sufficient to amount to *prima facie* compliance with the procedural
8 requirements of SEPA.’”⁸

9
10 The SEPA regulations require the County to “carefully consider the range of probable
11 impacts, including short-term and long-term effects” of a proposal.⁹ In addition, the regulations
12 state:

13
14 A proposal’s effects include direct and indirect impacts caused by a proposal.
15 Impacts include those effects resulting from growth caused by a proposal, as well
16 as the likelihood that the present proposal will serve as a precedent for future
17 actions. For example, adoption of a zoning ordinance will encourage or tend to
18 cause particular types of projects or extension of sewer lines would tend to
19 encourage development in previously unsewered areas.¹⁰

20 The Court of Appeals recently discussed the standards for an adequate SEPA Checklist:

21 ¶ 36 The agency must base its threshold determination on “information
22 reasonably sufficient to evaluate the environmental impact of a proposal.” WAC
23 197-11-335. Thus, for a nonproject action, such as a comprehensive plan

24 ⁴ *Moss v. City of Bellingham*, 109 Wn. App. 6, 16, 31 P.3d 703, 709 (2001) review denied *Moss v. City of*
25 *Bellingham*, 146 Wn.2d 1017, 51 P.3d 86 (2002).

26 ⁵ *Cheney v. Mountlake Terrace*, 87 Wn.2d 338, 344, 552 P.2d 184, 188 (1976).

⁶ *Eastlake Cmty. Council v. Roanoke Assocs., Inc.*, 82 Wn.2d 475, 494 – 95, 513 P.2d 36, 48 (1973).

⁷ RCW 43.21C.090.

⁸ *Chuckanut Conservancy v. Washington State Dept. of Natural Resources*, 156 Wn. App. 274, 286 – 87,
232 P.3d 1154, 1160 (2010) citing *Juanita Bay Valley Cmty. Ass’n v. City of Kirkland*, 9 Wn. App. 59, 73, 510 P.2d
1140 (1973).

⁹ WAC 197-11-060(4)(c).

¹⁰ WAC 197-11-060(4)(d).

1 amendment or rezone, the agency must address the probable impacts of any future
2 project action the proposal would allow. WASH. STATE DEP'T OF ECOLOGY,
3 *supra*, § 4.1, at 66; see WAC 197-11-060(4)(c)-(d). The purpose of these rules is
4 to ensure an agency fully discloses and carefully considers a proposal's
5 environmental impacts before adopting it and "at the earliest possible stage." *King*
6 *County v. Wash. State Boundary Review Bd.*, 122 Wn.2d 648, 663 - 64, 666, 860
7 P.2d 1024 (1993); see WAC 197-11-060(4)(c)-(d). An agency may not postpone
8 environmental analysis to a later implementation stage if the proposal would
9 affect the environment without subsequent implementing action. Richard L.
10 Settle, THE WASHINGTON STATE ENVIRONMENTAL POLICY ACT § 13.01[1], at 13-
11 15 to -16 (1987 & Supp. 2010); see WAC 197-11-060(5)(d)(i)-(ii).¹¹

12 **III. THE APPELLANTS HAVE COMMENTED ON THE SEPA DOCUMENTS FOR**
13 **THE COMPREHENSIVE PLAN UPDATE AND INTERIM ZONING**

14 Futurewise and the Methow Valley Citizens' Council have commented on the SEPA
15 documents prepared as part of the update of the Okanogan County Comprehensive Plan. They
16 have commented on the current SEPA Checklist and DNS.¹² They also provided the Responsible
17 Official with a copy of the Notice of Appeal under Okanogan County Code (OCC) 14.04.220A.1
18 and Argument during the public comment period on the Determination of Nonsignificance for
19 the comprehensive plan update.¹³ So the appellants meet the standing requirements of OCC
20 14.04.220A.2.

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22
23 ¹¹ *Spokane County*, 176 Wn. App. at 579, 309 P.3d at 684 - 85.

24 ¹² See the Futurewise Letter to Mr. Perry Huston, Director of Planning Okanogan County (June 13, 2014)
25 (in in Exhibit I of the Declaration of Tim Trohimovich enclosed with this Opening Brief) and the Methow Valley
26 Citizens' Council Letter to Mr. Perry Huston, Planning Director Okanogan County (June 16, 2014) in Exhibit J of
the Declaration of Tim Trohimovich enclosed with this Opening Brief.

¹³ In Exhibit I of the Declaration of Tim Trohimovich enclosed with this Opening Brief. All of the Exhibits
to the Notice are also exhibits to this Opening Brief with the same exhibit letters.

1 **IV. ARGUMENT'S RAISED IN THE APPELLANTS' COMMENT LETTERS AND**
2 **NOTICE OF APPEAL SUBMITTED DURING THE PUBLIC COMMENT**
3 **PERIOD**

4 **A. The SEPA Checklist lacks the particularity required to comply with SEPA and**
5 **failed to consider key impacts that will significantly affect the quality of the**
6 **environment**

7 In the *Spokane County* decision, the Court of Appeals held that a SEPA Checklist for a
8 comprehensive plan amendment and concurrent rezone did not adequately analyze the impacts of
9 the amendments and violated SEPA.¹⁴ The Court wrote:

10 ¶ 39 ... [t]he County argues the hearings board undervalued the checklist's
11 thorough contents. ... [T]he checklist still lacked required particularity. Though
12 amendment 07-CPA-05 varied greatly from the other seven proposals, the
13 checklist attempted to address them all with broad generalizations. The checklist
14 did not tailor its scope or level of detail to address the probable impacts on, for
15 example, water quality, resulting from amendment 07-CPA-05 specifically.
16 While the property is near potable water wells in a Critical Aquifer Recharge
17 Area with high susceptibility, the proposal could "allow an on-site [wastewater
18 disposal] system that will fail thus resulting in the degradation of the local
19 environment." AR at 562. Despite these concerns, the checklist repeated
20 formulaic language postponing environmental analysis to the project review stage
21 and assuming compliance with applicable standards. Thus, the checklist lacked
22 information reasonably sufficient to evaluate the proposal's environmental
23 impacts.¹⁵

24 In the *Spokane County* decision amendment 07-CPA-05 amended both the county
25 comprehensive plan and zoning regulations.¹⁶ Okanogan County's proposed action also adopts
26 an amended comprehensive plan and interim zoning regulations.¹⁷ So like amendment 07-CPA-
05, the amendments evaluated in the SEPA Checklist would affect the environment without any
subsequent implementing action.

¹⁴ *Spokane County*, 176 Wn. App. at 580 – 81, 309 P.3d at 685.

¹⁵ *Id.*

¹⁶ *Spokane County*, 176 Wn. App. at 563 – 64, 309 P.3d at 677.

¹⁷ SEPA Environmental Checklist Okanogan County Comprehensive Plan Update p. 2 (May 9, 2014),
Environmental Checklist Attachment 1 p. 6. Accessed on May 21, 2014 at: <http://okanogancounty.org/planning/> and
enclosed in Exhibit A of the Declaration of Tim Trohimovich enclosed with this Opening Brief.

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4 **1. The SEPA Checklist did not analyze the impacts of the comprehensive plan's proposed conversion of agricultural lands to other uses**

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6 Agricultural crops, agricultural soils, and agricultural land are elements of the
7 environment and checklist questions the Responsible Official must consider when deciding
8 whether an EIS is required.¹⁸ The proposed Okanogan County Comprehensive Plan map
9 designates the orchards northeast of Brewster and the farmland in the Okanogan River Valley
10 "Rural."¹⁹ The proposed Okanogan County Interim-Zone Map zones these areas Rural 1, which
11 allows as permitted uses single-family homes, multi-family apartment buildings, compost
12 manufacturers, air cargo terminals, aircraft hangars, aircraft sales, repair, and service, aircraft
13 salvage, airstrips, commercial, auto parking lots or garages, auto rental services, auto sales,
14 banks, exercise clubs, indoor swimming pools, food stores, maintenance shops, warehouses,
15 gravel pits less than three acres in size, halls, stadiums, auditoriums, hospitals, laundromats,
16 manufactured home sales facilities, light manufacturing, marinas, meat packing plants, medical
17 and dental clinics, mini-storage warehouses, petroleum service stations, professional office
18 buildings, quarries and borrow pits less than three acres in size, restaurants, cafes, and "etc.,"
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20

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22 ¹⁸ WAC 197-11-444(2)(b)(vii); WAC 197-11-060(2)(b); SEPA Environmental Checklist Okanogan County
Comprehensive Plan Update p. 3, p. 8 (May 9, 2014).

23 ¹⁹ Okanogan County Comprehensive Plan map (3/5/2014) accessed on May 21, 2014 at:
24 <http://okanogancounty.org/planning/> and enclosed in Exhibit P of the Declaration of Tim Trohimovich enclosed
25 with this Opening Brief; USDA Agricultural Land Use 2013 Crop Distribution pp. 2 – 3, p. 6, p. 9, pp. 13 – 16
26 accessed on May 22, 2014 at: <https://fortress.wa.gov/agr/gis/nras/nrascrops/> and enclosed in Exhibit D of the
Declaration of Tim Trohimovich included with this Opening Brief; 2013 Google Earth Images of the orchards
northeast of Brewster and the farmland north of Monse in Exhibit G of the Declaration of Tim Trohimovich
enclosed with this Opening Brief.



1 retail stores or gift shops, portable commercial sawmills, and wholesale establishments.²⁰ And
2 this is a partial list.²¹ All of these uses are allowed on one-acre lots.²² The density for permitted
3 multi-family apartments is one dwelling unit for 9,600 square feet.²³ This will allow a four-unit
4 apartment building on a one-acre lot, or a 22-unit apartment building on five acres, assuming the
5 health department requirements for onsite waste disposal systems can be met.²⁴ There are also
6 many conditional uses allowed in the Rural 1 zone.²⁵ None of the adverse impacts of paving over
7 the orchards and farmland for all of these uses are analyzed or disclosed in the SEPA Checklist.²⁶
8 This is particularly significant given that Okanogan County ranks third in the nation for the
9 market value of apples sold by county orchardists.²⁷

11 Other areas of farm and ranch land are also designated Rural in the proposed
12 comprehensive plan.²⁸ Over the last ten years, Okanogan County lost 36,031 acres of land in

16 ²⁰ Okanogan County Interim-Zone Map Map 4 Draft in Exhibit F of the Declaration of Tim Trohimovich
17 enclosed with this Opening Brief and accessed on May 21, 2014 at: <http://okanogancounty.org/planning/>; Draft
18 OCC 17.21.010 District use chart pp. 2 – 7 in Exhibit F of the Declaration of Tim Trohimovich enclosed with this
Opening Brief and accessed on May 21, 2014 at: <http://okanogancounty.org/planning/>.

18 ²¹ *Id.*

19 ²² Draft OCC 17.06A.060 in Exhibit F of the Declaration of Tim Trohimovich enclosed with this Opening
Brief and accessed on May 21, 2014 at: <http://okanogancounty.org/planning/>.

20 ²³ Draft OCC 17.06A.070B and Draft OCC 17.06A.060A in Exhibit F of the Declaration of Tim
Trohimovich enclosed with this Opening Brief and accessed on May 21, 2014 at:
21 <http://okanogancounty.org/planning/>.

21 ²⁴ Draft OCC 17.06A.070B.

22 ²⁵ Draft OCC 17.21.010 District use chart pp. 2 – 7 in Exhibit F of the Declaration of Tim Trohimovich
enclosed with this Opening Brief and accessed on May 21, 2014 at: <http://okanogancounty.org/planning/>.

23 ²⁶ SEPA Environmental Checklist Okanogan County Comprehensive Plan Update p. 3 – 14, (May 9, 2014),
Environmental Checklist Attachment 1 pp. 7 – 9 (May 9, 2014).

24 ²⁷ US Department of Agriculture National Agricultural Statistics Service, 2012 Census of Agriculture
County Profile Okanogan County, Washington p. *2. Accessed on June 13, 2014 at:
25 http://www.agcensus.usda.gov/Publications/2012/Online_Resources/County_Profiles/Washington/index.asp and in
Exhibit K of the Declaration of Tim Trohimovich enclosed with this Opening Brief.

26 ²⁸ Okanogan County Comprehensive Plan map (3/5/2014); USDA Agricultural Land Use 2013 Crop
Distribution pp. 1 – 17.

1 farms, the eleventh highest loss in Washington State.²⁹ Okanogan County did experience a small
2 increase in land in farms in the last five years, but the increase was much smaller than the
3 increase in the market value of agricultural products sold which increased from \$209 million in
4 2007 to \$287 million in 2012.³⁰ The failure to designate and conserve the farm and ranch land in
5 the comprehensive plan and the interim-zoning is a significant adverse effect on the
6 environment. It is also a significance adverse economic effect since agriculture is Okanogan
7 County's largest employer.³¹

9 The proposed Rural 1 zone is not the only zone with long lists of permitted and
10 conditions uses at high densities. The Minimum Requirement District, the proposed Rural 5
11 zone, and the proposed Rural 20 zone all have long lists of permitted and conditional uses
12 identical to the proposed Rural 1 zone.³² None of the adverse impacts of these uses are analyzed
13 or disclosed in the SEPA Checklist.³³ For the permitted uses, only a building permit will be
14 needed and many of these uses are exempt from future SEPA review. For example, throughout
15 Okanogan County a 25 unit apartment building is categorically exempt from SEPA.³⁴ Only

18 ²⁹ *Washington State Counties Ranked by Decline in Land in Farms 2002 to 2012* in Exhibit L, along with
19 the cited tables from the Census of Agriculture, of the Declaration of Tim Trohimovich enclosed with this Opening
20 Brief.

21 ³⁰ United States Department of Agriculture, National Agricultural Statistics Service, 2012 *Census of*
22 *Agriculture Washington State and County Data Volume 1 • Geographic Area Series • Part 47 AC-12-A-47 Chapter*
23 *2: County Level Data, Table 2. Market Value of Agricultural Products Sold Including Direct Sales: 2012 and 2007*
24 p. 244 (May 2014) accessed on June 12, 2014 at:
25 http://www.agcensus.usda.gov/Publications/2012/Full_Report/Volume_1_Chapter_2_County_Level/Washington/st_53_2_002_002.pdf in Exhibit M of the Declaration of Tim Trohimovich enclosed with this Opening Brief.

26 ³¹ Marcy Stamper, *County to use public land base to satisfy state call for agriculture, resource lands*
Methow Valley News Online (09-28-2010 | Volume: 108 | Issue: 19) in Exhibit N of the Declaration of Tim
Trohimovich enclosed with this Opening Brief.

³² Draft OCC 17.21.010 District use chart pp. 2 – 7.

³³ SEPA Environmental Checklist Okanogan County Comprehensive Plan Update pp. 1 – 14 (May 9,
2014).

³⁴ OCC 14.04.100 as amended by Okanogan County Ordinance No. 2014-1 in Exhibit F of the Declaration
of Tim Trohimovich enclosed with this Opening Brief.

1 building type permits will be required. So none of the environmental impacts of a 25 unit
2 apartment building, such as impacts on surface and ground water, will be reviewed as part of the
3 permitting process. None of these impacts are analyzed or disclosed in the SEPA Checklist.³⁵

4 In short, the SEPA Checklist does not disclose the impacts of all of these high density
5 uses allowed on the farmland, orchards, and rural lands of Okanogan County. These impacts
6 would significantly affect the quality of the environment. These impacts justify the preparation
7 of an EIS.

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10 **2. The SEPA Checklist did not analyze the impacts of uses allowed by the
comprehensive plan on water and air resources**

11 The unanalyzed and undisclosed impacts extend to other natural resources. Air and water
12 resources are elements of the environment and checklist questions that must be considered in
13 deciding whether an EIS is required.³⁶ For example, the SEPA Checklist does not disclose that
14 within the Methow Watershed, Water Resource Inventory Area (WRIA) 48, and the Okanogan
15 Watershed, WRIA 49, “most if not all of the available water has already been allocated.”³⁷ The
16 SEPA Checklist does not disclose that parts of the water basins in the county are closed to new
17 water appropriations.³⁸ Water is in such short supply that:

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20 ³⁵ SEPA Environmental Checklist Okanogan County Comprehensive Plan Update pp. 1 – 14 (May 9,
2014).

21 ³⁶ WAC 197-11-444(1)(b) & (c); WAC 197-11-060(2)(b); SEPA Environmental Checklist Okanogan
22 County Comprehensive Plan Update pp. 3 – 5 (May 9, 2014).

23 ³⁷ State of Washington Department of Ecology Water Resources Program, *Focus on Water Availability for*
24 *the Methow Watershed, WRIA 48* p. 2 (Publication Number: 11-11-052, Revised August 2012) accessed on May 21,
2014 at: <https://fortress.wa.gov/ecy/publications/summarypages/1111052.html> and enclosed in the accompanying
25 declaration of Tim Trohimovich as Exhibit B; State of Washington Department of Ecology Water Resources
26 Program, *Focus on Water Availability for the Okanogan Watershed, WRIA 49* p. 2 (Publication Number: 11-11-053,
Revised August 2012) accessed on May 21, 2014 at:

<https://fortress.wa.gov/ecy/publications/summarypages/1111053.html> and enclosed in the accompanying declaration
of Tim Trohimovich as Exhibit B.

³⁸ *Id.*

1 Ecology regularly sends out Administrative Orders under RCW 90.03 alerting
2 water right holders they will be curtailed in favor of instream flows for the
3 Methow and Okanogan Rivers. This has been a common occurrence in Okanogan
4 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.³⁹

5 Ecology also explained that:

6 Demands of new water use reduce water legally available for existing, senior
7 water rights including instream flows. Where hydraulic continuity is shown with
8 surface water, new domestic uses established under RCW 90.44.050 are subject to
9 curtailment to meet the needs of more senior water rights in water short years. If
10 water supply becomes limited, water use could be curtailed by those with senior
11 water rights, which includes instream flows established in Chapters 173-548, 173-
12 549 and 173-563 WAC.

13 [The] Department of Health does not consider interruptible water rights an
14 adequate and reliable water source consistent with WAC 246-290-420. For these
15 reasons, future water source plans will likely not be a reliable supply for year
16 round residential use and may be subject to interruption due to conflict with
17 instream flows. As such, it will be questionable whether [the proposed
18 comprehensive] plan would provide an appropriate provision for potable water
19 supply under RCW 58.17.⁴⁰

20 The very limited water availability in Okanogan County is confirmed by the Methow
21 Watershed Council. When the instream flow rule for the Methow was adopted, water was
22 reserved for permit exempt wells. The council states that to their knowledge, this is the only non-
23 interruptible water available in the Methow sub basin.⁴¹ The bedrock deposits that underlie the
24 aquifers subject to the instream flow rule “yield little water and are not considered a significant
25 source of domestic water.”⁴² The Council has projected that:

26 ³⁹ Letter from Washington State Department of Ecology to Perry Huston Okanogan County Planning p. 3
of 5 (April 7, 2011) in Exhibit O of the Declaration of Tim Trohimovich enclosed with this Opening Brief.

⁴⁰ *Id.*

⁴¹ Methow Watershed Council Letter to the Okanogan County Commission Re: Okanogan Comprehensive
Plan and watershed planning p. 1 (June 14, 2011) in Exhibit J of the Declaration of Tim Trohimovich enclosed with
this Opening Brief.

⁴² Expert Testimony of Laura Strauss, Hydrogeologist p. 4 (May 6, 2014) in Exhibit J of the Declaration of
Tim Trohimovich enclosed with this Opening Brief

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

4 Assuming full build-out of all possible parcels under present zoning, 5 reaches
5 would have water remaining in their reserve. The Upper Methow and Lower
6 Methow would exceed their reserves. The Upper Methow would have 127 parcels
7 unable to be supplied by permit-exempt wells out of a total of 1,948 possible
8 parcels. The Lower Methow would have 24,313 parcels out of a total of 26,133
9 possible parcels unable to be supplied by wells.⁴³

8 The proposed comprehensive plan and interim zoning do not propose any changes to the
9 Methow Valley Planning Area Sub Unit A.⁴⁴ So the proposed comprehensive plan and interim
10 zoning will allow the creation of 24,440 parcels without a potable water supply. Exceeding the
11 limits set by the minimum flow rule could adversely impact anadromous fish populations. The
12 county will not be able to allow development of 24,440 parcels because they lack an adequate
13 supply of potable water, a serious adverse impact of the proposed comprehensive plan and
14 interim zoning.

16 The lack of water will also prevent many new home owners from being able to create
17 watered green spaces around their homes to protect them from fire. This will adversely
18 impacting the built environment.

19 Water availability modeling for the Columbia basin shows significant water shortages
20 projected for the county. For the Methow basin “[i]n 2030, at the watershed scale, combined
21 municipal and surface water irrigation demands and adopted instream flows are projected to
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24 _____
25 ⁴³ *Id.* at p. 2. A map showing the subareas referred to by the Council is in Exhibit J of the Declaration of
26 Tim Trohimovich enclosed with this Opening Brief.

⁴⁴ SEPA Environmental Checklist Okanogan County Comprehensive Plan Update p. 2 (May 9, 2014),
Environmental Checklist Attachment 1 p. 6.

1 outstrip unregulated tributary supply generated within the Washington portion of the watershed
2 during many years from July through November, and in some years from December through
3 February.”⁴⁵ For the Okanogan basin, “[i]n 2030, at the watershed scale, combined municipal
4 and surface water irrigation demands and adopted instream flows are projected to outstrip
5 unregulated tributary supply generated within the Washington portion of the watershed during
6 most years for May through February.”⁴⁶ Global warming, by shifting when water is available,
7 will also contribute to water shortages when water is most in demand.⁴⁷

9 The SEPA Checklist claims that because of a series of Washington State Supreme Court
10 cases that “[n]ew development under the revised Comprehensive Plan will be more restrictive
11 than historically as a result of the legal precedents set by those cases.”⁴⁸ However, the
12 comprehensive plan does not contain any requirements implementing the supreme court
13 decisions despite the fact that RCW 36.70.330(1) requires that the comprehensive plan “land use
14 element shall also provide for protection of the quality and quantity of groundwater used for
15 public water supplies”⁴⁹ The comprehensive plan claims that official controls implementing
16 the comprehensive plan “identify requirements to assure that proposed new development will
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20 ⁴⁵ Washington State University, *Columbia River Basin Long-Term Water Supply and Demand Forecast*
21 *2011 Legislative Report* p. 124 (Ecology Publication No. 11-12-011: Jan. 2012). Accessed on June 12, 2014 at:
<http://www.ecy.wa.gov/programs/wr/cwp/forecast/wria48.html> in Exhibit J of the Declaration of Tim Trohimovich
22 enclosed with this Opening Brief.

23 ⁴⁶ Washington State University, *Columbia River Basin Long-Term Water Supply and Demand Forecast*
24 *2011 Legislative Report* p. 128 (Ecology Publication No. 11-12-011: Jan. 2012).

25 ⁴⁷ Climate Impacts Group University of Washington, *State of Knowledge Report Climate Change Impacts*
26 *and Adaptation in Washington State: Technical Summaries for Decision Makers* pp. 6-1 – 6-7 (December 2013)
accessed on Sept. 5, 2014 at: <http://cse.washington.edu/db/pdf/snoveretalsok816.pdf> cited pages in Exhibit Z of the
Declaration of Tim Trohimovich enclosed with this Opening Brief.

⁴⁸ SEPA Environmental Checklist Okanogan County Comprehensive Plan Update p. 5 (May 9, 2014).

⁴⁹ Comprehensive Plan 4/28/14 Review Edition pp. 4 – 36. Accessed on May 21, 2014 at:
<http://codepublishing.com/wa/okanogancounty/> and in Exhibit P of the Declaration of Tim Trohimovich enclosed
with this Opening Brief

1 meet state and local requirements for available water supplies ...⁵⁰ But, a review of the
2 Okanogan County Code did not disclose any regulations that implement the water availability
3 requirements of any of the supreme court decisions listed on page 5 of the SEPA Checklist.

4 In summary, the SEPA Checklist did not disclose that there is little to no water available
5 for new uninterruptable uses, such as residential uses, in much of Okanogan County, that
6 existing water users are regularly curtailed, and that new development will adversely impact
7 senior water rights including instream flows. These impacts would significantly affect the quality
8 of the built and natural environment. These impacts require the preparation of an EIS.

9 All of the many permitted and conditional uses in the Minimum Requirement District and
10 the proposed Rural 1, Rural 5, and Rural 10 zones are allowed to use onsite waste disposal
11 systems over aquifers and even over wellhead protection zones.⁵¹ This includes such highly
12 polluting uses as multi-family apartments, restaurants, acid manufacturing plants, asphalt batch
13 plants, explosive manufacturing and storage facilities, heavy manufacturing plants including the
14 manufacture of glue, metal plating, and rendering, petroleum bulk plants, junk yards, and waste
15 disposal landfills all of which are permitted or conditional uses in the Minimum Requirement
16 District and the proposed Rural 1, Rural 5, and Rural 10 zones.⁵² All of these zones allow multi-
17 family dwellings as permitted uses at a density of one dwelling unit per 9,600 square feet, which
18 allows 4.5 apartments per acre.⁵³ Marylynn Yates, in a peer reviewed scientific journal, analyzed
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22 ⁵⁰ Comprehensive Plan 4/28/14 Review Edition pp. 8 – 9.

23 ⁵¹ Draft OCC 17.06A.060A; Draft OCC 17.06B.060B; and Draft OCC 17.06C.060A; in Exhibit F of the
24 Declaration of Tim Trohimovich enclosed with this Opening Brief and Okanogan County Transportation and
25 Essential Public Facilities Map – 3 Draft in Exhibit P of the Declaration of Tim Trohimovich enclosed with this
26 Opening Brief all accessed on May 22, 2014 at: <http://okanogancounty.org/planning/>.

⁵² Draft OCC 17.21.010 District use chart pp. 2 – 6.

⁵³ Draft OCC 17.21.010 District use chart p. 3; Draft OCC 17.06A.070B; Draft OCC 17.06B.070B; and
Draft OCC 17.06C.070B.

1 data and cases of ground water pollution from septic tanks. She concluded that septic tanks are
2 major contributors of wastewater, septic tanks are the most frequently reported cause of ground
3 water contamination, and the most important factor influencing ground water contamination
4 from septic tanks is the density of the systems.⁵⁴ Lot sizes associated with ground water
5 contamination cases ranged from less than a quarter acre to three acres.⁵⁵ Based on the findings
6 of this study, the one acre minimum lot size proposed in the Rural 1 zone and the Minimum
7 Requirement District and the multi-family density of one dwelling unit per 9,600 square feet
8 (which allows 4.5 apartments per acre) proposed in the Rural 1, Rural 5, and Rural 10 zones are
9 likely to contaminate groundwater unless sewers, rather than septic systems, are used for waste
10 disposal.⁵⁶ The costs of extending sewers to broadly scattered clusters of dense development
11 would be significant and prohibitive. The comprehensive plan also does not require the use of
12 sewers to serve these densities.⁵⁷ It is likely such development would use onsite waste disposal
13 systems rather than sewers. The impacts of these high intensity and polluting uses using onsite
14 waste disposal systems were not analyzed or disclosed in the SEPA Checklist. Neither were the
15 potential costs of extending sewers. The potential for ground water contamination to occur under
16 the County's proposed comprehensive plan and interim zoning is a much greater risk than the
17 onsite waste disposal system for a market and bistro found to violate SEPA in the *Spokane*

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22 ⁵⁴ Marylynn V. Yates, *Septic Tank Density and Ground-Water Contamination* 23 GROUND WATER 586, p.
23 590 (1985). Accessed most recently on May 27, 2014 at: <http://info.ngwa.org/gwol/pdf/852537546.PDF> and in
24 Exhibit C of the Declaration of Tim Trohimovich enclosed with this Opening Brief. Ground Water is a peer
25 reviewed scientific journal. See the Ground Water Peer Review enclosed in Exhibit C of the Declaration of Tim
26 Trohimovich enclosed with this Opening Brief.

⁵⁵ Marylynn V. Yates, *Septic Tank Density and Ground-Water Contamination* 23 GROUND WATER 586, p.
590 (1985).

⁵⁶ Draft OCC 17.06A.060A; Draft OCC 17.21.010 District use chart p. 3; Draft OCC 17.06A.070B; Draft
OCC 17.06B.070B; and Draft OCC 17.06C.070B.

⁵⁷ Comprehensive Plan 4/28/14 Review Edition pp. 4 – 36.

1 County decision because its potential to pollute ground water was not analyzed and disclosed in
2 the SEPA Checklist.⁵⁸ So again, these impacts would significantly affect the quality of the built
3 and natural environment and require the preparation of an EIS.

4 Like the SEPA Checklist found to violate SEPA in the *Spokane County* decision, the
5 SEPA Checklist for the proposed comprehensive plan and interim zoning regulations “repeated
6 formulaic language postponing environmental analysis to the project review stage and assuming
7 compliance with applicable standards.”⁵⁹ For example, the checklist states that for earth impacts,
8 air impacts, water impacts, plant impacts, discharges to water and air, and hazardous materials
9 impacts the environmental analysis is postponed to the project review state, a practice found to
10 violate SEPA in *Spokane County*.⁶⁰

11 The SEPA Checklist for the comprehensive plan update and interim zoning lists as
12 mitigating measures regulations that are not yet adopted including the updated shoreline master
13 program which is years behind schedule, the adoption of a critical areas ordinance update for
14 which the county has missed its update deadline, resource protection codes, and protections for
15 historic and cultural sites.⁶¹ The SEPA Checklist for the comprehensive plan update does not
16 disclose the impacts that will occur if these mitigation measures are adopted late or never
17 adopted.

18 The SEPA Checklist for the comprehensive plan update and interim zoning asserts the
19 “Comprehensive Plan *per se* will have no specific effect.” However, this statement ignores the
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24 ⁵⁸ *Spokane County*, 176 Wn. App. 555, 562 – 63, 580 – 81, 309 P.3d 673, 676 – 77, 685.

25 ⁵⁹ *Spokane County*, 176 Wn. App. at 580 – 81, 309 P.3d at 685.

26 ⁶⁰ SEPA Environmental Checklist Okanogan County Comprehensive Plan Update pp. 3 – 6, p. 12 (May 9, 2014).

⁶¹ *Id.* at pp. 12 – 13.

1 interim zoning with its long lists of permitted uses, including high-density apartments, and the
2 high SEPA exemption thresholds the county has adopted.⁶² The statement also ignores WAC
3 197-11-060(4)(d)'s statement that the "adoption of a zoning ordinance will encourage or tend to
4 cause particular types of projects ..." It also ignores the *Spokane County* court's command that
5 "for a nonproject action, such as a comprehensive plan amendment or rezone, the agency must
6 "address the probable impacts of any future project action the proposal would allow."⁶³ The SEPA
7 Checklist for the comprehensive plan and interim zoning did not address these probable impacts
8 and this failure violates SEPA.

10 The checklist for the comprehensive plan and interim zoning argues that since there are
11 currently no nonattainment areas and population growth is planned to be moderate there will be
12 no air impacts.⁶⁴ However, just because there are no non-attainment areas now does not mean
13 that the requirements to prevent degradation in attainment areas for Class I or Class II air will not
14 be violated in the future without measures to protect our relatively clean air, especially in the
15 Methow Valley or other high mountain valleys subject to severe inversions – especially in
16 winter, when folks need heat. And the high allowable densities that are allowed in remote areas
17 under the proposed zoning means that there would probably be more wood stoves in use because
18 services such as electricity will not be available in those areas and more dirt roads would be
19 needed. The wood stoves and dirt roads will all generate particulates and these air impacts were
20 not analyzed or disclosed in the SEPA Checklist.

25 ⁶² SEPA Environmental Checklist Okanogan County Comprehensive Plan Update p. 12 (May 9, 2014);
Draft OCC 17.21.010 District use chart pp. 2 – 7; OCC 14.04.100.

26 ⁶³ *Spokane County*, 176 Wn. App. at 579, 309 P.3d at 684.

⁶⁴ SEPA Environmental Checklist Okanogan County Comprehensive Plan Update p. 3 (May 9, 2014).

1 In sum, like the SEPA Checklist and DNS found to violate SEPA in the *Spokane County*
2 decision, the SEPA Checklist and DNS for the comprehensive plan amendments and interim
3 zoning violates SEPA. We respectfully request that the Hearing Examiner direct that an adequate
4 environmental impact statement be prepared for the draft comprehensive plan and interim
5 zoning.
6

7 **3. The SEPA Checklist did not analyze the impacts landslides on the uses allowed**
8 **by the comprehensive plan and interim zoning**

9 Earth, including geology and soils including unstable soils, are elements of the
10 environment and checklist questions that must be considered in deciding whether an EIS is
11 required.⁶⁵ Areas within Okanogan County are at significant risk for damage from natural
12 hazards including landslides.⁶⁶ The *Okanogan County, Washington All Hazards Mitigation Plan*
13 recommends that:

14 Land-use planning is one of the most effective and economical ways to reduce
15 landslide losses by avoiding the hazard and minimizing the risk. This is
16 accomplished by removing or converting existing development or discouraging or
17 regulating new development in unstable areas. Buildings should be located away
18 from known landslides, debris flows, steep slopes, streams and rivers,
19 intermittent-stream channels, and the mouths of mountain channels. In the State
of Washington, restrictions on land use generally are imposed and enforced by
local governments by land-use zoning districts and regulations.⁶⁷

20 However, the comprehensive plan and interim zoning fails to require or encourage development
21 to avoid landslide hazards, allowing apartment buildings with densities of 4.5 apartments per
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23 ⁶⁵ WAC 197-11-444(1)(a); WAC 197-11-060(2)(b); SEPA Environmental Checklist Okanogan County
Comprehensive Plan Update pp. 2 – 3 (May 9, 2014).

24 ⁶⁶ Okanogan County All Hazards Mitigation Plan Committee, *Okanogan County, Washington All Hazards*
Mitigation Plan Volume I pp. 145 – 158 (Jan. 30, 2009) in Exhibit W of the Declaration of Tim Trohimovich
25 enclosed with this Opening Brief. Accessed on August 29, 2014 at:
<http://okanogandem.org/documents/AHMP/Okanogan%20County%20AHMP.pdf>.

26 ⁶⁷ *Id.* at p. 160.

1 acre throughout much of unincorporated Okanogan County.⁶⁸ The SEPA Checklist does not
2 disclose these hazards and the failure of the comprehensive plan and interim zoning to
3 implement the measures recommended by the *Okanogan County, Washington All Hazards*
4 *Mitigation Plan*.⁶⁹ The comprehensive plan and SEPA Checklist do not address the other natural
5 hazards identified by the plan.⁷⁰ These are significant and life threatening environmental impacts
6 that both were not analyzed in the EIS and that would significantly affect the quality of the
7 environment. These impacts certainly justify the preparation of an EIS.

9
10 **B. The withdrawal of the Determination of Significance (DS) violates SEPA**

11 The county was correct in its initial decision to issue the determination of significance
12 (DS) for the revisions to the comprehensive plan, shoreline master program, critical areas
13 ordinance, zoning code, and subdivision regulations on January 14, 2009. WAC 197-11-360(4)
14 provides that “[i]f at any time after the issuance of a DS a proposal is changed so, in the
15 judgment of the lead agency, there are no probable significant adverse environmental impacts,
16 the DS shall be withdrawn and a DNS issued instead.” But as was documented above, the
17 proposal has significant environmental impacts that were not analyzed and disclosed in the
18 SEPA Checklist. So the withdrawal of the DS violates SEPA.

19
20 **C. The Responsible Official committed reversible error in comparing the impacts of**
21 **the new comprehensive plan with the prior comprehensive rather than considering**
22 **the absolute impacts as SEPA requires**

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25 ⁶⁸ Okanogan County Interim-Zone Map Map 4 Draft; Draft OCC 17.06A.060A; Draft OCC 17.21.010
District use chart p. 3; Draft OCC 17.06A.070B; Draft OCC 17.06B.070B; and Draft OCC 17.06C.070B.

26 ⁶⁹ SEPA Environmental Checklist Okanogan County Comprehensive Plan Update pp. 2 – 3 (May 9, 2014).

⁷⁰ SEPA Environmental Checklist Okanogan County Comprehensive Plan Update pp. 2 – 3, pp. 4 – 5, pp.
12 – 14 (May 9, 2014).

1 Throughout the SEPA Checklist the Responsible Official minimizes the probably adverse
2 impacts of the proposed comprehensive plan and interim zoning by comparing them to the
3 current comprehensive plan or the current pattern of growth. The checklist also failed to consider
4 the sensitivity of areas where high levels of growth are allowed such as the many parts of the
5 county where surface and ground water supplies are known to be limited and where water
6 withdrawals by existing water rights holders are regularly curtailed.⁷¹ This is reversible error for
7 two reasons.

9 First, WAC 197-11-330(3) requires, in part, that in “determining an impact’s significance
10 (WAC 197-11-794), the responsible official shall take into account ... that ... [t]he absolute
11 quantitative effects of a proposal are also important, and may result in a significant adverse
12 impact regardless of the nature of the existing environment” However, the checklist shows
13 the Responsible Official compared the relative impact of the proposed comprehensive plan with
14 the existing fifty-year-old comprehensive plan. The checklist did not analyze or disclose the
15 absolute impact of the proposed comprehensive plan and the interim zoning regulations. This
16 failure to consider the absolute impacts of the proposed comprehensive plan and zoning
17 ordinance is shown on Table 1 of the Environmental Checklist Attachment 1. Table 1, instead of
18 analyzing how many lots or multi-family housing units can be created under the proposed
19 comprehensive plan and interim zoning, instead compares the acres of various zones under the
20
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23 ⁷¹ SEPA Environmental Checklist Okanogan County Comprehensive Plan Update p. 3, p. 4, p. 5, p. 7, p. 8,
24 p. 9, p. 10, p. 11, p. 12, p. 13 (May 9, 2014); State of Washington Department of Ecology Water Resources
25 Program, *Focus on Water Availability for the Methow Watershed, WRIA 48* p. 2 (Publication Number: 11-11-052,
26 Revised August 2012); 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);
Letter from Washington State Department of Ecology to Perry Huston Okanogan County Planning p. 3 of 5 (April 7,
2011).

1 current and proposed zoning.⁷² It was error not to consider the absolute impacts and they are
 2 significant. Consider the development allowed by the proposed comprehensive plan and the
 3 existing and interim zoning shown in the following table:

4 **Proposed 2014 Okanogan County Interim Zoning with Number of Allowed Lots and**
 5 **Apartments, Unincorporated Okanogan County**

6 County Zone	7 2014 (proposed) acres	8 Minimum Lot Size (acres)	9 Number of Lots that can be created	10 Multi- family/ Mobile Home Park Density (Units per acre)	11 Number of Apart- ments that can be built
12 17.05 Minimum Requirement District (MD)	672,854	1	672,854	4.5	3,027,843
13 17.08 Agricultural- Residential District (A- R)	491	20	25	0.05	25
14 17.09 Suburban Residential District (SR)	296	0.46	643	0.46	136
15 17.10 Commercial District (C)	230	0.12	1,917		0
16 17.11 Industrial District (I)	7	0.23	30		0
17 17.12 Airport Development District (AP)	176	0.23	765		0
18 17.14 Methow Review District (MRD)	1,094,521	20	54,726	0.05	54,726
19 17.14A Rural Residential District (RRD)	25,159	5	5,032	0.2	5,032
20 17.14B Low Density Residential District (LDRD)	1,042,999	20	52,150	0.05	52,150
21 17.15 Urban Residential District (UR)	32	0.11	291	12.1	387

22
 23
 24
 25
 26 ⁷² SEPA Environmental Checklist Okanogan County Comprehensive Plan Update (May 9, 2014)
 Environmental Checklist Attachment 1 p. 6.

County Zone	2014 (proposed) acres	Minimum Lot Size (acres)	Number of Lots that can be created	Multi- family/ Mobile Home Park Density (Units per acre)	Number of Apart- ments that can be built
17.16 Neighborhood Use District (NV)	27	8.7	3		0
17.17 Special Review Commercial	36	8.7	4		0
17.19 Planned Development (PD)	995				0
17.20 Planned Destination Resort (PDR)	73			3.5	256
17.06A Rural 1	267,265	1	267,265	4.5	1,202,693
17.06B Rural 5	473,238	5	94,648	4.5	2,129,571
17.06C Rural 20	906,113	20	45,306	4.5	4,077,509
Total	4,484,512		1,195,659		10,550,326

Notes:

Many zones allow accessory dwelling units and some allow farm worker housing that can increase the number of allowed units. These housing units are not included in the table above. When a standard is provided for lots with and without a public sewer, the density without a public sewer is used as it is the lower density.

Since the source table in the SEPA Checklist does not break down the various MRD zones, the MRD 20 minimum lot size and density was used.

Because Table 1 in Environmental Checklist Attachment 1 does not specify the underlying zone for the Planned Development (PD) district, this does not estimate the PD minimum lot size or density since it varies by zone.

Many zones require larger lots or lower densities when necessary to comply with the Health Department onsite waste water disposal regulations.

Sources:

Cited provisions of the Okanogan County Code and the Proposed Rural 1, Rural 5 and Rural 20 zones in Exhibit F of the Declaration of Tim Trohimovich enclosed with this Opening Brief. SEPA Environmental Checklist Okanogan County Comprehensive Plan Update (May 9, 2014) Environmental Checklist Attachment 1 p. 6.

As can be seen in the above table, the zoning Okanogan County is proposing to implement the proposed comprehensive allows the creation of 1.19 million lots in

1 unincorporated Okanogan County. The zoning would allow the creation of 10.5 million
2 apartments in unincorporated Okanogan County, many in very rural areas.⁷³ Interesting, we did
3 the same calculations for the 2013 zoning acreages in Table 1 of the SEPA Checklist. These
4 calculations show that 10,245,475 apartments are allowed in incorporated Okanogan County.⁷⁴
5 So by this measure the new comprehensive plan and zoning will have a greater impact than the
6 existing comprehensive plan and zoning. Because the Responsible Official failed to consider the
7 absolute magnitude of the development allowed, the SEPA Checklist and DNS failed to comply
8 with SEPA.

10 The Environmental Checklist Attachment 1 on pages 6 and 7 argues that in considering
11 the densities “brought about by adoption of the revised County Comprehensive Plan and interim
12 zone code” the conveyance of private land to public ownership or placed under conservation
13 easements must be considered pointing out that since 1967 approximately 187,000 acres has
14 been acquired by public agencies or placed under conservation easements. But 187,000 acres is
15 only 4.17 percent of the 4,484,512 acres the county has zoned. If the allowed apartments are
16 reduced by 4.17 percent the proposed interim zoning will still allow 10.11 million apartments.
17 This is still significant and was not considered by the Responsible Official.

19 Second, WAC 197-11-330(3) requires, in part, that in “determining an impact’s
20 significance (WAC 197-11-794), the responsible official shall take into account the ... same
21 proposal may have a significant adverse impact in one location but not in another location ...”

24 ⁷³ Okanogan County Interim-Zone Map 4 Draft.

25 ⁷⁴ In the interest of full disclosure, the total for the 2013 zones in Table 1 is 3,389,911 acres while the total
26 for the 2014 zones is 4,484,512 acres. See the Excel Spreadsheet in Exhibit E of the Declaration of Tim
Trohimovich enclosed with this Opening Brief.

1 Over 7.1 million of the apartments are allowed in two zones located in very remote areas, the
2 Minimum Requirement District and the proposed Rural 20 zone.⁷⁵ These areas are well away
3 from county roads and public facilities and services. In addition, the entire county lacks
4 available, unallocated water.⁷⁶ So the Responsible Official erred in not taking into account the
5 sensitivity of the site as WAC 197-11-330(3) requires. Again, the SEPA DNS for the
6 comprehensive plan update should be remanded back to the Responsible Official for the
7 preparation of an adequate environmental impact statement.
8

9
10 **V. ARGUMENT'S NOT RAISED IN THE APPELLANTS' COMMENT LETTERS
11 AND NOTICE OF APPEAL SUBMITTED DURING THE PUBLIC COMMENT
12 PERIOD**

13 **A. The SEPA Checklist did not analyze the impacts of uses allowed by the
14 comprehensive plan on fire fighting and other public facilities and services**

15 Public services and utilities, including fire and law enforcement, are elements of the
16 environment and checklist questions that must be considered in deciding whether an EIS is
17 required.⁷⁷ The proposed comprehensive plan and interim-zoning designates and zones 267,265
18 acres Rural 1 and 473,238 acres Rural 5.⁷⁸ These two zones will allow the creation of 361,913
19 lots and the construction of over 3.3 million apartments.⁷⁹ Significant areas of these zones apply
20 to relatively remote areas of the County.⁸⁰

21 ⁷⁵ Okanogan County Interim-Zone Map 4 Draft.

22 ⁷⁶ State of Washington Department of Ecology Water Resources Program, *Focus on Water Availability for
23 the Methow Watershed, WRIA 48* p. 2 (Publication Number: 11-11-052, Revised August 2012); State of Washington
24 Department of Ecology Water Resources Program, *Focus on Water Availability for the Okanogan Watershed, WRIA
25 49* p. 2 (Publication Number: 11-11-053, Revised August 2012).

26 ⁷⁷ WAC 197-11-444(2)(d); WAC 197-11-060(2)(b); SEPA Environmental Checklist Okanogan County
Comprehensive Plan Update pp. 10 – 11 (May 9, 2014).

⁷⁸ SEPA Environmental Checklist Okanogan County Comprehensive Plan Update (May 9, 2014)
Environmental Checklist Attachment 1 p. 6.

⁷⁹ Proposed OCC 17.06A.060; OCC 17.06A.070; OCC 17.06B.060; and OCC 17.06B.070.

⁸⁰ Okanogan County Interim-Zone Map Map 4 Draft.

1 Wildfires that require evacuation orders occur regularly in Okanogan County. In an
2 interview with KUOW, Okanogan County Sheriff Frank Rogers said that Okanogan County has
3 huge fires every year and every year the county must do evacuation notifications.⁸¹ This requires
4 the Sheriff, his deputies, and any available state patrol officers to drive every road in the
5 evacuation area and stop at every house.⁸² This is time consuming, resource intensive, and the
6 Sheriff has very limited resources, 20 to 30 officers, to do this important work.⁸³ The Carlton
7 Complex Fire this year burned 400 square miles.⁸⁴ If just eight square miles zoned R-1 where to
8 burn, the proposed comprehensive plan and interim-zoning would allow over 5,000 homes on
9 that land. Sheriff Rogers said his office could not notify 5,000 homes.⁸⁵

11 A 2014 study calculated that each new dwelling in Okanogan County only generates
12 “about 7% of the cost to provide services to the new dwelling” each year.⁸⁶ So the county will
13 not be able to afford to hire Sheriff deputies to serve these new homes.

15 The SEPA Checklist did not identify or disclose the wildfire impacts homes, lives, and
16 infrastructure, the impacts of evacuations on the Sheriff’s office, or the firefighting resources the
17 wildfires require.⁸⁷ The SEPA Checklist did not disclose that new residential development in

19
20 ⁸¹ Transcript of KUOW “The Record” *One Wildfire Victim Never Got an Evacuation Notice, Here's Why* p.
3 (July 21, 2014) in Exhibit Q of the Declaration of Tim Trohimovich enclosed with this Opening Brief.

21 ⁸² *Id.* at p. 2.

22 ⁸³ *Id.* at pp. 2 – 3.

23 ⁸⁴ InciWeb – Incident Information System Carlton Complex p. 1 of 2 (8-28-2014) accessed on Sept. 5, 2014
24 at <http://inciweb.nwcg.gov/incident/3967/> and in Exhibit V of the Declaration of Tim Trohimovich enclosed with
25 this Opening Brief.

26 ⁸⁵ Transcript of KUOW “The Record” *One Wildfire Victim Never Got an Evacuation Notice, Here's Why*
pp. 2 – 3 (July 21, 2014).

⁸⁶ Julie Ann Gustanski, Ph.D., LL.M. and David Scarsella, M.S., *Economic Analysis of Conservation Efforts*
in Okanogan County p. 44 (2014) in Exhibit R of the Declaration of Tim Trohimovich enclosed with this Opening
Brief. Accessed on August 28, 2014 at: <http://wdfw.wa.gov/publications/01605/>

⁸⁷ SEPA Environmental Checklist Okanogan County Comprehensive Plan Update pp. 10 – 11 (May 9,
2014).

1 Okanogan County only paid seven percent of the costs of the necessary public services.⁸⁸ The
2 impacts of the proposed development on firefighting resources and the resources of the Sheriff's
3 office to notify the residents of the new developments of the need to evacuate was not identified
4 or disclosed in the SEPA Checklist.⁸⁹ These impacts would significantly affect the quality of the
5 environment. These impacts justify the preparation of an EIS.

7 The proposed Okanogan County comprehensive plan and interim-zone map applies the
8 high-density R-1 zone to several areas that are served by dead-end roads. Some examples of
9 dead-end roads serving R-1 zoning are Otto Road, Alta Lake Road/NF-2917, Lookout Lane,
10 Eagle Crest Drive, Kamsak Road, Mountain Point Road, and the roads east and southeast of
11 Reesas Basin Road.⁹⁰ The Firewise Principles recommend "'two ways out' of the neighborhood
12 for safe evacuation during a wildfire emergency."⁹¹ So does the U.S. Fire Administration.⁹² The
13 value of a second way to access homes is shown by one of this year's fires where the Sheriff had
14 to turn back from giving evacuation notices in a residential development when "flames closed
15 over the hood of his patrol car, and he was forced to retreat ..."⁹³ The SEPA Checklist did not

20 ⁸⁸ *Id.*

21 ⁸⁹ *Id.*

22 ⁹⁰ Okanogan County Interim-Zone Map Map 4 Draft; Google Earth 2013 Aerial Images in Exhibit S of the
Declaration of Tim Trohimovich enclosed with this Opening Brief.

23 ⁹¹ *Firewise Toolkit A Guide to Firewise Principles* p. *2 in Exhibit T of the Declaration of Tim
Trohimovich enclosed with this Opening Brief and accessed on Aug. 28, 2014 at:

http://www.firewise.org/~media/Firewise/Files/Pdfs/Toolkit/FW_TK_Principles.pdf

24 ⁹² FEMA U.S. Fire Administration, *Wildfires: Protect Yourself and Your Community* in Exhibit T of the
Declaration of Tim Trohimovich enclosed with this Opening Brief and accessed on Aug. 28, 2014 at:

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

25 ⁹³ Ann McCreary, *Methow Valley News Online No relief: Valley copes with impact of new fires, storms,*
26 *outages and evacuations* p. 3 of 5 (Aug 7, 2014) in Exhibit U of the Declaration of Tim Trohimovich enclosed with
this Opening Brief and accessed on Aug. 20, 2014 at: <http://methowvalleynews.com/2014/08/07/no-relief/>

1 identify or disclose the risk of allowing one acre lots in areas with only one way to evacuate or
2 the impacts on the residents of these areas and the Sheriff's office.⁹⁴

3 The high density R-1 zoning is also applied to areas served by one lane roads. One
4 example is the North Fork of Gold Creek, south of Carlton in the Methow Valley, which is a US
5 Forest Service road accessing Foggy Dew Campground and several trailheads. Development
6 along the North Fork road is planned in the Interim-Zone map as R-1, with a one-acre minimum
7 lot size.⁹⁵ The North Fork road is a poorly maintained one lane U.S. Forest Service road with no
8 constructed turnouts, a steep cut bank on one side, and a steep drop-off into the North Fork of
9 Gold Creek on the other side.⁹⁶ "In one section, very sharp turns skirt steep cliffs on one side and
10 a deep drop-off into the creek on the other. During the previous two fires (Buckhorn Fire, 2012;
11 Carlton Complex, 2014) fire crews or residents had to pull over onto the narrow shoulder in
12 order to pass by each other."⁹⁷

13 Five acre zoning is also served by narrow one-lane roads. "Private land in an inholding
14 on the Middle Fork of Gold Creek (total of 71.06 Acres) within the National Forest boundaries
15 is" zoned Rural 5, with a five-acre minimum lot size.⁹⁸

16
17
18 With no boundary line adjustments or consolidation of properties under one
19 ownership, at least 11 five-acre parcels could be permitted along this dead-end,
20 narrow one-lane dirt road under the interim zoning ordinance. With boundary line
21 adjustments and/or consolidation of properties under one ownership, at least 14
22 five-acre parcels could be built upon. This bottle-neck, with no possible second
23 exit from the drainage due to the narrow structure of the valley, could be
24 disastrous in either wildfire or the resultant mudslides, especially if fire traffic is

25 ⁹⁴ SEPA Environmental Checklist Okanogan County Comprehensive Plan Update pp. 10 – 11 (May 9,
26 2014).

⁹⁵ Okanogan County Interim-Zone Map Map 4 Draft; Email from Isabelle Spohn (Sept. 5, 2014) in Exhibit
Y of the Declaration of Tim Trohimovich enclosed with this Opening Brief.

⁹⁶ Email from Isabelle Spohn (Sept. 5, 2014).

⁹⁷ *Id.*

⁹⁸ Okanogan County Interim-Zone Map Map 4 Draft; Email from Isabelle Spohn (Sept. 5, 2014).

1 attempting to enter while residents are attempting to leave. During the two recent
2 fires above, residents had to either pull over into the brush to pass each other or
3 one of the vehicles had to back up several hundred yards.⁹⁹

4 These undisclosed and unanalyzed impacts would significantly affect the quality of the
5 environment. These impacts require the preparation of an EIS.

6 **B. The SEPA Determination of Nonsignificance (DNS) should be reevaluated because**
7 **of the fires, floods, and mudslide potential in Okanogan County**

8 WAC 197-11-340(3)(a) provides in relevant part that the “lead agency shall withdraw a
9 DNS if: ... (ii) There is significant new information indicating, or on, a proposal’s probable
10 significant adverse environmental impacts” The recent fires, floods, and mudslides in
11 Okanogan County constitute new information indicating probable significant adverse impacts
12 from the proposed comprehensive plan. As was described under Section VA, R-1 and R-5 zoning
13 are applied to areas that will be difficult to evacuate because they have only one access or
14 because they are located on single-lane roads.

15
16 The fires have changed the local built and natural environments, damaging buildings,
17 farms, ranches, and forests and leaving the burned over areas susceptible to flooding and
18 mudflows.¹⁰⁰ The Carlton Complex Fire burned 400 square miles.¹⁰¹ A significant amount of the
19

20
21 ⁹⁹ Email from Isabelle Spohn (Sept. 5, 2014).

22 ¹⁰⁰ Ann McCreary and Marcy Stamper, *Methow Valley News Online* *Floods, slides cut swath of damage*
23 *after torrential storm* p. 1 of 5 (Aug. 29, 2014) accessed on Sept. 5, 2014 at:
24 <http://methowvalleynews.com/2014/08/29/floods-slides-cut-swath-of-damage-after-torrential-storm/> in Exhibit V of
25 the Declaration of Tim Trohimovich enclosed with this Opening Brief; Okanogan Wenatchee National Forest and
26 Burned Area Emergency Response, *Post-Fire Hazards: Debris Flows These Tips Could Save Your Life!* p. * 2 in
Exhibit U of the Declaration of Tim Trohimovich enclosed with this Opening Brief and accessed on Sept. 5, 2014 at:
<http://central.washingtonfire.com/wp-content/uploads/2014/08/WAdebrisflows.pdf>; Pacific Biodiversity
Institute, *Carlton Complex Wildfire Recovery* p. 1 of 3 (August 2014) accessed on Sept. 5, 2014 at:
<http://www.pacificbio.org/enews/PBI-August-2014-enews.htm> and in Exhibit V of the Declaration of Tim
Trohimovich enclosed with this Opening Brief.

¹⁰¹ InciWeb – Incident Information System Carlton Complex p. 1 of 2 (8-28-2014).

1 burned over land was private land affected by the proposed comprehensive plan and interim
2 zoning. According to a GIS analysis the Pacific Biodiversity Institute conducted at the request of
3 the Carlton Complex Fire Recovery and Assistance Network, a local grass roots Okanogan
4 County organization:

5
6 From our analysis of the initial fire area, we learned that over 4,240 private
7 parcels were within the fire perimeter, comprising over 41% of the burn area. Not
8 all these parcels burned in the fire, but most did, with over 300 homes destroyed
9 and significant losses of livestock and agricultural crops. Overall, the impacts to
10 the local community have been very significant.¹⁰²

11 In addition, allowing high density R-1 zoning and the high multi-family densities allowed
12 in the county's other rural zones in areas subject to flooding and mudflows has the potential for
13 significant adverse impacts on the development permitted in those zones. So the DNS should be
14 withdrawn based on this new information.

15 The University of Washington has projected that in the forested areas of the Eastern
16 Cascades and the Okanogan Highlands the "annual area burned is projected to increase by about
17 a factor of 4 by the 2040s, compared to 1980-2006, under a medium greenhouse gas scenario."¹⁰³
18 This will make the environmental impacts from burns, including property damage, floods, and
19 mudflows, more common. This underscores the need to do an EIS on the proposed
20 comprehensive plan.

21 RESPECTFULLY SUBMITTED and signed on this 10th day of September 2014,

22 
23 _____
24 Tim Trohimovich, WSBA No. 22367
25 Attorney for Futurewise and the Methow Valley Citizens' Council

26 ¹⁰² Pacific Biodiversity Institute, *Carlton Complex Wildfire Recovery* p. 1 of 3 (Aug. 2014).

¹⁰³ Climate Impacts Group University of Washington, *State of Knowledge Report Climate Change Impacts and Adaptation in Washington State: Technical Summaries for Decision Makers* p. 7-3 (Dec. 2013).

CERTIFICATE OF SERVICE

I, Tim Trohimovich, declare and certify under penalty of perjury and the laws of the State of Washington that, on September 10, 2014, I caused the following document to be served on the persons listed below in the manner shown: Futurewise's and the Methow Valley Citizens' Council's Opening Brief, true and correct copies of which are attached to this certificate of service.

Okanogan County Hearings Examiner
c/o Mr. Perry Huston
Director of Planning
123 5th Avenue, Suite 130
Okanogan, Washington 98840
Telephone: (509) 422-7218

Mr. Alexander W. Mackie
Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Telephone: (206) 359-8000
Counsel for Okanogan County

Original

- By United States Mail, postage prepaid and properly addressed
- By Legal Messenger or Hand Delivery
- By Facsimile
- By Federal Express or Overnight Mail prepaid
- Email: phuston@co.okanogan.wa.us

- By United States Mail, postage prepaid and properly addressed
- By Legal Messenger or Hand Delivery
- By Facsimile
- By Federal Express or Overnight Mail prepaid
- By E-Mail:
amackie@perkinscoie.com;
krentz@perkinscoie.com

Signed and certified on this 10th day of September 2014,

Tim Trohimovich, WSBA No. 22367
Attorney for Futurewise and the Methow Valley Citizens' Council

BEFORE THE OKANOGAN COUNTY HEARINGS EXAMINER

IN THE MATTER OF APPEAL OF OKANOGAN COUNTY SEPA)
THRESHOLD DETERMINATION)
ISSUED MAY 9, 2014)
REGARDING THE OKANOGAN COUNTY COMPREHENSIVE PLAN)

STATEMENT OF ISSUES AND INTRODUCTION

On May 9, 2014, the SEPA responsible official for Okanogan County¹ issued a Determination of Non-Significance with respect to the proposed Okanogan County Comprehensive Plan Update and Interim Zoning Ordinance and withdrawal of the previously issued Determination of Significance with respect to the proposed Comprehensive Plan Update, Shoreline Master Program, Critical Areas Ordinance, Zoning Code and Subdivision Code.

The appeal was timely filed by Futurewise and the Methow Valley Citizens' Council, collectively referred to hereinafter as the APPELLANT, and represented by Mr. Tim Trohimovich, Attorney at Law. Okanogan County, hereinafter referred to as the COUNTY is represented by Alexander Mackie, Attorney at Law.

There are three distinct issues to be considered by the Hearing Examiner:

1. Whether or not the Hearing Examiner has jurisdiction to hear and decide the matter.
2. Whether or not the APPELLANTS have standing to bring the appeal, and
3. The merits of the appeal itself.

These issues will be considered separately in the order presented above.

FINDINGS OF FACT, CONCLUSIONS, AND DECISION

This matter was heard by the Okanogan County Hearings Examiner on November 23, 2014.

FINDINGS OF FACT WITH RESPECT TO THE ISSUE OF JURISDICTION

1. At the hearing on the date noted, the APPELLANT argued that the Hearing Examiner lacks jurisdiction to hear and decide the matter because after the DNS was issued and the appeal filed, the County Commissioners on Sept. 29, 2014, adopted new rules with respect to SEPA threshold determination appeals barring administrative appeals of threshold determinations on legislative proposals unless that determination is connected to the final legislative decision.

¹ Mr. Perry Huston, Director of the Office of Planning and Development

2. The COUNTY argued that the rules in place at the time of the threshold determination and appeal were filed control, not rules later adopted.
3. The Hearing Examiner left the record open until November 14, 2014 in order to allow the parties to submit additional briefings on the jurisdictional issue.
4. Both parties filed supplemental briefs on the issues on November 14.²
5. The APPELLANT argues that the amendment of the County statute relative to the authority of the Hearing Examiner is merely procedural and the COUNTY argues that there is “ample authority for the examiner to proceed,”³ drawing an analogy to the Land Use Petition Act, and that the County Commissioners changed a “substantive right.”⁴
6. The APPELLANT relates the issue of jurisdiction to the land-use permit vesting doctrine in Washington State.

CONCLUSIONS WITH RESPECT TO THE ISSUE OF JURISDICTION

1. The APPELLANT’S argument as to lack of jurisdiction is unpersuasive. The matter of an appeal of a threshold determination is not merely procedural but, as the COUNTY points out – substantive.
2. While not including in briefing by either party, common sense tells us that if a local government was able to change the appeal jurisdiction after an appeal had been filed; all sorts of mischief could be made by local legislative authorities by changing the rules to secure a preferred outcome.
3. **The Okanogan County Hearing Examiner has jurisdiction to hear and decide this appeal.**

FINDINGS OF FACT WITH RESPECT TO THE ISSUE OF STANDING

1. OCC at §14.04.220.2.A, both before the appeal was filed, and after the adoption of Ordinance 2014-10, bars appeals by parties who have failed to comment during the SEPA threshold determination process.
2. The APPELLANT did not fail to comment.
3. The APPELLANT argues that §14.04.220.2.A grants them “standing to maintain this appeal.”⁵
4. The COUNTY in briefing prior to the hearing argued that the APPELLANT was without standing to bring the appeal based on the “lack of any identified direct and immediate injury.”⁶

² “Futurewise and the Methow Valley Citizens’ Council’s supplemental brief on Jurisdiction and Standing” and “Okanogan County’s Response Brief to Appellant’s Supplemental Brief on Jurisdiction and Standing.”

³ Okanogan County’s Response Brief to Appellant’s Supplemental Brief at page 2

⁴ Id at page 3

⁵ Futurewise and the Methow Valley Citizens’ Council’s supplemental brief on Jurisdiction and Standing at page 4

5. The COUNTY, in its supplemental briefing apparently abandoned the argument that the APPELLANT lacked standing to be heard by the Hearing Examiner stating that “Before the Hearings Examiner Futurewise had the right to a hearing on the merits of the SEPA decision based solely on the fact of “comment.”⁷ Also “...the COUNTY recognizes the ‘comment test’ for filing the appeal, and the injury in fact requirement to successfully challenge the DNS...”⁸
6. The APPELLANT has consistently maintained that “Since Futurewise and MVCC commented on the SEPA documents, the two organizations have standing to maintain the appeal.”⁹
7. OCC at §14.04.220.2.A is not dispositive as to who MAY appeal but does bar those who have not testified.

CONCLUSIONS WITH RESPECT TO THE ISSUE OF STANDING

1. While the OCC is not clearly dispositive as to who may bring an appeal it implies that those who have testified have standing.
2. The COUNTY briefing on the standing issue suggests that it agrees with the APPELLANT as to “comment standard” to establish standing, but it seems to reserve the “injury in fact” standard to some degree.
3. On balance, given the implication offered by OCC and the general agreement of the parties it is the opinion of the Hearing Examiner that **the APPELLANT has standing to bring the appeal.**

FINDINGS OF FACT WITH RESPECT TO THE MERITS OF THE APPEAL

1. The burden of proof is on the APPELLANT to present sufficient credible evidence to support its position.¹⁰
2. In order to issue a “determination of significance,” the SEPA responsible official must find there is a “**probable significant environmental impact.**”¹¹ (emphasis added)
3. “Significant” as used in SEPA means a reasonable likelihood of more than a moderate adverse impact on environmental quality.¹²
4. In any action involving an attack on a determination by a governmental agency relative to the requirement or the absence of the requirement, or the adequacy of a “detailed statement,” the decision of the governmental agency [SEPA responsible official] shall be accorded **substantial weight.** (emphasis added)
5. The standard of review before the Hearing Examiner is whether the SEPA threshold determination by the responsible SEPA official is “**clearly erroneous.**”¹³

⁶ Okanogan County’s Response to Appellants’ Brief at pages 4, 6, 12, 17, 19, 21, 23, 24, etc.

⁷ Okanogan County’s Response Brief to Appellant’s Supplemental Brief on Jurisdiction and Standing at page 3, line 6

⁸ Id, page 3, line 23

⁹ Futurewise and the Methow Valley Citizens’ Council’s supplemental brief on Jurisdiction and Standing at page 4

¹⁰ Okanogan County Hearing Examiner rules endorsed by County Commissioners

¹¹ RCW 43.21C.031, WAC 197-11-360

¹² WAC 197-11-794

6. This matter was specifically assigned to the Hearing Examiner by the County Commissioners.
7. The decision of the Hearing Examiner is final and binding on the validity of the SEPA threshold determination.¹⁴
8. The Responsible SEPA Official has authority to withdraw a DS when circumstances change.¹⁵
9. The project (adoption of a new comprehensive plan and official controls pursuant thereto) materially changed when the County elected to proceed with the Comprehensive Plan and interim zoning controls independently, rather than the aforementioned suite of plans and regulations previously referenced.
10. Subsequent regulations will be subject to independent SEPA review.
11. Adoption of a comprehensive plan is not an official control in and of itself but rather a guide to the adoption of official controls.¹⁶
12. The APPELLANT argues that the proposed comprehensive plan update will dramatically increase development in Okanogan County, but then, ironically, argues that such development cannot be supported due to lack of water, transportation infrastructure and other services.
13. The proposed comprehensive plan update does not increase the intensity of use or the extent of development capability in Okanogan County.
14. The proposed interim zoning ordinance is exactly that – interim – and a final zoning code will be subject to environmental review before adoption. It mirrors the existing zoning ordinance in terms of intensity except that it provides for an increase in minimum lot sizes (decreased density) in some districts.
15. The County has adopted both plan and regulatory protections for agriculture lands and farms.
16. Water resources are not regulated by Okanogan County – they are the purview of the Washington State Dept. of Ecology.
17. Based on available data, growth in Okanogan County is very slow. The level of growth suggested by the APPELLANT is more fantastic than probable.
18. The proposed comprehensive plan does not increase the extent of development capability in Okanogan County.
19. The interim zoning code will be reviewed with 60 days of adoption.

¹³ COUNTY response brief at page 5-7, citing *Norway Hill Pres. V. King Cnty. Council* and Professor Richard Settle from his treatise entitled Washington State Environmental Policy Act – A Legal and Policy Analysis.

¹⁴ OCC 2.65.070(A)(16)

¹⁵ WAC 197-11-360(4)

¹⁶ RCW 36.70.340

CONCLUSIONS WITH RESPECT THE MERITS OF THE APPEAL

1. The APPELLANT has not demonstrated that adoption of the comprehensive plan and interim zoning code will result in **probable significant environmental impacts**.
2. The APPELLANT has not demonstrated that its concerns about farm lands, water supply, air quality, landslides, fire and others create more than a moderate impact on the environment by reason of adoption of the proposed comprehensive plan update.
3. The Carlton Complex fire of 2014 is not "new information" that would change the threshold determination criteria.
4. By any reasonable standard, the APPELLANT has not demonstrated that the decision of the SEPA Responsible Official was **clearly erroneous**.
5. The Hearing Examiner attributes **significant weight** to the decision of the SEPA responsible official.
6. The comprehensive plan update falls within the classification discussed by Professor Settle¹⁷ where no determination of significance is required when no material change in use or intensity is authorized.
7. The environmental checklist and supporting materials presented by the SEPA Responsible Official adequately support the determination of non-significance.

DECISION

Based upon the information contained in the application materials, and additional information provided at the hearing, briefings by the parties, and the findings and conclusions above, it is the decision of the Hearing Examiner to **DENY** the appeal.

Dated this 16th day of November, 2014.

OKANOGAN COUNTY HEARING EXAMINER



DAN BEARDSLEE

¹⁷ Ibid -- Settle

1 **EXPEDITE**
 2 No hearing set
 3 Hearing is set:
 4 Date: October 6, 2015
 5 Time: 9:00 a.m.
 6 Judge/Calendar: _____

7
 8 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**
IN AND FOR OKANOGAN COUNTY

9
 10 **METHOW VALLEY CITIZENS'**
COUNCIL and FUTUREWISE,

NO. 15-2-00005-7

11 **Petitioners/Plaintiffs,**

12 **v.**

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY'S
AMICUS CURIAE BRIEF

13 **OKANOGAN COUNTY,**

14 **Respondent/Defendant.**

15
 16 **I. INTRODUCTION**

17 This case involves a challenge to Okanogan County's recent update of its
 18 comprehensive land use plan. The Methow Valley Citizens' Council and Futurewise
 19 (collectively referred to as "MVCC") are contesting Okanogan County's adoption of its 2014
 20 Comprehensive Plan and associated planning maps and documents, which include an Interim
 21 Zone Code and Interim Zone Map (collectively referred to as the "Comprehensive Plan" or
 22 "Plan"). The State of Washington, Department of Ecology (Ecology) offers this amicus curiae
 23 brief to address issues in this case relating to the Comprehensive Plan's role in the regulation
 24 of water resources.

25 Ecology concurs with MVCC's position that the Plan violates the Planning Enabling
 26 Act, RCW 36.70, because it fails to adequately protect water resources and water quality. In

1 addition, Ecology concurs with MVCC's position that the County violated the State
2 Environmental Policy Act (SEPA), RCW 43.21C, by issuing a Determination of Non-
3 Significance (DNS) and not preparing an Environmental Impact Statement (EIS) that would,
4 among other things, fully consider impacts on water resources and quality that would be
5 caused by implementation of the Plan.

6 An aspect of the Plan that is of great concern to Ecology is its interim zoning that
7 establishes a "rural high density" zone throughout significant portions of the County which
8 allows the division of land into one-acre lots for the development of one home, or an apartment
9 building with up to four units, on each lot. The interrelationship between land use planning
10 and permitting laws and the laws governing water rights and the management of water
11 resources in Washington is becoming increasingly important as our state's population has
12 grown and competition for limited water resources has increased. There are legitimate
13 concerns that adequate water is not available to support development at this level of density in
14 rural Okanogan County, and that rural development at this density could cause adverse impacts
15 on water quality from, among other things, increased storm water runoff and septic discharge.
16 The Plan allows many more lots than can be supported by the County's water supply, without
17 including measures in the Plan that will ensure that water availability and quality will be
18 adequately protected.

19 Ecology supports MVCC's request for the Court to rule that the Comprehensive Plan
20 fails to comply with the Planning Enabling Act and to remand the matter back to the County
21 with a directive for it to re-write the Plan to bring it into compliance. Further, on remand, the
22 County should be required to comply with SEPA by preparing an EIS that adequately
23 considers impacts on water resources and quality that would be caused by implementation of
24 the Plan. The statement should include a range of alternative planning approaches, so that
25
26

1 adverse impacts on water resources and on fish populations that depend upon water for habitat
2 that would be caused by future development in rural Okanogan County can be minimized.¹

3 **II. IDENTITY AND INTEREST OF AMICUS CURIAE**

4 Ecology is the state agency that is the administrator of water resources in Washington.
5 See RCW 43.21A; RCW 90.03; RCW 90.14; RCW 90.44; RCW 90.54. Ecology is authorized
6 to adopt rules for water management in watersheds throughout the state. These water
7 management rules include minimum instream flow requirements, stream closures, and other
8 measures. See RCW 90.54.020, .040, .050. Ecology administers Washington's water
9 permitting system through the issuance of decisions on applications for water right permits
10 authorizing surface water diversions and groundwater withdrawals. RCW 90.03.290;
11 RCW 90.44.060. Further, Ecology has the authority to ensure that water resources are used
12 lawfully, including regulating permit-exempt groundwater wells² that are used inconsistently
13 with the statutory allowance in the Groundwater Code. See, e.g., RCW 90.03.600, .605.

14 Ecology has four important interests in this case. First, the issue involving the Planning
15 Enabling Act's requirement that comprehensive plans include adequate provisions for
16 protection of water resources, stated below, has statewide ramifications related to the overlap
17 between Ecology's water management authority and counties' land use regulation authority
18 under the Act when such authority addresses local water resources. Second, because
19 Okanogan County's Comprehensive Plan will govern the use of land and water in rural areas of
20 the County in the future, Ecology seeks to ensure that the County's specific Plan will include
21 provisions that will facilitate the proper management and protection of water resources. Third,

22 ¹ In this brief, Ecology is addressing only the County's adoption of the Comprehensive Plan as it relates
23 to the management of water use and the maintenance of instream flows, i.e., water "availability" or "quantity,"
24 and as it relates to water quality. Ecology is not addressing any other issues, such as the issue relating to
25 requirements to designate agricultural and forest lands in a comprehensive plan.

26 ² Under the Groundwater Code, certain uses of groundwater for domestic, stock watering, non-
commercial lawn and garden irrigation, and industrial purposes are exempt from the requirement to obtain a
permit from Ecology to establish a new water right. RCW 90.44.050. However, this is an exemption *only* from
the permitting requirement; and other aspects and requirements of water law apply to permit-exempt groundwater
uses. *Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002).

1 the water management rule for the Methow River Basin (Methow Rule), WAC 173-548, and
2 the water management rule for the Okanogan River Basin (Okanogan Rule), WAC 173-549,
3 are involved in the dispute over water in this case. As the agency which adopted these rules
4 and is charged with their implementation, Ecology has an interest in this Court's consideration
5 of the Methow Rule and the Okanogan Rule. Fourth, Ecology submitted comments on
6 Okanogan County's Draft Environmental Impact Statement (DEIS) and has an interest in
7 ensuring that the County complies with the requirements of SEPA so that its Comprehensive
8 Plan will be developed based on proper consideration of alternative courses of action and will
9 include adequate measures for the protection of water availability and quality.

10 III. SPECIFIC ISSUES ADDRESSED BY AMICUS CURIAE

11 1. In adopting its Comprehensive Plan, did Okanogan County violate
12 RCW 36.70.330(1), the provision in the Planning Enabling Act that requires land use elements
13 of comprehensive plans to protect groundwater resources?

14 2. Did Okanogan County violate the State Environmental Policy Act when it
15 withdrew its Draft Environmental Impact Statement relating to its Comprehensive Plan and
16 issued a Determination of Non-Significance finding that it was unnecessary to prepare an
17 Environmental Impact Statement?

18 IV. FACTUAL BACKGROUND

19 Ecology generally agrees with the statement of facts contained in Methow Valley
20 Citizens' Council's and Futurewise's Petitioners'/Plaintiffs' Opening Brief (MVCC Opening
21 Br.) at pages 7 through 10, and adds the following background related to Ecology's
22 involvement in this matter. Through letters dated June 5, 2009, and April 7, 2011, Ecology
23 submitted comments to the County on its draft Comprehensive Plan update documents. Letter
24 from Department of Ecology to Okanogan County, June 5 2009; RAP00000261-265 (Letter
25 from Department of Ecology to Okanogan County, April 7, 2011). A copy of the June 5, 2009,
26 letter is attached as Appendix 1, and a copy of the April 7, 2011, letter is attached as

1 Appendix 2. Subsequently, on June 21, 2013, Ecology sent a letter to the County that provided
2 comments on the draft Comprehensive Plan update and its accompanying DEIS. Letter from
3 Department of Ecology to Okanogan County, June 21, 2013.³ A copy of the June 21, 2013,
4 letter is attached as Appendix 3.

5 V. ARGUMENT⁴

6 A. Okanogan County Violated the Planning Enabling Act's Requirement That 7 Comprehensive Plans Must Protect Groundwater Resources

8 Ecology agrees with MVCC that the Comprehensive Plan fails to comply with
9 RCW 36.70.330(1), the provision of the Planning Enabling Act that requires protection of
10 groundwater resources. This provision requires comprehensive plans and zoning to be
11 consistent with Ecology's water management rules, and the County's Plan is inconsistent with
12 Ecology's rules for the Methow River Basin and the Okanogan River Basin. Implementation
13 of the Plan would cause adverse impacts to instream flows, and senior water right holders, in
14 both of these basins, where Ecology already issues orders during water-short periods that
15 require water right holders to shut off their use when required minimum flows are not met.

16 RCW 36.70.330, the subsection of the Planning Enabling Act setting forth required
17 elements for comprehensive land use plans, provides, in relevant part:

18 The comprehensive plan shall consist of a map or maps, and descriptive text
19 covering objectives, principles and standards used to develop it, and shall
include each of the following elements.

20 (1) A land use element which designates the proposed general
21 distribution and general location and extent of the uses of land for agriculture,
22 housing, commerce, industry, recreation, education, public buildings and lands,
and other categories of public and private use of land. . . . *The land use element
shall also provide for protection of the quality and quantity of groundwater*

23 ³ Ecology has not ascertained whether its June 5, 2009, and June 21, 2013, letters to the County are
24 included in the administrative record compiled by the County for this case. It is Ecology's understanding that the
record will be supplemented to include any records referred to in briefs that have not yet been included in the
record.

25 ⁴ Ecology agrees with MVCC that this Court has jurisdiction over this case under the Uniform
26 Declaratory Judgment Act or the Land Use Petition Act. See MVCC Opening Br. at 10-12, 14-18. It is
axiomatic that there must be some avenue available for judicial review of a county's decision to adopt a
comprehensive land use plan under the Planning Enabling Act.

1 used for public water supplies and shall review drainage, flooding, and storm
2 water run-off in the area and nearby jurisdictions

3 RCW 36.70.330(1) (emphasis added). Further, the Act requires that development regulations,
4 which include zoning codes and maps, “shall not be inconsistent with the county’s
5 comprehensive plan.” RCW 36.70.545.

6 In its landmark decision involving the interrelationship between regulation of land use
7 and water resources, *Kittitas County v. Eastern Washington Growth Management Hearings*
8 *Board*, 172 Wn.2d 144, 256 P.3d 1193 (2011), the Supreme Court held that, under the Growth
9 Management Act (GMA), local governments must find that water supply is both legally and
10 physically available before they may approve subdivision and building permit applications. In
11 rejecting a county’s argument that it was preempted from adopting regulations related to the
12 protection of groundwater resources on the ground that such responsibility rests only on
13 Ecology, the Court pronounced in *Kittitas County* that:

14 In fact, several relevant statutes indicate that the County *must* regulate to some
15 extent to assure that land use is not inconsistent with available water resources.
16 The GMA directs that the rural and land use elements of a county’s
[comprehensive] plan include measures that protect groundwater resources.

17 *Kittitas Cty.*, 172 Wn.2d at 178. More recently, in *Whatcom County v. Western Washington*
18 *Growth Management Hearing Board*, 186 Wn. App. 32, 46, 344 P.3d 1256 (2015), the Court
19 of Appeals held that, in adopting comprehensive plans under the GMA, counties are required
20 to include rural elements that include measures to protect water availability and water quality.

21 For the most part, as a consequence of its population, Okanogan County is not required
22 to adopt a comprehensive plan and certain development regulations under the GMA. See
23 RCW 36.70A.040. As a result, the County has opted to engage in planning under the
24 requirements of the Planning Enabling Act. But that does not mean that the same principles
25 related to groundwater resources under the GMA are inapplicable to Okanogan County merely
26 because it primarily plans under the Planning Enabling Act.

1 Ecology agrees with MVCC that the Planning Enabling Act, which contains identical
2 statutory language regarding protection of groundwater as in the GMA, requires protection of
3 groundwater resources in the same manner that is required under the GMA, and that the
4 principles stated in *Kittitas County* apply to Okanogan County's planning functions. See
5 MVCC Opening Br. at 50-51. The GMA requires that the land use element of a
6 comprehensive plan adopted under that act "shall provide for protection of the quality and
7 quantity of groundwater used for public water supplies." RCW 36.70A.070(1). The Planning
8 Enabling Act includes the exact same language, except for the addition of the word "also."
9 RCW 36.70.330(1). Since this language in both statutes is the same, the Planning Enabling
10 Act should be read to require protection of groundwater resources to the same extent as the
11 provisions in the GMA requiring the protection of groundwater in comprehensive plans and
12 zoning regulations. To comply with this provision, comprehensive plans and zoning must
13 ensure that water is legally available to support the development that would be permissible, or
14 require mitigation to offset impacts on senior water rights, including closed stream flows, or
15 minimum instream flows at times when they are not met. And they must also ensure adequate
16 protection of water quality, either through reducing the density of development that is allowed,
17 or by requiring mitigation or other measures to prevent or offset adverse impacts.

18 The interim zoning included in the County's Plan contains a "rural high density" zone
19 throughout significant portions of the County that allows the division of land into one-acre lots.
20 And virtually all that the Comprehensive Plan states about "water rights," other than a policy to
21 attempt to keep water rights from being transferred outside the county, is that:

22 Okanogan County recognizes a water right as private property and affords it the
23 same protection. Recent court decisions concerning exempt wells have changed
24 the historic view of exempt wells and the County is required to follow state
25 guidelines with respect to uses and developments on exempt wells. State water
26 right permits are administered by the Washington Department of Ecology and it
is the policy of the County that promotion of the goals of this Comprehensive
Plan be a consideration in any permit decisions made by that agency.

1 RAP00001371-1422 (Comprehensive Plan of 2014, at 11-12). Similarly, the Plan appears to
2 attempt to justify high density zoning by stating that:

3 Historic land use divisions and segregations have created many more legal lots
4 in the County than the population growth suggests is needed. However . . .
5 requirements to prove available water supply to obtain building permits and
6 court-mandated limitations on exempt wells in specific projects under
7 RCW 90.44.050 severely limit the population and development potential of the
8 more rural areas where public water supplies are not available.

9 The County supports density rather than lot size limitations in low density rural
10 areas to minimize the amount of lands devoted to roads, fences and impervious
11 surfaces to limit development impact on the more remote rural areas and avoid
12 conflicts with recreation and resource issues.

13 *Id.* at 14.

14 These provisions fail to adequately protect the quality and quantity of groundwater, as
15 required by the Act. Specifically, the County's failure to address the comments provided by
16 Ecology in its three letters by revising the draft Plan in order to prevent the potential impacts
17 on water availability and quality discussed by Ecology demonstrates the County's failure to
18 comply with RCW 36.70.330(1). Despite explicit concerns regarding water availability raised
19 by Ecology in its letters, the County failed to make any changes to its draft Plan to address
20 Ecology's concerns. MVCC has correctly characterized the water-related concerns that
21 Ecology expressed to the County through its comments. *See* MVCC Opening Br. at 27-29,
22 39-40; Methow Valley Citizens' Council's and Futurewise's Petitioners'/Plaintiffs' Reply
23 Brief and Answer to Motion to Dismiss (MVCC Reply) at 5-6, 20-21. Ecology expressed
24 concerns over potential impacts to instream flows, and senior water right holders, in the
25 Methow River and Okanogan River Basins, where Ecology already issues orders during water-
26 short periods that require water right holders to shut off their use when required minimum
flows in those basins are not met. The County failed to address Ecology's comment 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

1 those with senior water rights, which includes instream flows established in [the
2 Methow and Okanogan Rules].

3 App. 2, at 3.

4 Under the Methow Rule and the Okanogan Rule, adequate water is not legally available
5 in many parts of the County to support development under the interim zoning, unless a
6 mitigation system is established to ensure that new water uses are offset by the acquisition of
7 shares of senior water rights, or by other measures to mitigate the impacts of new water uses on
8 stream flows. New unmitigated water rights are not available because minimum instream
9 flows established under the Okanogan Rule and the Methow Rule are frequently not met,
10 which is causing the curtailment of preexisting irrigation water rights that have priority dates
11 senior to rights associated with new wells. Further, under provisions in the Methow Rule, and
12 the Supreme Court's decision in *Department of Ecology v. Campbell & Gwinn, L.L.C.*,
13 146 Wn.2d 1, 43 P.3d 4 (2002),⁵ reliance on the exemption from water right permitting for
14 group domestic water uses, without mitigation to offset effects on flows, is highly problematic.
15 Consequently, without a mitigation system, water is not available to support new development
16 in much of the County, especially in the rural high density zones. The Comprehensive Plan
17 and associated development regulations must include mitigation provisions to be adequately
18 protective of groundwater resources under RCW 36.70.330(1).

19 **1. Under the Okanogan Rule, the Comprehensive Plan is deficient because,
20 without mitigation, permit-exempt groundwater may not provide an
21 adequate source of water for new development**

22 The Okanogan Rule established stream management units and minimum instream flow
23 requirements for certain river reaches. WAC 173-549-020. Additionally, there are closures of
24 certain streams to new water uses on a seasonal basis. WAC 173-549-025. Groundwater use

25 ⁵ In *Campbell & Gwinn*, the Supreme Court held that each subdivision can qualify for only one
26 exemption from groundwater permitting requirements for group domestic water use not exceeding 5,000 gallons
per day of water use, and that a development cannot be sliced into multiple subdivisions that individually would
require no more than 5,000 gallons of water per day. *Campbell & Gwinn*, 146 Wn.2d at 12-15.

1 is subject to the instream flows and closures when there is hydraulic continuity between a
2 proposed groundwater source and regulated surface water body. WAC 173-549-060. Under
3 the Okanogan Rule's express language, permit-exempt groundwater use is not subject to the
4 instream flows and closures. However, permit-exempt groundwater use that would affect
5 instream flows may not provide an adequate source of water for new homes because holders of
6 water rights that are senior in priority to new permit-exempt wells are already being required to
7 shut off their water use at times when the flows are not met:

8 Ecology regularly sends out Administrative Orders under RCW 90.03 alerting
9 water right holders they will be curtailed in favor of instream flows for the
10 Methow and Okanogan Rivers. This has been a common occurrence in
11 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.

12 App. 2, at 3. The water users who are shut off hold water rights for irrigation purposes that
13 were issued by Ecology after the date that the Okanogan Rule became effective in 1976 and
14 include conditions requiring that water use be curtailed at times when the rule's flow
15 requirements are not met. RAP00000078-83 (Department of Ecology, *Focus on Water*
16 *Availability for the Okanogan Watershed, WRIA 49*, at 2), ("Eighty-two irrigation rights based
17 on permits issued after adoption of WAC 173-549 are curtailed at some time during most years
18 when the adopted flows are not met."). As a result, users of new permit-exempt wells, who
19 would have rights that are junior in priority to the already-existing irrigation rights with the
20 curtailment conditions, could impair the holders of those rights by forcing them to shut off
21 their water use because of low flows earlier than would occur if the new, junior exempt wells
22 were not pumping water that is connected to the river. Thus, Ecology informed the County
23 that "water use could be curtailed by those with senior water rights," and further commented
24 that the:

25 Department of Health does not consider interruptible water rights an adequate
26 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

1 flows. As such, it will be questionable whether [the proposed comprehensive]
2 plan would provide an appropriate provision for potable water supply under
RCW 58.17.

3 App. 2, at 3.

4 **2. Under the Methow Rule, the Comprehensive Plan is deficient because,**
5 **without mitigation, permit-exempt groundwater may not provide an**
6 **adequate source of water for new development**

7 The County's failure to account for the availability of water in areas governed by the
8 Methow Rule is even more apparent because the Methow Rule expressly governs permit-
9 exempt groundwater use. Under WAC 173-548-050, several streams and lakes are closed to
10 new appropriations of water, including "groundwater hydraulically connected with these
11 surface waters," which includes "rights to use water consumptively established through permit
12 procedures and groundwater withdrawals otherwise exempted from permit under
13 RCW 90.44.050." WAC 173-548-020 establishes the Lower Methow, Middle Methow, Upper
14 Methow, Methow Headwaters, Early Winters Creek, Chewack River, and the Twisp River as
15 stream management units, sets forth base (i.e., minimum) flows for those reaches on a monthly
16 basis, and states that "[a]ll rights hereafter established shall be subject to the base flows . . .
17 except as provided under WAC 173-548-030 herein." WAC 173-548-020(4). In turn,
18 WAC 173-548-030 provides that "there are surface waters available for appropriation from the
19 stream management units" in certain amounts and at certain times, sets forth quantities of
20 water in cubic feet per second during each month of the year for each stream management unit,
21 and states that "[t]he appropriation limit is set forth to be an amount equal to the one in two
22 year natural reach discharge on a monthly basis for all management reaches except Early
23 Winters Creek. The appropriation limit for Early Winters Creek is set forth to be an amount
24 equal to the estimated natural mean monthly streamflow for that stream." Then, the second
25 subsection sets forth allocations of water by use categories for the period from April to
26 September, and the period from October to March. These include reserved allocations of
2 cubic feet per second in each management unit for "Single Domestic and Stock Use." For

1 "Public Water Supply, Irrigation, and Other Uses," the reserved allocations are stated as
2 "[r]emaining waters up to the appropriation limit set forth in WAC 173-548-030(1)(c)."
3 WAC 173-548-030. And, under WAC 173-548-060, groundwater use is subject to the
4 instream flows. WAC 173-548-060 states that "[i]f it is determined that a future development
5 of groundwater measurably affects surface waters subject to the provisions of [this rule], then
6 rights to said groundwater shall be subject to the same conditions as affected surface waters."
7 Groundwater use is subject to the instream flow requirements set forth in WAC 173-548-020 if
8 there is any indication of hydraulic continuity⁶ between the aquifer that would be pumped and
9 a regulated surface water body that would cause even a de minimis reduction in stream flows.
10 *Postema v. Dep't of Ecology*, 142 Wn.2d 68, 85-93, 11 P.3d 726 (2000); *see also Hubbard v.*
11 *Dep't of Ecology*, 86 Wn. App. 119, 125-127, 936 P.2d 27 (1997) (In a case involving
12 application of the Okanogan Rule, a ".004 percent reduction in the river's flow during low
13 flow" was determined to demonstrate hydraulic continuity between the proposed well and the
14 Okanogan River.).

15 Ecology has determined that no water remains available under the reservations for
16 "Public Water Supply, Irrigation, and Other Uses," which would include group domestic water
17 use. For the reservations for "Single Domestic and Stock Use" it has been estimated that some
18 water remains available for new appropriations. RAP00000222-235 (Letter from Methow
19 Watershed Council to Okanogan County, June 14, 2011). However, the quantities remaining
20 available are limited and Ecology may at some future time determine that reserved waters have
21 been fully allocated. Further, these reservations where some water remains available only
22 allow use of water for single domestic uses; in other words the reserved water could be used to
23 supply single homes, but cannot provide water for group domestic use to support subdivisions.
24 And even new, unmitigated permit-exempt use for single domestic purposes can be

25
26 ⁶ "Hydraulic continuity" is a scientific term that describes the interconnection between groundwater (aquifers) and surface water bodies (such as rivers and lakes).

1 problematic because, just as with the Okanogan Rule, holders of water rights that are senior in
2 priority to new permit-exempt wells could be required to shut off their water use when the
3 minimum instream flows required under the Methow Rule are not met. Thus, a Plan must take
4 this Rule and the limited availability of water into account, which the County has failed to do.

5 **3. The Comprehensive Plan and interim zoning lack sufficient controls to**
6 **prevent proliferation of illegal permit-exempt wells**

7 MVCC also is correct that, in the recent past, Ecology has opposed the County's
8 approval of proposed developments that were divided into several applications for smaller
9 adjacent subdivisions in efforts to skirt the requirement that they must obtain a water right
10 permit if more than 5,000 gallons per day of water is required to serve the entire development.
11 MVCC Opening Br. at 53-54. For that reason, Ecology commented to the County that it
12 "fears the potential misuse of the groundwater exemption resulting from future developments
13 as a consequence" of the zoning. App. 2, at 4. Ecology is concerned that the allowance for
14 subdivision of large tracts of land into one-acre lots could promote larger developments
15 consisting of numerous one-acre lots where proponents could attempt to manipulate the permit
16 exemption statute through the daisy-chaining of permit-exempt wells.

17 With regard to the daisy-chaining of permit-exempt wells, as explained above, under
18 the Methow Rule, since the reservation for domestic use is only for single domestic use that
19 can support a single home, and not group domestic use that can provide a water supply for a
20 subdivision, the Plan and interim zoning should be revised to provide that *no* subdivisions in
21 the area covered by the Methow Rule can be approved that would rely on permit-exempt
22 groundwater, unless there is sufficient mitigation to offset impacts on stream flows.

23 With respect to the area covered by the Okanogan Rule, sufficient measures must be
24 included in the Plan to prevent the daisy-chaining of exempt wells. In *Whatcom County*, the
25 Court of Appeals upheld a comprehensive plan adopted by Whatcom County in part because
26 that county's development regulations include a provision stating that "[a]ll contiguous parcels

1 of land in the same ownership shall be included within the boundaries of any proposed long or
2 short subdivision of any of the properties” and that “lots so situated shall be considered as one
3 parcel....” *Whatcom Cty.*, 186 Wn. App. at 47–48 (emphasis in original) (citation omitted).
4 Okanogan County’s Plan should be re-written to include a similar measure that is geared to
5 prevent the unlawful daisy-chaining of permit-exempt wells.

6 To summarize in regard to water quantity, the County’s Plan fails to comply with
7 RCW 36.70.330(1). The Planning Enabling Act provision for protection of water resources
8 requires comprehensive plans and zoning to be consistent with Ecology’s water management
9 rules, and the County’s Plan is inconsistent with both the Methow Rule and the Okanogan
10 Rule. Implementation of the Plan would cause adverse impacts to instream flows, and senior
11 water right holders, in the Methow and Okanogan River Basins, where Ecology already issues
12 orders during water-short periods that require irrigation water right holders to shut off their use
13 when required minimum flows in those basins are not met. And the Plan is also inconsistent
14 with the Methow and Okanogan Rules because it does not specifically require that all new
15 subdivisions in the Methow Basin must provide mitigation for water resource impacts, and that
16 all new subdivisions in the Okanogan Subbasin must comply with *Campbell & Gwinn* and
17 include mitigation for water resources impacts if unmitigated water use would cause reductions
18 in instream flows that would result in earlier curtailment of senior irrigation water rights.

19 **4. The Comprehensive Plan and interim zoning lack sufficient controls to**
20 **prevent adverse impacts on water quality**

21 With respect to water quality, Ecology raised concerns over potential groundwater
22 contamination from septic systems, and contamination of surface water from development
23 activities, within the high density zones. App. 2, at 1–2; App. 3, at 2–3. High density rural
24 development could cause adverse impacts on water quality from, among other things, increased
25 storm water runoff and septic discharge. Increased rural development density, where homes
26 will have to rely on septic systems, will increase the potential for groundwater contamination

1 from septic systems. *See* MVCC Opening Br. at 33–34. Also, increased density will cause
2 increases in impervious surfaces and associated storm water runoff, which will increase the
3 potential for surface and groundwater contamination. The Plan fails to comply with the
4 Planning Enabling Act because the density allowed under the Plan would cause negative
5 impacts on the quality of water that the public in Okanogan County depends on for water
6 supplies.

7 **B. By Failing to Issue an Environmental Impact Statement, Okanogan County**
8 **Violated the State Environmental Policy Act**

9 Initially in its SEPA process, the County made a threshold determination that the
10 proposed Plan update may cause significant adverse impacts on the environment, issued a
11 Determination of Significance, and proceeded to prepare a DEIS that was released for public
12 comment. Later, the County back-tracked, withdrew its DEIS, and issued a DNS. Under
13 SEPA, an EIS must be prepared when a proposal may have a significant adverse impact on the
14 environment. Accordingly, a DNS can only be issued in a scenario where the agency
15 reasonably believes that a proposal will not have a significant adverse impact on the
16 environment. Ecology agrees with MVCC that the County's second threshold determination,
17 that the Plan will not have a significant adverse impact on the environment, was unlawful and
18 should be reversed.

19 SEPA requires that “[a]n environmental impact statement . . . shall be prepared on
20 proposals for legislation and other major actions having a probable significant, adverse
21 environmental impact.” RCW 43.21C.031(1); *see also* RCW 43.21C.030(c). When a proposal
22 is an “action” that is not “categorically exempt” from SEPA review, an agency must make a
23 “threshold determination” as to whether preparation of an EIS is necessary. WAC 197-11-330.
24 To make such a determination, the agency must use an environmental checklist to assist its
25 analysis and must document its conclusion as to whether an environmental impact statement is
26 required by issuing a Determination of Significance or a DNS. WAC 197-11-315, -330.

1 The agency must base its threshold determination on “information reasonably sufficient
2 to evaluate the environmental impact of a proposal.” WAC 197-11-335. Consequently, a
3 checklist must adequately address a proposal and must fully disclose its potential
4 environmental impacts. *Spokane Cty. v. E. Wash. Growth Mgmt. Hearings Bd.*, 176 Wn.
5 App. 555, 580–581, 309 P.3d 673 (2013).

6 Through its letter dated June 21, 2013, attached as Appendix 3, Ecology provided
7 extensive comments on the DEIS that related to both water resources and water quality. The
8 County violated SEPA when it failed to revise the DEIS based on Ecology’s comments
9 pointing to potential significant environmental impacts, and, instead, jettisoned the draft and
10 issued a DNS. The County violated SEPA by issuing the DNS because it failed to disclose
11 adverse impacts that were reported by Ecology in its comments and, thus, failed to either
12 address them or explain why they are not significant.

13 The County’s failure to address Ecology’s comments by not including information on
14 environmental impacts discussed by Ecology in the SEPA Environmental Checklist (Checklist)
15 also demonstrates the County’s failure to comply with SEPA. The Checklist completed by the
16 County provides, at the very most, only bare-bones information on water availability in rural
17 Okanogan County. This scanty information is not reasonably sufficient to properly evaluate
18 potential impacts to the environment related to water availability in general and to groundwater
19 in particular and determine whether and what measures may need to be included in the
20 Comprehensive Plan and the interim zoning to prevent environmental impacts. *See Spokane*
21 *Cty.*, 176 Wn. App. at 580–81, (holding that to provide information reasonably sufficient to
22 evaluate a proposal’s impacts, a checklist must contain information with “particularity,” rather
23 than “broad generalizations”).

24 The section of the Checklist relating to surface water merely explains that there are
25 three major river systems in the County—the Columbia, Methow, and Okanogan Rivers—and
26 that “[r]ivers and lakes provide a major source of irrigation water for the County’s agriculture

1 industry and recreation opportunities tied to boating, swimming, fishing and, where
2 appropriate, recreational gold mining.” RAP00000030–67 (Checklist at 4). No information is
3 provided on how current factors related to the Methow and Okanogan Rivers may affect the
4 availability of water for future development, even under the interim zoning that was approved
5 along with the Comprehensive Plan. For instance, the Checklist fails to mention the limited
6 availability of water, despite information provided by Ecology to the County explaining that
7 Ecology regularly issues administrative orders alerting holders of water rights that have
8 priority dates junior to the minimum instream flows required under the Methow and Okanogan
9 Rules that they must shut off their water use when the flows are not met, and that “[b]ecause
10 users are already being shut off in the Methow and Okanogan River Basins, it is critical the
11 County carefully consider how to evaluate water availability and legal water sources to support
12 and sustain growth” in the County. App. 3, at 1.

13 The section of the Checklist relating to groundwater merely states that “[m]uch of the
14 new development in the unincorporated portions of the County will be served by existing water
15 systems and exempt wells,” and that “[t]he current Comprehensive Plan update recognizes
16 limitations imposed on exempt wells since the adoption of the prior Comprehensive Plan” that
17 have resulted from several Washington Supreme Court decisions. RAP00000030–67
18 (Checklist at 4–5). However, as discussed above, the Comprehensive Plan does not contain
19 any requirements that would facilitate implementation of and compliance with those Supreme
20 Court decisions despite the fact that RCW 36.70.330(1) requires that the comprehensive plan
21 “land use element shall also provide for protection of the quality and quantity of groundwater
22 used for public water supplies”

23 The Checklist then proceeds to state that “[n]ew development under the revised
24 Comprehensive Plan will be more restrictive than historically as a result of the legal precedents
25 set by those cases,” and that “[t]he availability of water for withdrawal and specific limitations,
26 if any, on the availability of water, including closed basins are set forth” in the water

1 management rules for the Methow and Okanogan Basins. RAP00000030-67 (Checklist at 5).
2 But the Checklist does not include any information on how, as also discussed above, daisy-
3 chaining permit-exempt wells to skirt the 5,000 gallon per day limit under RCW 90.44.050 has
4 been a problem in the County. If the Checklist had provided such information, it could have
5 prompted the inclusion of provisions in the Comprehensive Plan to prevent such problems,
6 such as the measure that the Court of Appeals found important in upholding the comprehensive
7 plan at issue in the *Whatcom County* case.

8 Further, the Checklist states that water for future development in the County under the
9 Comprehensive Plan would "be served by existing water systems and exempt wells,"
10 (Checklist at 4), but neglects to disclose that water may not be available in the future for new
11 permit-exempt wells unless there is mitigation to ensure there will be no impact on instream
12 flows. Inclusion of this information could have prompted the County to include an approach in
13 the Plan to facilitate development of a mitigation system through the transfer of existing water
14 rights into one or more water banks for mitigation for new permit-exempt uses when it is
15 determined that no water is available for new uses under the reservations of the Methow Rule
16 and to ensure that new permit-exempt wells will not injure holders of irrigation water rights
17 that are subject to curtailment when the instream flows under the Methow Rule and the
18 Okanogan Rule are not met.

19 The County erroneously contends that its withdrawal of the DEIS and issuance of the
20 DNS was justified because it adopted interim, rather than final, zoning in association with its
21 approval of the Comprehensive Plan. This argument fails for three reasons. First, an interim
22 zoning code is an "action" under SEPA. Second, the Comprehensive Plan constitutes a major
23 action subject to SEPA in its own right since it provides the framework for future zoning and
24 regulation of development in the County, which will undoubtedly cause environmental
25 impacts. And third, the interim zoning causes adverse environmental impacts by, among other
26 things, allowing 1-acre lots in rural areas, while not including any measures to prevent the

1 daisy-chaining of permit-exempt wells, and not ensuring that new development cannot be
2 approved in areas where water is not available for new permit-exempt wells, without
3 mitigation.

4 Ecology agrees with MVCC's position that the County erred in justifying its decision to
5 issue the DNS on the basis that the interim zoning associated with the Plan purportedly will not
6 result in any greater environmental impacts than would be caused by the former zoning code.
7 See MVCC Opening Br. at 40-41; MVCC Reply at 14-15. While the County asserts that the
8 interim zoning maintains the "status quo," true maintenance of the status quo with respect to
9 environmental impacts would involve a moratorium on development or temporary down-
10 zoning to allow less density while the County produces a permanent zoning code, rather than
11 continued development without sufficient measures to ensure protection of water resources.

12 Moreover, the Hearings Examiner erred in affirming the County's DNS by justifying
13 the lack of information related to water resources on the false premise that such information is
14 not required because "[w]ater resources are not regulated by Okanogan County - they are the
15 purview of the Washington State Dept. of Ecology." RAP00001423-1432 (*In re Appeal of*
16 *Okanogan Cty. SEPA, Threshold Determination, Issued May 9, 2014, Regarding the Okanogan*
17 *Cty. Comprehensive Plan*, Okanogan County Hearings Examiner at 4 (Nov. 23, 2014)). This is
18 erroneous because, in its land use regulatory role, the County is required to ensure that
19 groundwater resources are protected under RCW 36.70.330(1) and cannot avoid this
20 requirement based on the mistaken notion that Ecology has the sole responsibility to manage
21 water. See *Kittitas Cty.*, 172 Wn.2d at 178. This fundamental error of law is grounds for
22 reversal of the Hearings Examiner's decision.

23 In sum, the County violated SEPA by issuing a DNS when it should have prepared and
24 issued an EIS that evaluated the impacts on water resources and water quality that would be
25 caused by implementation of the Comprehensive Plan. This matter should be remanded to the
26 County with a requirement that an EIS be prepared that would fully consider impacts on

1 groundwater resources and consider alternative zoning approaches, and measures to prevent
2 the unlawful daisy-chaining of permit-exempt wells, and to require mitigation as a prerequisite
3 to the approval of new subdivisions, building permits, and other land use permits.⁷

4 **VI. CONCLUSION**

5 Ecology agrees with Methow Valley Citizens' Council and Futurewise that Okanagan
6 County's 2014 Comprehensive Plan is unlawful and should be invalidated by the Court. This
7 matter should be remanded to the County so that it can develop a comprehensive land use plan
8 that adequately protects groundwater resources in accordance with the Planning Enabling Act.
9 The County should also be required to prepare an EIS that will fully describe potential adverse
10 impacts on groundwater, and include alternative planning and zoning approaches that will
11 minimize such impacts.

12 DATED this 22nd day of September 2015.

13 ROBERT W. FERGUSON
14 Attorney General



15 ALAN M. REICHMAN, WSBA #23874
16 Senior Counsel
17 Attorneys for Amicus Curiae
18 State of Washington, Department of Ecology
19 (360) 586-6748

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21
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23
24
25 ⁷ One possible mitigation approach could be the development of one or more water banks to provide
26 mitigation to allow for development served by new permit-exempt wells based on purchasing shares of water
rights for mitigation where necessary to ensure that senior water rights, including instream flows, are not
impaired.



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

15 W Yakima Ave, Ste 200 • Yakima, WA 98902-3452 • (509) 575-2490

June 5, 2009

Perry Huston
Okanogan County Planning
123 Fifth Avenue North, Suite 130
Okanogan, WA 98840

Dear Mr. Huston:

Thank you for the opportunity to comment on the notice for the Okanogan County Comprehensive Plan Update. We have reviewed the documents and have the following comment.

Water Resources

Water must and can only be used in accordance with Washington State Water Laws as provided in RCW 90.03, RCW 90.14, RCW 90.42 and RCW 90.44.

The Draft Comprehensive Plan, Chapter One, Section Six B, Private Property and Water Rights, provides a list of programs that will be offered to encourage water right holders to keep their water within Okanogan County. One of the programs proposes to "Promote the re-issuance of water rights lost through relinquishment within Okanogan County." Relinquished water rights cannot be re-issued. If this is not the intended description for this proposed program, Ecology recommends the County contact the Department's Water Resources for assistance in providing a statement to better clarify the program proposed.

If you have any questions concerning the Water Resources comments, please contact Breean Zimmerman at (509) 454-7647.

Floodplain

Okanogan County has had restrictive language in its code since 1994 regarding the

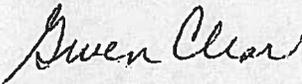


Mr. Huston
June 5, 2009
Page 2 of 2

Methow Review District. The measure is at OCC 17.14.110D and states: "Construction in Flood Hazard Areas. No structures for human habitation or any sewage disposal facilities shall be constructed or placed in areas inundated by the 100-year flood." In the years since this was passed, Ecology has observed a somewhat uneven enforcement of this measure. It is hoped that the comprehensive plan will place added emphasis on strengthening this provision.

If you have any questions concerning the Floodplain comments, contact Chuck Steele at (425) 649-7139.

Sincerely,



Gwen Clear
Environmental Review Coordinator
Central Regional Office
(509) 575-2012



STATE OF WASHINGTON
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April 7, 2011

Perry Huston
Okanogan County Planning
123 Fifth Avenue North, Suite 130
Okanogan, WA 98840

RE: Addendum A – Okanogan County Comprehensive Plan Revisions

Dear Mr. Huston:

Thank you for the opportunity to comment on the revisions proposed in Addendum A – Okanogan County Comprehensive Plan, dated February 11, 2011. Ecology appreciates the opportunity and cooperative effort that Okanogan County is providing the public, government agencies, and interested stakeholders to review and comment on the Comprehensive Plan. The public review process is essential to assure quality environmental protection is considered and valued in the proposed revisions to the Comprehensive Plan.

Ecology recommends that clarification be provided concerning the association between the current review and the SEPA environmental review process. The use of the term Addendum may confuse reviewers on the method of review for the Comprehensive Plan revisions, Shorelines Master Program, Critical Areas Ordinance, Okanogan County Code 17 – Zone, and Okanogan County Code 16-Subdivisions. Ecology advises the use of the term Expanded Scoping be used for this process leading up to the issuance of the Draft EIS.

We have reviewed the document(s) and have the following comments:

A. WATER QUALITY

Ground Water

1. Minimum Requirement District that will be Rural-High Density (1 acre minimum), please describe how potential impacts to ground water from this density of on-site septic systems will be assessed to insure that groundwater quality will not be affected.
2. Within the high density zones, please describe how areas of higher risk to ground water contamination from on-site septic systems will be identified, based on geology, soil types, water table characteristics, proximity to water bodies, groundwater monitoring, etc., be

Appendix 2



Mr. Perry Huston
April 7, 2011
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identified. Please explain how local ordinances will be developed to mitigate the risk by specifying required system type, location, etc.

3. Please describe the need for mitigating (if any) affects of on-site septic systems on ground water quality will be identified. Please explain how appropriate requirements will be identified.

Surface Water

1. Within the high density zone designations, please describe how areas of higher risk to surface water contamination from development activities and/or installation of on-site septic systems will be identified, based on geology, soil types, water table characteristics, proximity to water bodies, etc. Please explain how ordinances will be developed to mitigate the risk by specifying stormwater construction requirements or best management practices, required septic system type or technology, location, etc.
2. Please describe how the need for mitigating the affects of on-site septic systems on surface water quality will be identified. Please explain how appropriate requirements will be identified.

If you have any questions or would like to respond to these Water Quality comments, please contact Charlie McKinney at (509) 457-7107.

B. WATER RESOURCES

Environmental review of zone designations should analyze the likely impacts of the development allowed within that zone. Water use is an environmental impact which varies based on water availability and is essential for development. The information contained in Addendum A – Okanogan County Comprehensive Plan does not provide sufficient information to evaluate water availability or the adequacy of water rights if necessary.

It must be noted this Comprehensive Plan Revision action involves areas that may be subject to the Instream Resources Protection Plan for the Methow River basin (WAC 173-548), Okanogan River basin (WAC 173-549) and Columbia River (WAC 173-563).

Addendum A to the Environmental Impact Statement (EIS) states the resulting Comprehensive Plan will provide an overall decrease in density. Based on the information provided, Ecology is unable to determine if the result intended will have more or less of an impact to water resources in areas subject to revision from this process. However, Ecology is concerned about impacts to senior water rights and instream flows resulting from any density.

Mr. Perry Huston
April 7, 2011
Page 3 of 5

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.

Therefore, development projects resulting from this action will require new water use, being within the proximity of the Methow, Okanogan, and Columbia Rivers, and could be subject to instream flows (WAC 173-548 Methow River, WAC 173-548 Okanogan River, and WAC 173-563 Columbia River). In addition, if Ecology determines there is significant hydraulic continuity between surface water and the proposed ground water source, any permit exempt ground water use or ground water right shall be subject to the same instream flow conditions as affected surface waters.

Zone changes are proposed within the Methow Closed Basin. The Methow Rule (WAC 173-548-030) currently limits the reservation for exempt ground water use in the Methow Basin to single domestic use, and stock water. The reservation does not include new industrial uses nor group or multiple domestic uses that are required for subdivisions. In *Ecology v. Campbell & Gwinn*, 146 Wn2d 1 (2002), the Supreme Court held that lots of a subdivision that are jointly planned to use the exemption are group uses limited to a single group domestic exemption of 5,000 gallons per day (gpd). Because group domestic use is not covered under the reservation in the existing rule, WAC 173-548, group domestic uses begun after the rule would be subject to permitting requirements, instream flows and interruption. Once reserves provided under WAC 173-548 are exhausted, then all uses will be subject to permitting requirements.

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.

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.

Ecology understands the proposed Comprehensive Plan amendments will result in a large transformation of land through zone changes. The proposed plan will create a significant increase in development through, for example, creating a "Rural High Density" (RHD) zone.

Mr. Perry Huston
April 7, 2011
Page 4 of 5

Ecology has concerns with the immense expansion of one acre minimum zoning, such as the proposed RHD zone. The proposed RHD zone will result in a considerable increase of development in a localized area and therefore an increased need for water that may result in localized impacts to groundwater levels impacting existing users. Similar projects in areas of limited water supply across Ecology's Central Region have proposed to augment water supply by bringing senior water rights to the project to reduce or fully mitigate water resource impacts.

Addendum A does not address water use, water rights, and water availability. We respectfully request that the County address these environmental impacts as part of the Comprehensive Plan revisions. Ecology's Water Resources program is concerned for senior water right holders/users, which includes existing groundwater exempt uses. In addition to possible impairment to instream flows, senior water right holders and existing exempt uses, Ecology fears the potential misuse of the groundwater exemption resulting from future developments as a consequence of the zone changes. Ecology has cautioned the County a number of times through SEPA comments regarding the misuse of groundwater exemption.

Water is a finite resource. Particularly, with the effects of climate change resulting in more frequent droughts as we have experienced in north Central Washington. Without water, communities cannot grow and thrive. Because water users are already regularly being curtailed in the Methow and Okanogan River basins, it is critical the County carefully consider how to evaluate water availability and legal water supply sources to support and sustain growth in the Okanogan County.

If you have any questions or would like to respond to these Water Resources comments, please contact Brean Zimmerman at (509) 454-7647.

C. SHORELANDS & ENVIRONMENTAL ASSISTANCE

Addendum A frequently includes the statement "The proposed policies and land use designation in the Comprehensive Plan will result in a net decrease in overall density from the existing comprehensive plan". No Documentation was given or cited to support this statement.

Rural Resource High and Rural Resource Low Density should be assigned with the draft Shoreline Master Program and the available Channel Migration Zones (CMs) in mind. Allowing smaller subdivisions without the consideration of the existence of the CMZs could give a false impression of safe developable land, especially concerning areas surrounding dynamic river systems such as the Methow, Twisp, Chewuch and Stimilkimeen. Flooding considerations should be applied when assigning these High/Low designations on the Okanogan River.

Mr. Perry Huston
April 7, 2011
Page 5 of 5

If you have any questions or would be to respond to the Shorelands & Environmental Assistance comments, please contact Clynda Case at (509) 457-7125.

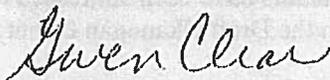
D. AIR QUALITY

We encourage Okanogan County to evaluate the long term impacts to breathing air quality of the plan that is being proposed, and to assure that the development will not place the County in a non-attainment status with respect to federal air quality standards. Non-attainment status places a heavy financial burden on affected communities, and makes it more difficult for business and industry to locate in the area. Okanogan County airsheds are particularly susceptible to PM2.5 air pollution (fine particles) buildup, especially during times of air stagnation in the fall and winter. The primary sources of PM2.5 are outdoor burning, indoor burning, and other combustion sources such as diesel generators and industrial processes. With the known health effects of PM2.5 and the upcoming tightening of the PM2.5 standard by the federal government, this is an excellent time for Okanogan County to review its future trajectory and map a course that preserves healthy breathing air for future generations.

If you have any questions about the Air Quality comments please contact Sue Billings at (509)575-2486.

Thank you for the opportunity to provide comments on the Addendum A-Revisions to the Okanogan County Comprehensive Plan.

Sincerely,



Gwen Clear
Environmental Review Coordinator
Central Region Office
(509) 575-2012

GC:TT (110401 / 236)



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

15 W Yakima Ave, Ste 200 • Yakima, WA 98902-3452 • (509) 575-2490

June 21, 2013

Perry Huston, Director
Okanogan County Planning
123 Fifth Avenue North, Suite 130
Okanogan, WA 98840

Re: Draft Environmental Impact Statement Revisions

Dear Mr. Huston:

Thank you for the opportunity to comment on the Draft Environmental Impact Statement for revisions to the Okanogan County Comprehensive Plan. We have reviewed the documents and have the following comments.

WATER RESOURCES

Environmental review of zone designations should analyze the likely impacts of the development allowed within that zone. Water use is an environmental impact which varies based on water availability and is essential for development. Ecology's Water Resources program provided comments on the Draft Okanogan County Comprehensive Plan on June 5, 2009 and again on April 7, 2011 (see attached). It does not appear that Ecology's comments have been addressed in the Draft Environmental Impact Statement dated May 16, 2013 or in the Draft Okanogan County Comprehensive Plan dated May 16, 2013.

Ecology's Water Resources program is concerned for senior water right holders/users, which includes existing groundwater exempt uses. In addition to possible impairment to instream flows, other senior water right holders and existing exempt uses, Ecology fears the potential abuse of the groundwater exemption resulting from future developments as a consequence of the zone changes. Ecology has cautioned the County a number of times through SEPA comments regarding the abuse of groundwater exemption.

This action involves areas that may be subject to the Instream Resources Protection Plan for the Methow River basin (WAC 173-548), Okanogan River basin (WAC 173-549) and Columbia River (WAC 173-563)., Ecology regularly sends out Orders alerting water right holders they will be shut off in favor of instream flows for the Methow and Okanogan Rivers. Because users are already being shut off in the Methow and Okanogan River basins, it is critical the County carefully consider how to evaluate water availability and legal water sources to support and sustain growth in the Okanogan County.

Appendix 3



Mr. Huston
June 21, 2013
Page 2

It is relevant to this plan that on July 28, 2011, the Washington Supreme Court issued its decision in Kittitas County v. Eastern Washington Growth Management Hearings Board, 172 Wn.2d 144, 256 P.3d 1193 (2011); a case which included as a major issue the respective roles of Ecology and local governments in the management of water resources.

The Court concluded that in implementing RCW 19.27.097 and RCW 58.17.110, counties must ascertain that water is legally available, as well as physically or factually available, before they can approve applications for subdivisions and building permits. Under this holding of the Court, counties are not only required to ascertain that water is physically available, for instance, through hydrogeological data showing that a well can successfully yield water, but must determine that there is an "appropriate provision for potable water supply" to approve a subdivision under RCW 58.17.110.

Ecology requests Okanogan County consider our comments prior to adopting the May 16th Draft Comprehensive Plan.

If you have any questions or would like to respond to these Water Resources comments, please contact Sage Park at (509) 454-7647.

WATER QUALITY

Ground Water

1. Minimum Requirement District that will be Rural-High Density (1 acre minimum), please describe how potential impacts to ground water from this density of on-site septic systems will be assessed to insure that groundwater quality will not be affected.
2. Within the high density zones, please describe how areas of higher risk to ground water contamination from on-site septic systems will be identified, based on geology, soil types, water table characteristics, proximity to water bodies, groundwater monitoring, etc., be identified. Please explain how local ordinances will be developed to mitigate the risk by specifying required system type, location, etc.
3. Please describe the need for mitigating (if any) affects of on-site septic systems on ground water quality will be identified. Please explain how appropriate requirements will be identified.

Surface Water

1. Within the high density zone designations, please describe how areas of higher risk to surface water contamination from development activities and/or installation of on-site septic systems will be identified, based on geology, soil types, water table characteristics, proximity to water bodies, etc. Please explain how ordinances will be developed to mitigate the risk by

Mr. Huston
June 21, 2013
Page 3

specifying stormwater construction requirements or best management practices, required septic system type or technology, location, etc.

2. Please describe how the need for mitigating the affects of on-site septic systems on surface water quality will be identified. Please explain how appropriate requirements will be identified.

If you have any questions or would like to respond to these Water Quality comments, please contact Charlie McKinney at (509) 457-7107.

SHORELANDS/ENVIRONMENTAL ASSISTANCE

Section 8.1 Goals and Policies: POLICY: Views of the Methow River corridor, especially at road crossings and trailheads where views of the river are most accessible should be maintained. Projects reviewed and permitted under the Okanogan County Shoreline Master Program should be conditioned to provide and protect views.

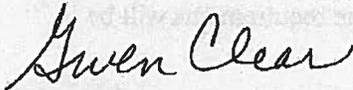
1. Ecology recommends protected view corridors be aligned to avoid removal of existing native vegetation and minimize disturbance to riparian functions and processes. Ecology also recommends mitigation of vegetation removed in accordance with the Okanogan County Shoreline Master Program.

Section 9.5.1 Suggested Goals and Policies: GOAL: Ranching, hobby farming and other agricultural activities that use and maintain the open fields should be encouraged.

2. Ecology recommends review of new proposed uses in accordance with the Okanogan County Critical Areas Ordinance.

If you have any questions or would like to respond to these Shorelands/Environmental Assistance comments, please contact Andrea Jedel at (509) 454-4260.

Sincerely,



Gwen Clear
Environmental Review Coordinator
Central Regional Office
(509) 575-2012

Attachments
1830

The Methow Valley Citizens' Council

Board of Directors

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Phil Millam
Vice Chair

Kari Bown
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Twisp, WA 98856
www.mvcitizens.org
509 997-0888

June 16, 2014

Perry Huston, Planning Director
123 5th Ave. North, Suite 130
Okanogan, WA 98840

RE: Comments on SEPA Checklist, Withdrawal of DS, and Issuance of DNS for proposed Okanogan County Comprehensive Plan and Interim Zoning Ordinance

Sent via e-mail to: phuston@co.okanogan.wa.us.

Dear Director Huston:

Thank you for this opportunity to comment and for the time you have spent on the Comprehensive Plan update. We believe the county was correct in its initial Determination of Significance for the proposed the County Comprehensive Plan and related documents and should thus prepare an Environmental Impact Statement for the current proposal.

A major thrust of the SEPA Checklist is devoted to minimizing the probable adverse impacts of the proposed Comprehensive Plan and Interim Zoning Ordinance by comparing them with the current 50-year old Comprehensive Plan and current pattern of growth. However, the County is responsible by law to disclose the absolute impact of the proposed Comprehensive Plan and Interim Zoning regulations, regardless of the nature of the existing environment. We are especially concerned about the pressing issues of water availability and protection of groundwater quality that remain unaddressed in these documents and will greatly influence the future of this county.

Because significant environmental impacts were not analyzed nor disclosed, withdrawal of the DS and issuance of a DNS violates the State Environmental Policy Act.

The Methow Valley Citizens' Council

We respectfully request that the SEPA decisions be remanded, that you proceed with due diligence to address inconsistencies, contradictions, and crucial omissions in the proposal, and that you prepare an adequate Environmental Impact Statement.

Very truly yours,



Maggie Coon
Chair, the Methow Valley Citizens' Council

MVCC incorporates by reference these documents:

- * Notice of Appeal and Argument under OCC 14.04.220A.1, filed 5/27/14 by Futurewise and MVCC, along with attachments.
- * All previous submissions by MVCC to Okanogan County during years 2009-2014 relating to the Comprehensive Plan update, SEPA determination, EIS, and related documents (Zoning, Shorelines, Critical Areas, and Subdivision ordinances) along with their attachments.
- * MVCC's Comments on the proposed Comprehensive Plan and Interim Zoning Ordinance, dated June 16, 2014, including the attachments.

COMMENTS

- 1. The SEPA Checklist lacks information that is reasonably sufficient to evaluate the proposal's environmental impacts.** Thus, it does not comply with SEPA. The checklist simply uses repetitive language postponing environmental analysis to the project review stage and assumes compliance with applicable standards. Compliance with relevant law is assumed.
- 2. The SEPA Checklist for the Comprehensive Plan update and Interim Zoning names as mitigating measures regulations that are not yet adopted.** These include the updated Shoreline Master Program which is years behind schedule, the adoption of a Critical Areas Ordinance for which the county has missed its update deadline, resource protection codes, and protections for historic and cultural sites. The checklist includes the More Completely Planned Area documents for Sub Unit A and the Middle Methow (Subunits B, C, and D) as relevant, although the County's adoption of these "updated" documents is not scheduled until after County adoption of the Comprehensive Plan itself has occurred. For example, on p. 16 of the Comprehensive Plan Appendices A and B are apparently relied upon to show that sufficient

The Methow Valley Citizens' Council

Resource Lands have been designated; but these More Completely Planned Area plans are not scheduled for adoption until after the Comp Plan has been adopted. In addition, these More Completely Planned Area documents are still outdated. They address major development projects that are no longer proposed, such as the Arrowleaf resort. The County has not done its job in updating, although the Comprehensive Plan update has been underway for 7 years. The SEPA Checklist does not disclose the impacts that will occur if any of these plans and mitigation measures are adopted late or never adopted at all.

3. The claim that the Comprehensive Plan per se will have no specific effect ignores the Interim Zoning and the impacts it will cause. The SEPA Checklist for the comprehensive plan update and interim zoning asserts the "Comprehensive Plan per se will have no specific effect." However, this statement ignores the interim zoning with its long lists of permitted uses, including high-density apartments and the new statewide maximum SEPA exemption thresholds the county recently adopted. The almost identical range of uses across the R-1, R-5, and R-20 zoning fails to differentiate the variation in needs and impacts in these various zoning categories. The "no specific effect" statement ignores WAC 197-11-060(4)(d), stating that the "adoption of a zoning ordinance will encourage or tend to cause particular types of project." It also ignores the Spokane County court's command that "for a nonproject action, such as a comprehensive plan amendment or rezone, the agency must address the probable impacts of any future project action the proposal would allow." (See MVCC/Futurewise Appeal of 5/27/14.)

4. Inconsistencies within and among the included maps and keys to maps, text of the Comprehensive Plan, and text of the Interim Zoning document (including the District Use Chart) make evaluation of the environmental impact of the proposal impossible to evaluate for an adequate Threshold Determination. Examples include, but are not limited to:

A. Conflicts from maps to text exist – One example is the conflicts between text description of R-1, R-5, and R-20 zones and the Zoning map, along with Transportation maps which show county "minor" and "major" but no "arterials." The verbal descriptions of these zones do not seem to coincide with the Zoning map, which shows R-1 zoning in very remote areas with dirt and gravel roads leading to hayfields and public lands.

B. Ambiguities from map to map exist. Comparisons of the Methow Review District Sub Unit maps and Interim Zoning ordinance map reveal differences that could cause confusion as to whether some areas are in 5 acre or 20 acre zoning. In addition, properties designated for R-1 zoning (one acre minimum) on the Zoning map show up on Forest Service maps as being far from services and accessed by dirt or gravel roads (and by a jeep trail in at least one instance.) Many of these properties also appear on such detailed maps to be significantly more than one mile from anything that could be considered a county "arterial," the criterion for R-1 zoning.

C. Conflicts exist between the text of the District Use Chart, Rural-1 text, and the Zoning map regarding whether or not agriculture is allowed in rural areas.

The Methow Valley Citizens' Council

D. Zoning maps do not coincide with verbal descriptions of these zones, such as the consideration of how far properties in these zones are from services such as grocery stores. Properties far away from such services are mapped as in R-1, one-acre zoning. Areas in narrow valleys with dead-end one-lane roads with steep, heavily forested hillsides are designated for 5-acre zoning when the resultant fire situation with this density of development could be disastrous.

5. Withdrawal of the DS violates SEPA because the proposal has significant environmental impacts that were not analyzed and disclosed in the SEPA checklist. A DS is to be withdrawn and a DNS issued instead if at any time after the issuance of a DS a proposal is changed significantly. If, in the judgment of the lead agency, there are no probable significant adverse environmental impacts, the DS shall be withdrawn and a DNS issued instead. This description of appropriate DS withdrawal does not fit the facts in this case.

6. The Comprehensive Plan and Environmental Checklist have crucial omissions which prevent an accurate analysis of impacts. Some examples of lacking elements include, but are not limited to:

A. Description of any protective provisions for Wellhead protection zones. These zones are marked on the Transportation Map, but there is no description of what "Wellhead Protection Zone" refers to in this county.

B. Any definition for "county arterial" or description of methodology in measuring the distance from a county arterial, which is used to designate the zoning for properties in R-1, R-2, and R-20 into their categories. (Is distance measured by road travel, or "as the crow flies?")

C. Description of what fiscal impact will arise from development encouraged by the Comp Plan and Interim Zoning ordinance in rural areas. This is particularly in relation to remote areas planned for 1-acre or 5-acre development which are on dirt and gravel roads, far from services such as grocery stores. Uses in these areas include multi-family dwellings. The cost of upgrading and maintaining roads, aside from needs for delivery of electricity and possibly sewage disposal systems, is not addressed. A proposal's effects include direct and indirect impacts caused by a proposal. Impacts include those effects resulting from growth caused by a proposal, as well as the likelihood that the present proposal will serve as a precedent for future actions. For example, adoption of a zoning ordinance will encourage or tend to cause particular types of projects; or extension of sewer lines would tend to encourage development in previously unsewered areas. None of the documents in question address the fiscal impacts of these broadly applicable zoning provisions that apply across all the Rural zoning categories.

D. Much information regarding the changes in climate and predictions for our area has become available in the past few years, and certainly since the Comprehensive Plan of 1964 was issued. Differences in climate will affect the already overallocated water supplies in the County but are not addressed in any discussion of planning needs or related impacts.

The Methow Valley Citizens' Council

E. The Circulation Element is totally lacking in substance. A transportation plan should guide the Comprehensive Plan, but there is little in the Circulation Element to provide this guidance. How will roads support growth? What impact will there be from new roads? What will be the need for capital projects? Although the Commissioners are in the process of passing an ordinance giving blanket approval for All Terrain Vehicles on all county roads with speed limits of 35 mph and under, including roads crossing public lands, this is not addressed in the Circulation Element at all; nor are the impacts of such a sweeping proposal addressed.

F. Where are the Forestry and Agricultural Resource Lands located, and how many acres are included in each designation? Although there are two maps dealing with "Land Use Designation" and "Current Land Use," there is no map that clearly shows where the Comp Plan designates Resource Lands of Long Term Commercial Significance, as required. On the Land Use Designation Map, the approximate locations of current mines are located. But where are the Resource Lands for Forestry and Agriculture? No text is clear enough to help identify these Resource Lands either. What portion includes public lands? What portion includes private lands? To present a list of "priority uses" in some of the zoning designations does not assure that these lands will not be used for other purposes in these designations than forestry or agriculture. Many uses are allowed in the Rural Resource/Low Density lands other than agriculture and forestry. What land has actually been set aside by the County for Agriculture and Forestry? How can it be determined from the information provided whether the amount of land designated is sufficient for future needs in uses such as orchards, cattle, forest industries, and agricultural crops?

7. The overallocation of water in the Methow Valley and other drainages in the County is a pressing planning issue and must be addressed in the Comprehensive Plan. The Checklist fails to reveal the significant impacts of this failure to address available water. The Methow Watershed Council has predicted that a minimum of 1,092 lots to a maximum of over 24,000 lots are at risk of having no water available for future development in the Methow's Lower Reach (Beaver Creek to Pateros.) Recent changes in our local climate make effective water planning even more urgent. Who will get the water? What conservation provisions could be employed to avoid closures? What values and policies will set the direction for our county in such decisions? The lack of policies to set the direction for our county in relation to water will be responsible for huge impacts not addressed in the Checklist.

8. The Plan fails to meet its state-mandated obligation to "protect the quality and quantity of groundwater used for public water supplies," and the Checklist fails to adequately address the impacts of this failure. Critical recharge aquifers are not identified in the Plan, nor are any plans for their protection revealed; the Critical Areas Ordinance, which also deals with aquifers, is long overdue in its adoption. Locations of suggested Wellhead Protection Zones for public water supplies are marked on the Transportation map, but protections remain unaddressed. The District Use chart allows such uses as acid manufacturing plants, asphalt plants, explosive manufacturing/storage and other potentially toxic uses over critical aquifers and Wellhead Protection Zones in all the Rural 1 acre, 5 acre, and 20 acre zonings – along with onsite septic systems.

In The Methow Valley Citizens' Council

9. The Checklist fails to address the impact resulting from new requirements in the Comprehensive Plan upon easements, dedications, and other "development related servitude." Conservation easements or property acquired by such organizations and agencies as the Methow Conservancy and WDFW have had huge and positive impact upon the environment of the county and particularly the Methow Valley. Yet the Comprehensive Plan refers to "dedication, easement, or other development-related servitude imposed on lands during a permit review" and declares that "such requirements shall not be imposed," unless a list of new requirements are followed (line 73, proposed Comprehensive Plan.)

The Methow Valley Citizens' Council

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Perry Huston, Planning Director
123 5th Ave. North, Suite 130
Okanogan, WA 98840
Sent via e-mail to: phuston@co.okanogan.wa.us

June 16, 2014

**RE: Comments on the Okanogan County Comprehensive Plan
4/28/14 Review Edition, Interim Zoning and zoning code
amendments Chapter 17.06A Rural 1 District (R1), Chapter 17.06B
Rural 5 District (R5), Chapter 17.06C Rural 20 District (R20), and
Chapter 17.21 District Use Chart**

Dear Director Huston:

Thank you for the opportunity to comment on the 2014 Comprehensive Plan and Map. These comments are submitted on behalf of the Methow Valley Citizens' Council, which works to protect the Methow Valley's natural environment and rural character through planning and

conservation of the quality of our water, air and wildlife.

The development of the County's Comprehensive Plan cannot be inconsistent with the Planning Enabling Act, which under RCW 36.70.330 requires that the Comprehensive Plan include the following:

- (1) A land use element which designates the proposed general distribution and general location and extent of the uses of land for agriculture, housing, commerce, industry, recreation, education, public buildings and lands, and other categories of public and private use of land, including a statement of the standards of population density and building intensity recommended for the various areas in the jurisdiction and estimates of future population growth in the area covered by the comprehensive plan, all correlated with the land use element of the comprehensive plan. The land use element shall also provide for protection of the quality and quantity of groundwater used for public water supplies and shall review drainage, flooding, and storm water run-off in the area and nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute Puget Sound or waters entering Puget Sound;
- (2) A circulation element consisting of the general location, alignment and extent of major

The Methow Valley Citizens' Council

thoroughfares, major transportation routes, trunk utility lines, and major terminal facilities, all of which shall be correlated with the land use element of the comprehensive plan;

(3) Any supporting maps, diagrams, charts, descriptive material and reports necessary to explain and supplement the above elements.

The County is also required, under the Growth Management Act described in RCW 36.70A.170(1), to designate resource lands—including agricultural, forest and mineral resource lands as well as critical areas.

We find the current draft of the Comprehensive Plan continues to fall short of complying with these requirements. The issues we raised in earlier comments remain, and we have new concerns.

The 2014 Comprehensive Plan and Interim Zoning do change much of what is now Minimum Requirement District with one acre minimum lots to Rural 5 zoning, with a base density of one home per five acres, which is an improvement compared to current zoning. The Plan also indicates that the Methow Review District zoning will not change and will be included in the Plan as a More Completely Planned Area (MMCPA). However, this latest plan revision raises new issues.

The Plan, as written, together with its maps, is difficult to read and understand. It has been confusing, even to professional land use planners. There are numerous errors and contradictions that need to be corrected. Some of these are highlighted in the following comments, which we wish to add to comments previously submitted on earlier drafts of the Comprehensive Plan. Our previous comments and attachments are incorporated by reference with comments and attachments being submitted today.

We thank you once again for this opportunity to respond to the proposed 2014 Plan. If you have any questions about our comments or the attachments we have provided, please contact me. Our organization is more than willing to help the County improve the Comprehensive Plan in any way we can.

Sincerely,



Maggie Coon
Chair, Methow Valley Citizens' Council

The Methow Valley Citizens' Council

General Comments

1. The vision statement and planning objectives outlined in the Plan focus on protecting property rights but fail to explain the County's strategy for managing future growth and complying with state-mandated planning laws.

We find the vision and planning objectives described on pages 5 and 6 to have been stripped of real meaning reflecting almost none of the input that resulted from earlier work by citizen advisory groups (see attached file, MVCC 2011 Plan Comments). It does not speak to serious concerns about the impacts of growth on water resources raised in letters submitted by the Department of Ecology, the Methow Watershed Council and others and many other issues of concern to the community. What we have now boils down to a set of statements about protecting property rights. This does not qualify as a vision statement.

In general, it is difficult to discern a coherent planning concept in the proposed Plan. Although Plan goals are referred to in the text, there is no set of goals labeled as such. The proposed Comprehensive Plan tells us little about how it will use land use planning, zoning and other regulatory powers the County possesses to manage growth while also meeting statutory requirements—such as protecting the quality and quantity of groundwater used for public water supplies.

2. The statement about "development-related servitude" under General Planning Objectives is misplaced and would appear to intend to impose new and potentially costly restrictions on the County's ability to enforce state and local laws.

The following statement found on page 6 is odd as well as oddly placed and is not a planning objective:

"...with respect to any requirement for an easement, dedication or other development-related servitude imposed on lands during a permit review, such requirements shall not be imposed unless the County can demonstrate in written findings based on site-specific circumstances that such conditions are reasonably necessary as a direct result of the proposed development or plat to which the dedication of land or easement is to apply and roughly proportional to problems associated with the development under review."

Please explain what "development-related servitude" is, what the broadly defined statement is getting at and why it's placed under "General Planning Objectives." It seems to be trying to place what could be a costly new set of requirements on the County that could hinder its efforts to apply and abide by state and local land use regulations. This statement doesn't belong here and should be removed.

3. The Plan ignores documented water resource limitations and fails to use or recognize zoning as a means to manage water resources and meet its state-mandated

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obligation to “protect the quality and quantity of groundwater used for public water supplies.”

We commented extensively in earlier submissions regarding concerns about the impacts of the proposed Plan on the County's groundwater resources. Our comments referenced scientific documentation indicating that the County's most productive aquifers are located within the unconsolidated glacial and alluvial deposits located in valley bottoms and side benches throughout the County—precisely beneath areas the County plans for the most intensive development.

We indicated concern about planned growth exceeding the capacities of water resources and depleting aquifers. We submitted documentation and comments from others, including the Department of Ecology and the Methow Watershed Council, substantiating our concerns. (See attached files, MVCC 2013 Plan Comments and Hydro Part 3 Methow Watershed Council documents submitted to Okanogan County). We add new concerns about the impact of ignoring our water supply limits and the impact on property values when water is fully appropriated—especially in the Lower Methow.

The Methow Watershed Council has warned there is no water for 1,092 existing undeveloped lots in the Lower Methow Reach and there would be more than 20,000 lots without water under existing zoning, which the proposed Plan changes little. The Council has warned, “property values and development potential in the undeveloped lots...will be adversely impacted once Department of Ecology determines that water resources have been ‘fully appropriated.’” (See attached “Hydro 3 attachment - WRIA 48 Watershed Planning Information for Okanogan County Planning Commission,” p.1.)

We have previously noted and are submitting additional expert testimony (see attached files, Hydro Part 1, 2 and 3) indicating the County's aquifers are unconfined water table aquifers, which are highly susceptible to contamination. We recommended these areas be considered critical aquifer recharge areas in our comments on the County's proposed Critical Areas Ordinance (see attached file, MVCC CAO comments). Evidence we submitted described the risks of groundwater contamination from septic systems—indicating that development densities of one home per acre and even one home per three to five acres can pollute groundwater.

We are equally concerned about commercial and industrial uses being allowed over highly susceptible aquifers. As listed in the amended Chapter 17.21 District Use Chart, the new Rural 1, 5 and 20 zones allow commercial and industrial uses with a high potential for polluting groundwater.¹ Allowing uses such as petroleum service stations, compost

¹ In addition to single-family homes and multi-family apartment buildings, the following are among the uses permitted in the Rural 1, 5 and 20 zones: compost manufacturers, air cargo terminals, aircraft hangars, aircraft sales, repair, and service, aircraft salvage, airstrips, commercial, auto parking lots or garages, auto rental services, auto sales, banks, exercise clubs, indoor swimming pools, food stores, maintenance shops, warehouses, gravel pits less than three acres in size, halls, stadiums, auditoriums, hospitals, laundromats, manufactured home sales

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manufacturers, or light manufacturing almost anywhere in the County, especially over water table aquifers, risks contaminating our sole source of public water supplies.

4. The Plan's land use descriptions are confusing and its maps contradictory. Based on the figure labeled "Map 1- Comprehensive Plan Overlay," arguments could be made to support sweeping changes in the Methow Review District.

Map 1 is difficult to interpret because the names of land use designations in the text don't match the map legend. These should be more consistent.² In addition, Map 1 and the figure labeled "Okanogan County Current Land Use Map 2" are contradictory. This ambiguity could arguably lead to incremental zoning changes in the Methow Review District, through developer or property owner rezone requests.

For example, areas shown on Map 2 in the Methow Review District as uplands with a twenty acre base density are shown as Resource with a five acre base density as well as Rural on Map 1. Densities in the Rural designation are not specified in the Plan, but we assume it would mean one-acre lots (because elsewhere in the County the Rural designation has been given one acre zoning.)

We are concerned it would be possible to make an argument, as part of a proposed rezone for example, that designations shown on Map 1 represent the "official" comprehensive land use plan for the Methow Review District. Someone wanting smaller lots might say that the Comprehensive Plan supports the rezone of 20 acre lots into five or one acre lots.

Map 2 is described in the Plan's text (page 8) as previously identified areas to which a "finer grain" of land use planning is appropriate and "illustrates the current designations, which have been reviewed by the County and which further implement the goals and policies of this Plan," but which "the planning agency may recommend changes to..." This is entirely confusing. Map 2 is the current zoning map, not a land use map, and includes the Minimum Requirement District designated in the 1964 Comprehensive Plan. It is not clear which parts of Map 2 are to be considered part of the new official Comprehensive Plan land use map.

facilities, light manufacturing, marinas, meat packing plants, medical and dental clinics, mini-storage warehouses, petroleum service stations, professional office buildings, quarries and borrow pits less than three acres in size, restaurants, cafes, and "etc.," retail stores or gift shops, portable commercial sawmills, and wholesale establishments.

² Based on descriptions on pages 6-7 of the Plan, we have assumed the following:

- "Rural Resource/Recreation Lands (Public lands) are labeled "Resource Recreation" on the map and include all public lands.
- "Rural Resource/Low Density Lands (Privately owned lands)" are labeled "Resource" on the map. The plan text states a base density of five acres in these areas.
- "Rural/High Density Lands" are labeled "Rural" on the map. No base density is indicated.

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The following statement, on page 21 under Compatible Uses, creates further confusion:

"In addition, Methow Review District, Agricultural districts and neighborhood commercial districts necessary to serve rural populations are permitted within the Rural Resource/Low Density designated areas."

The Rural Resource/Low Density designated areas, according to the Plan text, have a base density of five acres. But the Methow Review District has extensive areas of 20 acre zoning.

Clearly, if the County does not intend to change the land use and zoning in the Methow Review District (as stated on page 20 of the Plan and indicated on the figure labeled "Okanogan County Interim-Zone Map 4) the significant contradictions between the text and Map 1 and 2 need to be fixed. Similar contradictions need to be clarified with respect to the Barnholt Loop and Molson Overlay.

The Comprehensive Plan Map dated 10/14/10 (formerly available on the County's website) is clearer and less ambiguous with respect to the Methow Review District, and is generally superior to Map 1 as a land use map.

5. The Plan could undermine the long-term viability of agriculture in Okanogan County and appears to eliminate agriculture as a permitted use in areas now being actively farmed.

We are greatly concerned and perplexed by the following statement on page 21 under "Compatible Uses," referring to areas labeled "Rural" and shown in yellow on Map 1:

"In addition, all of the other uses and activities identified in Chapter 17.21, except agriculture, are properly located in in the Rural/High Density designated area."

We find it hard to believe the County really intends to discourage agriculture in areas designated Rural. The Rural areas shown in yellow on the land use map (Map 1) include a majority of what is now being actively farmed in the County. If agricultural uses are not allowed in these areas, existing orchards and alfalfa fields will be nonconforming uses and expansion of agriculture will be difficult or impossible.

However, proposed Interim Zoning Map 4 contradicts the Plan. It shows these areas zoned Rural 1, which under proposed amendments to Chapter 17.21, the District Use chart, permits one acre lots, multifamily homes at 4 to 5 dwelling units per acre, a variety of commercial and industrial uses and a full range of agricultural uses—all the uses currently allowed in the Minimum Requirement District. The contradiction between what is said in the Plan's text and outlined in the District Use Chart muddies the County's intentions and needs to be fixed.

The Methow Valley Citizens' Council

Under the Growth Management Act, Okanogan County was required to designate agricultural lands of long-term commercial significance by September 1, 1991. It continues to fail to do so. The negative impacts to agriculture and the local economy from the spread of subdivisions and suburban development into actively producing farms and orchards were discussed at length in comments submitted earlier. Most significantly, the continued failure to designate and protect agricultural lands will hurt the local economy, threatening the County's major source of employment. (See attached files MVCC 2011 Comp Plan Comments and Futurewise 2013 Comp Plan Comments.)

We disagree with arguments for not providing agriculture zoning presented on pages 7-9 of Environmental Checklist Attachment 1.³ In particular we disagree with the conclusion that "no additional conservation designations are required to conserve a critical mass necessary to support the (agriculture) industry." The Rural 1 zoning placed over what are now active commercial agricultural uses creates pressure for conversion to residential use.

We don't believe it's necessary to restrict uses to agriculture in these areas. We do believe, at a minimum, areas such as the orchards north of Brewster and Pateros should be designated for lot sizes in the 20 to 40 acre range to reduce conversion pressure.

6. Housing densities in areas zoned Rural 1 or 5 promote suburban levels of development and a mix of incompatible uses throughout much of the County, encouraging costly sprawl, straining public services and potentially making residential areas less safe and desirable.

According to land use Map 1, private land now designated Minimum Requirement District is designated Rural or Resource. Outside of the Methow Review District, Resource designated areas are zoned Rural 5, allowing five-acre lots. Rural designated land is zoned Rural 1, allowing one-acre lots. Rural 20 zoning appears to be exclusively assigned to public lands designated as Resource Recreation.

Multifamily housing is allowed at densities of 9600 square feet per acre—the equivalent of four to five homes per acre in all three zones. A four-unit apartment building could be built on a one-acre lot, or a 22-unit apartment building on five acres, assuming the health department requirements for onsite waste disposal systems can be met.

The land use and Rural 1 and 5 zoning designations are misnamed and misapplied. Development on lots of one acre, and even five acres, with the possibility of multifamily housing is suburban not rural development. This level of development will require new urban services such as public water systems, sewers and upgraded roads throughout much of the County. The proposed zoning will promote a "sprawling" growth pattern shown to be inefficient and costly to support with necessary public services. This growth pattern also

³ Appended to the SEPA Determination of Non-Significance on the Comprehensive Plan published by the County on May 14, 2014.

The Methow Valley Citizens' Council

tends to increase the price of housing and raise local property taxes. The excessive densities and high growth potential represented by the Rural zoning far exceeds what is necessary, based on forecast population increases for the County.

Planned densities of one acre or more should be recognized as "suburban" and concentrated near existing town centers where services are available. The County should reduce the extent of areas zoned Rural 1 and Rural 5, designate more Rural 20 zoning and consider creating a 40-acre minimum lot size zone in areas currently in agriculture or forest use. It should eliminate multifamily development, other than housing for farm workers, in all three Rural zones.

The Rural zones also allow commercial and industrial uses that are incompatible with residential use. Traffic, noise, smells, air and groundwater pollution, visual clutter are among the things to be concerned about when commercial and industrial uses are close to residential areas. Under the proposed Plan and interim zoning, this could happen almost anywhere in the County outside the Methow Review District. Most residents would be upset to find a marijuana grow operation, a compost manufacturer, light manufacturing plant, airstrip, or meat packing plant on the lot next to door. Residential areas would be less safe and desirable places to live, which in turn would diminish property values. The list of permitted and conditioned uses should be revised and more discrete areas suitable for commercial and industrial uses identified in the Plan.

7. The Plan has eliminated public input and leaves little assurance plan updates will occur. The Lower Methow Valley, where water resources are over-allocated, should be a high priority More Completely Planned (MMCPA) area incorporating earlier input from citizens groups.

We contend that the Okanogan County Commissioners violate the intent of SEPA by incrementally eliminating public input that has occurred, even input acquired by County-appointed facilitators.⁴

The County appropriately started early in the process of revising of this now 50-year old Comprehensive Plan by appointing the Lower Valley Advisory Group (LVAG) to work on gathering input for the Lower Methow Valley planning. This is an area that has experienced a large increase in subdivision during the past decade and also encompasses a large portion of the "Lower Reach" of the Methow Valley, which is projected to have extreme water shortages in the future if mitigation measures are not put into place. (See comment 3 above.) The group came up with recommendations over the two years they met, including

⁴ The SEPA Handbook states the following in Section 3.1: "Including the public early in the EIS process is key to identifying public issues, establishing communication lines, and facilitating trust. Taking time up-front to plan how to involve the public and being responsive to the public's needs as the process proceeds can result in a more complete and accurate document and a more satisfied public. Early involvement can also avoid later pitfalls and unnecessary delays."

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proposals to reduce zoning densities. An agreement was reached and approved by the Okanogan County Planning Commission to add most of this area to the adjoining Methow Review District, now a proposed MCPA, which had provisions to prevent excessive population densities.

The LVAG was joined after one year by ten other neighborhood groups convened by the County, several with County-appointed facilitators. The vision statements, goals and recommendations from the neighborhood groups were included in the first Comprehensive Plan draft. In the next draft, they were moved to the Appendix. In the following draft, the groups were simply mentioned by geographic area, with their recommendations omitted. In the current draft, neither the groups nor their input is mentioned.

The Lower Methow Valley is an area of special concern and the County should make it a high priority to complete a MCPA there. The proposed Plan and zoning make effectively no change to this area, which remains designated for one-acre lots, and there is no effort to address the projected water shortages.

In addition, previous drafts of the Plan contained provisions for citizens, towns, and cities to request Plan amendments on an annual basis, during certain months of the year (Docketing). Plan review was also scheduled for every five years. These provisions have been eliminated in the proposed Plan and should be put back.

8. The Circulation Element of the Plan fails to show how areas planned for higher density development will be supported by the County's road network and where roads will need to be improved. It fails to reflect or provide for the true public investment costs of implementing the Plan.

Under RCW 36.70.330 (2), a comprehensive plan must include: "A circulation element consisting of the general location, alignment and extent of major thoroughfares, major transportation routes, trunk utility lines, and major terminal facilities, all of which shall be correlated with the land use element of the comprehensive plan."

The Plan doesn't show or explain how the proposed land use and road networks are correlated. The figure labeled Okanogan County Transportation and Essential Public Facilities Map 3 only shows the existing road network, not road improvements necessary to support development outlined on the land use map, Map 1, and Interim Zoning, Map 4.

The Plan should identify and plan for the necessary future capital investments needed to make road improvements to support development, based on the "functional classification system" described on pages 30 and 31. Because many of the areas proposed for Rural 1 zoning on Map 4 are currently served by unpaved or otherwise inadequate roads, a high level of capital investment may be needed to support development in these areas.

The Methow Valley Citizens' Council

Finally, there are confusing inconsistencies between Map 3 and the road classifications shown on its legend and the road classifications discussed in the text. They do not match up. We also find inconsistencies between the road criteria for the Rural designation described in the Plan and areas designated Rural on the Map 1.

9. Map 3 Identifies "Group A Wells" and "Well Head Protection," but there is nothing in the text defining the designations or indicating what is proposed. These water resources are important to protect.

We find no discussion or description in the Plan clarifying what the designations on Map 3 mean or encompass. Does the County intend to do anything to protect these essential public facilities? Simply including them on the map does nothing to meet the County's obligation to protect "the quality and quantity of groundwater used for public water supplies," as required under RCW 36.70.330.

It's important to regulate development in wellhead protection zones to prevent contamination of important public water supply sources. We recommend these be mapped as critical aquifer recharge areas together with appropriate development regulations in the proposed Critical Areas Ordinance.

10. The Comprehensive Plan relies upon plans and regulations that are not yet adopted.

The Plan makes reference to yet-to-be adopted plans and regulations that will provide environmental protections, including the updated Shoreline Master Program which is years behind schedule, the adoption of a Critical Areas Ordinance for which the County has missed its update deadline, resource protection codes, protections for historic and cultural sites, and Sub Area Plans⁵ for the Upper Methow Valley⁶ and the Middle Methow Valley⁷.

The Upper and Middle Methow plans are to be adopted after the Comprehensive Plan, and are included in the Plan appendices. The two plans are supposed to show that sufficient Resource Lands have been designated in the Comprehensive Plan (see page 16). However, the County has not set a target date for adoption of the plans.

The county has spent seven years revising the Comprehensive Plan and has still not updated the the Upper and Middle Methow plans, in spite of extensive community input given years ago.⁸ What are the chances that the plans will be adopted in a timely fashion?

⁵ Now called "More Completely Planned Area" plans (MCPA).

⁶ Sub Unit A, 1976 Methow Valley Plan

⁷ Sub units B, C, and D, 1976 Methow Valley Plan

⁸ The County convened a neighborhood group for the Middle Methow in 2008 for the purpose of input to the Comp Plan for that area (to update the Methow Valley Citizens Council Valley Plan of 1976.) However, the goals and policies were not used to update the document now included in the Comprehensive Plan as the

The Methow Valley Citizens' Council

Although the County calls these two More Completely Planned Areas currently "updated," the plans still refer to developments that were abandoned many years ago, such as the Arrowleaf development.

Additional comments

Lines 95-97: The statement that water resources on public lands supply the needs of the county for water gives an incomplete and inaccurate picture of where Okanogan County's water resources for public water supplies are found. See comment #3 above.

Lines 139-145: Map 2 doesn't show existing land use as implied here. Map 2 shows the existing zoning.

Lines 166-174: Regarding "official controls will cover everything." Please define and enumerate which official controls are meant here.

Lines 292: Please clarify what the density bonus is for.

Lines 295-296: Any effort to reissue lost water rights could hasten reaching the end of our water supplies, leaving more private land without being able to be supplied by a well. See comment 3 above.

Pages 16-17: The agriculture and forest designation criteria are unclear, though some rational is included in the DNS attachment. Please include the criteria in the Planning document. See also comment 5 above.

Lines 453-456: The policy on mines is vague. It would appear mining could occur anywhere in rural or resource designation lands with a conditional use permit. Please clarify.

Lines 504-511: The zoning, as mapped, is inconsistent with this language.

Line 546: This is confusing. What two rural designations are being referred to? Please clarify.

Lines 551-556: Please fill in the blank reference.

Attachments

The following digital files, referenced in this document, are being submitted as attachments:

Methow Valley MCPA, and all record of their meetings was eventually dropped from the Comprehensive Plan, with not even a reference in this draft (see comment 7 above.)

The Methow Valley Citizens' Council

Futurewise 2013 Plan Comments

Hydro Part 1 – Hydro testimony on Methow aquifers

Hydro Part 2 – Figures 4A and 4B aquifer recharge areas

Hydro Part 3 – Methow Watershed Council documents submitted to Okanogan County

MVCC 2011 Plan Comments

MVCC 2013 Plan Comments

MVCC CAO Comments



**Building communities
Protecting the land**

June 21, 2013

Okanogan County Planning Commission
Okanogan County Office of Planning and Development
123 Fifth Avenue North, Suite 130
Okanogan, Washington 98840

Dear Planning Commissioners:

**Subject: Comments on the Okanogan County Comprehensive Plan – Final
Draft dated May 16, 2013 & Okanogan County Land Use Designation
Map – Draft**

Sent via email to: planning@co.okanogan.wa.us and via U.S. Mail

Thank you for the opportunity to comment on the update of the Okanogan County Comprehensive Plan. While we appreciate and support that Okanogan County is updating its comprehensive plan, we are very concerned that the county is failing to properly designate agricultural lands and forest lands of long-term commercial significance as required by RCW 36.70A.170(1). We are also concerned that the comprehensive plan does not meet the minimum requirements of the County Planning Enabling Act, chapter 36.70 RCW. We urge the county to meet these minimum standards and to go beyond them to meet the expectations of county residents.

Futurewise is working throughout Washington State to create livable communities, protect our working farmlands, forests, and waterways, and ensure a better quality of life for present and future generations. We work with communities to implement effective land use planning and policies that prevent waste and stop sprawl, provide efficient transportation choices, create affordable housing and strong local businesses, and ensure healthy natural systems. We are creating a better quality of life in Washington State together. We have members across Washington State including Okanogan County.

Comments on Chapter 1: The Okanogan County Comprehensive Plan

The Vision Statement should recognize the important role of agriculture in the county economy. Please see page 5 of the Revised Final Draft 05/16/13

The Washington State Employment Security Department has documented that the “[a]griculture is a very important sector for Okanogan County, which mainly consists of various tree fruits and wheat.”¹ Agriculture is Okanogan County’s largest employer,

¹ Mark A. Berreth, *Okanogan County Profile* p. 1 of 5 (Washington State Employment Security Department: Updated May 2012) accessed on June 20, 2013 at: <https://fortress.wa.gov/esd/employmentdata/reports-publications/regional-reports/county-profiles/okanogan-county-profile#overview> and enclosed with this letter.

providing jobs to 16 percent of county residents.² "In 2007, agriculture, forestry, fishing and hunting paid an annual average of \$35,305 ..." ³ This was a higher annual wage than those in the construction industry, although not as high as manufacturing workers who earned an average of \$37,302.⁴ Many of these manufacturing workers process agricultural and forest products.

Given the central role of agriculture in the county economy and the need to protect these jobs, the Vision should include protecting the agricultural industry and its land base and the jobs and incomes those lands generate.

Water Rights. Please see page 13 of the Revised Final Draft 05/16/13

We are concerned that the "water rights" section does not recognize that within the Methow Watershed, Water Resource Inventory Area (WRIA) 48, and Okanogan Watershed, WRIA 49, "most if not all of the available water has already been allocated."⁵ Given this lack of available water, the water necessary to serve the large expanses of rural residential land the comprehensive plan provides for will come at the expense of existing water right holders. This is inconsistent with the comprehensive plan's stated objective of protecting first in time, first in right water rights. The comprehensive plan should be made internally consistent by sizing rural development to match the available water resources. This is required by RCW 36.70.330(1) which provides in relevant part that "[t]he land use element shall also provide for protection of the quality and quantity of groundwater used for public water supplies"

Chapter 2: Existing Conditions

We appreciate that the table of land use designations on page 14 is now based on the current comprehensive plan. The table is helpful.

Consider adding a table of existing land uses. See page 14 of the Revised Final Draft 05/16/13

In addition to the table of land use designations, it would also be helpful to include information actual land use in Okanogan County. The Forest Service has prepared

² Marcy Stamper, *County to use public land base to satisfy state call for agriculture, resource lands* Methow Valley News Online (09-28-2010 | Volume: 108 | Issue: 19) last accessed on June 20, 2013 at: <http://www.methowvalleynews.com/story.php?id=4298> and.

³ T. Baba Moussa, *Okanogan County Profile* p. 5 of 6 (Washington State Employment Security Department: January 2009) enclosed with Futurewise's April 27, 2011 letter to the Board of Commissioners for Okanogan County.

⁴ *Id.*

⁵ 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 June 20, 2013 at: <https://fortress.wa.gov/ecy/publications/summarypages/1111052.html> and enclosed in the email with 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 June 20, 2013 at: <https://fortress.wa.gov/ecy/publications/summarypages/1111053.html> and enclosed in the email with this letter.

estimates of land use on nonfederal land in Okanogan County for 1976, 1994, and 2006 based on the digital interpretation of aerial photographs. That data is enclosed in Appendix A of this letter and a copy of the report from which Appendix A was extracted is enclosed with the paper original of this letter. As you can see in the table, between 1976 and 2006, there have been small, but significant decreases in area of wildland forest and wildland range land outside of federal lands. There was a small increase in intensive agricultural between 1976 and 1994 and that category has been stable since. There were major increases in low density residential development between 1976 and 2006. There was a significant increase in urban development between 1976 and 1994 with urban growth stable since then.

The Figure 1: Historical Population Data 1960-2000 and Table 1: Historical Population For Growth Management and Other Purposes on pages 14 and 15 should be updated to include the currently available 2010 and 2012 population

Figure 1 shows the county population through 2005, despite its title. Table 1 shows the county's population through 2000. We recommend that the figure and table be updated to include the currently available 2010 and 2012 population totals for the county. This data is available at the State of Washington Office of Financial Management website:

<http://www.ofm.wa.gov/pop/default.asp>

Chapter 3: Land Use - Resource Lands

Okanogan County, along with all counties and cities in Washington State, was required to designate agricultural lands of long-term commercial significance by September 1, 1991.⁶ We urge the county to fulfill these duties now, before the 22nd anniversary of this deadline arrives.

We are concerned that this chapter is inconsistent the requirements for designating natural resource lands. Those concerns and a GMA compliant method of designating natural resource lands are spelled out in the following sections.

Growth Management Act Requirements for Designating Agricultural Lands of Long-Term Commercial Significance are not incorporated into the county criteria on page 17

The Washington State Supreme Court has held that there is a three part definition of agricultural lands of long-term commercial significance. As the Supreme Court has held:

¶ 17 In sum, based on the plain language of the GMA and its interpretation in *Benaroya I*, we hold that agricultural land is land: (a) not already characterized by urban growth (b) that is primarily devoted to the commercial production of agricultural products enumerated in RCW 36.70A.030(2), including land in areas used or capable of being used for

⁶ RCW 36.70A.170.

production based on land characteristics, and (c) that has long-term commercial significance for agricultural production, as indicated by soil, growing capacity, productivity, and whether it is near population areas or vulnerable to more intense uses.⁷

The county's criteria on page 17 are inconsistent with the supreme court's holding. For example, the county's first criterion combines characterized by urban growth with urban zoning, but zoning is not actual urban growth. The supreme court holding requires that the land to be not already characterized by urban growth, not that it be zoned for urban growth. The criteria also do not include consideration of the growing capacity and productivity of soils as the supreme court's decision requires. We recommend that the criteria be revised to reflect these requirements.

RCW 36.70A.050 directed the agency that is now the State of Washington Department of Commerce to adopt minimum guidelines for the classification and designation of agriculture, forest, and mineral lands. "The GMA provides that these 'minimum guidelines' apply to all jurisdictions, but also 'shall allow for regional differences that exist in Washington state. The intent of these guidelines is to assist counties and cities in designating the classification of ...' agriculture, forest, and mineral lands of long-term commercial significance.⁸ We recommend that Okanogan County follow the approach in the minimum guidelines for designating agricultural lands of long-term commercial significance. This approach has the advantage of complying with state law, including the *Lewis County* decision.

The Approach Recommended in the Minimum Guidelines

The Washington State Department of Commerce's minimum guidelines for agricultural lands recommend the following process for designating agricultural lands.

1. Identify lands currently used or capable of being used for agricultural production. See WAC 365-190-050(3)(b).

One source of the land areas used for the production of agricultural products is much of Okanogan County outside the Colville Indian Reservation is *Land Ownership Change and the Ranching Economy in the Okanogan Valley and Eastern Okanogan County* "Map 2: Private Parcels by Taxable Land Use Code (Agricultural and Other), Study Area" on page 19 of the report.⁹

⁷ *Lewis County v. Western Washington Growth Management Hearings Bd.*, 157 Wn.2d 488, 502, 139 P.3d 1096, 1103 (2006).

⁸ *Manke Lumber Co., Inc. v. Diehl*, 91 Wn. App. 793, 805, 959 P.2d 1173, 1180 (1998).

⁹ Julia Haggerty and Patty Gude, *Land Ownership Change and the Ranching Economy in the Okanogan Valley and Eastern Okanogan County*, Washington p. 19 (Headwaters Economics, Bozeman, Montana: Nov. 12, 2008). Accessed most recently on June 21, 2013 at: http://headwaterseconomics.org/wphw/wp-content/uploads/HeadwatersEconomics_OkanoganLandStudy.pdf and enclosed with the paper original of Futurewise's April 27, 2011 letter to the Board of Commissioners for Okanogan County.

The Washington State Department of Natural Resources maintains a collection of aerial photographs that can be provided either in hard copies or as digital data. You can find out more at DNR's Photo and Map Services website:

http://www.dnr.wa.gov/BusinessPermits/Topics/Maps/Pages/photo_and_map_products_and_services.aspx The county can also use web based applications to identify agricultural land in current use such as Google Earth at: <http://www.google.com/earth/index.html>

For identifying the location of cropland, the Washington State Department of Agriculture has a 2012 Crop Distribution Geodatabase that identifies those sections, generally 640 acre squares, of land that have crops growing in 2012 and characteristics of those crops. The 2012 Crop Distribution Geodatabase can be downloaded at:

<http://agr.wa.gov/PestFert/NatResources/AgLandUse.aspx> and a printout of the web based version of the 2012 Crop Distribution Geodatabase is enclosed with the paper version of this letter and in separate emails. For more information please contact: Perry Beale, Senior Crop Mapping Specialist Washington State Department of Agriculture, telephone (360) 902-2065 or e-mail: pbeale@agr.wa.gov

In considering the crop distribution data, it is important to note that the in 2007, cropland made up just 10.5 percent of the land in Okanogan County farms and ranches.¹⁰ So cropland data cannot be exclusively used to identify the land currently in agriculture.

Additional sources of data on the location of land areas used for the production of agricultural products are the Okanogan County Watershed Plans. The *Level 1 Watershed Technical Assessment Final Report: Okanogan River Watershed Resource Inventory Area 49* found that:

There are about 80,668 acres of land water-righted for irrigation in WRIA 49, according to the Ecology WRATS/GWIS database. As discussed previously, it is undocumented –and unlikely – that all water rights are fully employed. The County Assessor's parcel database designates a total of 55,321 acres for an agricultural use of some sort. The 1999 Okanogan LFA identified a total of 101,930 acres of crop land in the Okanogan Basin, of which 50 percent (about 51,000 acres) was estimated to be irrigated. This value would agree reasonably well with the County Assessor's data.¹¹

¹⁰ 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 June 21, 2013 at: http://www.agcensus.usda.gov/Publications/2007/Full_Report/Volume_1_Chapter_2_County_Level/Washington/st53_2_008_008.pdf. A copy of the *2007 Census of Agriculture, Washington State and County Data Volume 1 Geographic Area Series • Part 47* was enclosed with the paper original of Futurewise's April 27, 2011 letter to the Board of Commissioners for Okanogan County.

¹¹ ENTRIX, Inc., *Level 1 Watershed Technical Assessment Final Report: Okanogan River Watershed Resource Inventory Area 49* p. 3-19 (Okanogan Watershed Planning Unit: Sept. 2006). Accessed most recently on June

WAC 365-190-050(3)(b)(ii) recommends that the United States Department of Agriculture's land capability classification system be used to determine whether land is used or capable of being used for agricultural production. This system is summarized in United States Department of Agriculture's Field Office Technical Guide on page 7 of 9 of Section 2 – Natural Resources Information "1. Soils" enclosed with Futurewise's April 27, 2011 letter to the Board of Commissioners for Okanogan County and accessed most recently on June 21, 2013 at:

<http://efotg.sc.egov.usda.gov/references/public/WA/cropland.pdf> We recommend using land capability classes 1 through 7 in identifying land capable of being used for agricultural production.

Geographical information system data layers and soils data, including the land capability classes, can be downloaded for free from United States Department of Agriculture Natural Resource Conservation Service Web Soil Survey webpage at:

<http://websoilsurvey.nrcs.usda.gov/app/HomePage.htm>

2. Deduct lands already characterized by urban growth. See WAC 365-190-050(3)(a).

Land Ownership Change and the Ranching Economy in the Okanogan Valley and Eastern Okanogan County "Figure 7: Structure Development Series, Study Area" identifies long-term development trends through 2008 for Okanogan County.¹² These areas can also be identified using the aerial photographs discussed above and the county's records for vested development. Consistent with the Washington Supreme Court's *Quadrant Corp.* decision,¹³ we recommend that existing and vested development with a density of one dwelling unit per acre or greater and the land immediately adjacent to these areas and suitable for urban development be deducted.

3. Determine which of the remaining lands have long term commercial significance. See WAC 365-190-050(3)(c).

After identifying the lands that are being used and are capable of being used for agricultural production and after deducted those lands that are already characterized by urban growth, the county should determine which of the remaining lands have long-term commercial significance. The Growth Management Act, in RCW 36.70A.030(10), defines

21, 2013 at:

http://www.okanogancd.org/sites/default/files/programs/owp/24_Technical%20Assessment.pdf and enclosed with the paper original of Futurewise's April 27, 2011 letter to the Board of Commissioners for Okanogan County. 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 was enclosed with the paper original of Futurewise's April 27, 2011 letter to the Board of Commissioners for Okanogan County.

¹² Julia Haggerty and Patty Gude, *Land Ownership Change and the Ranching Economy in the Okanogan Valley and Eastern Okanogan County*, Washington p. 21 (Headwaters Economics, Bozeman, Montana: Nov. 12, 2008).

¹³ *Quadrant Corp. v. State Growth Management Hearings Bd.*, 154 Wn.2d 224, 233 – 41, 110 P.3d 1132, 1137 – 41 (2005).

“long-term commercial significance” to include “the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land’s proximity to population areas, and the possibility of more intense uses of the land.” So the county is required to consider these factors. WAC 365-190-050(3)(c) includes eleven factors that relate to the statutory factors and other considerations. Each of those factors is identified below. We recommend that these factors be considered together as a whole.

“(i) The classification of prime and unique farmland soils as mapped by the Natural Resources Conservation Service[.]” WAC 365-190-050(3)(c)(i).

Enclosed with Futurewise’s April 27, 2011 letter to the Board of Commissioners for Okanogan County are lists of the prime and unique farmlands soils in Okanogan County. The soil survey divides the county in four areas, so we provided the lists for all four areas. To help the county evaluate the significance of those soils, we are also enclosed with the April 27, 2011 letter lists of the acreage in each of the soils in the county. All of these lists were downloaded from the United States Department of Agriculture Natural Resource Conservation Service. These lists can be used with the soil GIS data layers that can be downloaded at the Web Soil Survey webpage.

“(ii) The availability of public facilities, including roads used in transporting agricultural products[.]” WAC 365-190-050(3)(c)(ii).

State Route (SR) 97, which runs through Okanogan County from the Canadian border to Chelan County and beyond is one of the major livestock transport routes in the state.¹⁴ Hay is shipped throughout Washington State, and Okanogan County hay is shipped to Washington State destinations.¹⁵

The county could also use data from the cities and its own records to indentify public facilities, such as sewer lines, that would indicate that an area would likely convert to other more intense uses.

“(iii) Tax status, including whether lands are enrolled under the current use tax assessment under chapter 84.34 RCW and whether the optional

¹⁴ Stephanie Meenach, Eric L. Jessup, & Kenneth L. Casavant, *Transportation and Marketing Needs for the Washington State Livestock Industry* p. 12 (Washington State University, School of Economic Sciences, Strategic Freight Transportation Analysis (SFTA) Research Report #12: November 2004). Accessed most recently on June 21, 2013 at: http://www.sfta.wsu.edu/research/reports/research_paper.htm and enclosed with the paper original of Futurewise’s April 27, 2011 letter to the Board of Commissioners for Okanogan County.

¹⁵ Stephanie Meenach, Eric L. Jessup, & Kenneth L. Casavant, *Transportation Characteristics and Needs of the Washington Hay Industry: Producers and Processors* p. 10 (Washington State University, School of Economic Sciences, SFTA Research Report #11: November 2004). Accessed most recently on June 21, 2013: http://www.sfta.wsu.edu/research/reports/research_paper.htm and enclosed with the paper original of Futurewise’s April 27, 2011 letter to the Board of Commissioners for Okanogan County.

public benefit rating system is used locally, and whether there is the ability to purchase or transfer land development rights[.]” WAC 365-190-050(3)(c)(iii).

Land Ownership Change and the Ranching Economy in the Okanogan Valley and Eastern Okanogan County “Map 2: Private Parcels by Taxable Land Use Code (Agricultural and Other), Study Area” on page 19 of the report identifies the land classified by Okanogan County Assessor the in the “Agriculture” land use tax code.¹⁶ The county could use data from the County Assessor Office to identify those properties in a current use taxation program. Okanogan County had 541,794 acres in the Farm and Agriculture Current Use Taxation Program in the 2010 tax year.¹⁷

“(iv) The availability of public services[.]” WAC 365-190-050(3)(c)(iv).

The county could also use data from the cities and its own records to indentify public services that would indicate that an area would likely convert to other more intense uses. This criterion needs to distinguish between those public services that agricultural areas need, such as fire districts, sheriff services and emergency medical services, and those services that support more intense uses such as urban governmental services like sewer extensions and water systems designed to serve intense uses.¹⁸

“(v) Relationship or proximity to urban growth areas[.]” WAC 365-190-050(3)(c)(v).

The county could use its data on the location of city expansion areas to identify them. They are shown on the draft “Land Use Designation” Map.

“(vi) Predominant parcel size[.]” WAC 365-190-050(3)(c)(vi).

This criterion seeks to identify whether an area has predominate parcel sizes that can be efficiently used for agriculture over the long-term. *Land Ownership Change and the Ranching Economy in the Okanogan Valley and Eastern Okanogan County* “Map 4: Agricultural Holdings by Size Category, Study Area” identifies the agricultural land in Okanogan County in very large ownerships, holdings 160 acres and larger.¹⁹ This shows

¹⁶ Julia Haggerty and Patty Gude, *Land Ownership Change and the Ranching Economy in the Okanogan Valley and Eastern Okanogan County*, Washington p. 19 (Headwaters Economics, Bozeman, Montana: Nov. 12, 2008).

¹⁷ Washington State Department of Revenue, *Current Use Assessments: True and Fair Value Assessments in 2009 due in 2010: Current Use Detail*. Enclosed with the enclosed with the paper original of Futurewise’s April 27, 2011 letter to the Board of Commissioners for Okanogan County.

¹⁸ RCW 36.70A.030(18) defines “[u]rban governmental services’ or ‘urban services’ [to] include those public services and public facilities at an intensity historically and typically provided in cities, specifically including storm and sanitary sewer systems, domestic water systems, street cleaning services, fire and police protection services, public transit services, and other public utilities associated with urban areas and normally not associated with rural areas.”

¹⁹ Julia Haggerty and Patty Gude, *Land Ownership Change and the Ranching Economy in the Okanogan Valley and Eastern Okanogan County*, Washington p. 23 (Headwaters Economics, Bozeman, Montana: Nov. 12, 2008).

extensive areas of large land holdings. The county could also use data from the County Assessor Office to identify the predominate parcel sizes in those lands that may qualify as agricultural lands of long-term commercial significance, such as lots larger than 20 acres, which was the proposed agricultural minimum lot size. It is important to recognize, as *Land Ownership Change and the Ranching Economy in the Okanogan Valley and Eastern Okanogan County* does that farms and ranches are made up of multiple parcels and that small parcels may be included in agricultural areas because it is not unusual to create a small lot for a house for one of the family members that own or work on a farm or ranch. It is also important to recognize that some forms of agriculture, such as intensively farmed organic farms, often use small parcels. So we recommend using a predominate parcel size of ten and twenty acres and not excluding smaller parcels when mixed in with predominately larger parcels.

“(vii) Land use settlement patterns and their compatibility with agricultural practices[.]” WAC 365-190-050(3)(c)(vii).

This criterion seeks to identify patterns of urban and rural development that may interfere with agricultural activities long term. *Land Ownership Change and the Ranching Economy in the Okanogan Valley and Eastern Okanogan County* “Figure 7: Structure Development Series, Study Area” identifies settlement patterns, although some of the buildings show would be farm and ranch homes.²⁰ Aerial photographs can also be used to identify settlements.

“(viii) Intensity of nearby land uses[.]” WAC 365-190-050(3)(c)(viii).

This criterion seeks to identify areas of intense uses that may interfere with agricultural activities long term. *Land Ownership Change and the Ranching Economy in the Okanogan Valley and Eastern Okanogan County* “Figure 7: Structure Development Series, Study Area” shows the intensity of development over time.²¹ Aerial photographs can also be used to identify these areas.

“(ix) History of land development permits issued nearby[.]” WAC 365-190-050(3)(c)(ix).

Land Ownership Change and the Ranching Economy in the Okanogan Valley and Eastern Okanogan County “Figure 7: Structure Development Series, Study Area” shows residential and commercial building permits over time, although some are for farm and ranch dwellings.²² County building permit records can also be consulted. This criterion seeks to identify areas where permits have been issued for types and levels of development that are inconsistent with long-term agricultural uses.

²⁰ *Id.* at p. 21.

²¹ *Id.*

²² *Id.*

“(x) Land values under alternative uses[.]” WAC 365-190-050(3)(c)(x).

Land Ownership Change and the Ranching Economy in the Okanogan Valley and Eastern Okanogan County includes information on prices for ranch land the ranch land buyers.²³ In 1993 through 2008, “Traditional Ranchers” were the largest purchaser of ranchland.²⁴ County real estate data can be used to determine land values under alternatives uses. However, caution must be used in applying this criterion. The Washington State Supreme Court has noted that uses other than agriculture will always be more profitable so that this type of criterion cannot be controlling in determining whether or not land has long-term commercial significance.²⁵

“(xi) Proximity to markets[.]” WAC 365-190-050(3)(c)(xi).

Okanogan County has good access to livestock and hay markets. “Livestock are shipped to three main locations in Washington once leaving producer operations; feed lots, other farms, and slaughter facilities.”²⁶ Livestock arrive at feedlot and producer operations from all over Washington State.²⁷ Producers received 39.05 percent of their livestock from within 50 miles.²⁸ The balance, over 60 percent, arrives from 50 miles to greater than 100 miles.²⁹ State Route (SR) 97, which runs through Okanogan County is one of the major livestock transport routes in the state.³⁰ Hay is shipped throughout Washington State, and Okanogan County hay is shipped to Washington State destinations.³¹ Stockyards are located in Toppenish and Davenport.³²

4. Designing agricultural land sufficient to maintain and enhance the agricultural industry. See WAC 365-190-050(5).

The Growth Management Act establishes as a goal, in RCW 36.70A.020(8), to “[m]aintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries.” To help implement this goal, WAC 365-190-050(5) provides that “[w]hen applying the criteria in subsection (3)(c) of this section [the long-term significance criteria discussed above], the process should result in designating an amount of

²³ *Id.* pp. 25 – 30.

²⁴ *Id.* at p. 28.

²⁵ *City of Redmond v. Central Puget Sound Growth Management Hearings Bd.*, 136 Wn.2d 38, 52 – 53, 959 P.2d 1091, 1097 (1998).

²⁶ Stephanie Meenach, Eric L. Jessup, & Kenneth L. Casavant, *Transportation and Marketing Needs for the Washington State Livestock Industry* p. 6 (Washington State University, School of Economic Sciences, Strategic Freight Transportation Analysis (SFTA) Research Report #12: November 2004).

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at p. 12.

³¹ Stephanie Meenach, Eric L. Jessup, & Kenneth L. Casavant, *Transportation Characteristics and Needs of the Washington Hay Industry: Producers and Processors* p. 10 (Washington State University, School of Economic Sciences, SFTA Research Report #11: November 2004).

³² Julia Haggerty and Patty Gude, *Land Ownership Change and the Ranching Economy in the Okanogan Valley and Eastern Okanogan County, Washington* p. 15 (Headwaters Economics, Bozeman, Montana: Nov. 12, 2008).

agricultural resource lands sufficient to maintain and enhance the economic viability of the agricultural industry in the county over the long term; and to retain supporting agricultural businesses, such as processors, farm suppliers, and equipment maintenance and repair facilities." The *Washington Agriculture Strategic Plan 2020 and Beyond* makes the case that if we are going to maintain our agricultural industry in Washington State we need to maintain our existing land base.³³ So in designating its agricultural lands of long-term commercial significance, Okanogan County should also seek to maintain its farming and ranching land base to maintain and enhance the agricultural industry.

Failing to adequately designate agricultural lands of long-term commercial significance will harm the Okanogan County economy and budget

As we have documented, "[a]griculture is a very important sector for Okanogan County, which mainly consists of various tree fruits and wheat."³⁴ Agriculture is Okanogan County's largest employer, providing jobs to 16 percent of county residents.³⁵ "In 2007, agriculture, forestry, fishing and hunting paid an annual average of \$35,305 ..." ³⁶ This economic data shows that agriculture in Okanogan County has long-term commercial significance.

The Washington State Department of Agriculture's recently completed *Washington Agriculture Strategic Plan 2020 and Beyond* documents to need to conserve agricultural lands to maintain the agricultural industry and the jobs and incomes the industry provides.³⁷ Given our current economic problems, not protecting such an important part of the state and Okanogan County economies is a bad idea.

Allowing the conversion of Okanogan County's farm and ranch land is also a bad idea for the Okanogan County budget. As the *Washington Agriculture Strategic Plan 2020 and Beyond* documents,

For each \$1 paid in taxes by farm and forest lands in that [Skagit] county, those lands received back about 51 cents in services, contributing a 49 cent subsidy for the rest of the taxpayers in the county. For every \$1 paid in taxes by residential properties, those properties received \$1.25 in public services.³⁸

³³ Washington State Department of Agriculture, *Washington Agriculture Strategic Plan 2020 and Beyond* pp. 50 – 55 (2009). Last accessed on June 21, 2013 at: <http://agr.wa.gov/FoF/> and the cited pages enclosed with the paper original of Futurewise's April 27, 2011 letter to the Board of Commissioners for Okanogan County.

³⁴ Mark A. Berreth, *Okanogan County Profile* p. 1 of 5 (Washington State Employment Security Department: Updated May 2012).

³⁵ Marcy Stamper, *County to use public land base to satisfy state call for agriculture, resource lands* *Methow Valley News Online* (09-28-2010 | Volume: 108 | Issue: 19).

³⁶ T. Baba Moussa, *Okanogan County Profile* p. 5 of 6 (Washington State Employment Security Department: January 2009).

³⁷ Washington State Department of Agriculture, *Washington Agriculture Strategic Plan 2020 and Beyond* pp. 50 – 52 (2009).

³⁸ *Id.* at p. 53.

Converting farmland and forest land to residential development, assuming there are buyers for such land, will blow hole in the Okanogan County general fund budget. It will also harm the county's largest industry and the county residents the industry and related businesses employ.

Comparing the *Land Use Designation Map Draft* with the Washington State Department of Agriculture's 2012 Crop Distribution map, a copy of which is enclosed with the paper original of this letter and in separate emails, shows that most of the crop land and orchards in the Okanogan Valley, the side valleys, along Columbia River, and in the Methow Valley are not designated as agricultural lands of long-term commercial significance. This shows that the county's criteria and their application are flawed. We recommend using the approach from the minimum guidelines summarized above.

Failing to include standards of population density and building intensity violates RCW 36.70.330(1) for the Agriculture, Forest, and Mineral Resource Lands designations

RCW 36.70.330(1) requires that the county's land use element must include "a statement of the standards of population density and building intensity recommended for the various areas in the jurisdiction and estimates of future population growth in the area covered by the comprehensive plan" For the Agricultural Resource lands designation there are no density standards and the policies on lots sizes on page 18 of the comprehensive plan all relate to how developable the property is, not to the protection of agricultural land which is the purpose of the designation. We recommend that the comprehensive plan include a 40 acre minimum lot size to protect the agricultural land.

It is the same for the Forest Resource lands designation on pages 20 and 21. Parcels smaller than 40 acres have much lower timber harvest rates and are more likely to be converted to residential land uses.³⁹ Parcels smaller than 50 acres have higher than average costs for preparing timber sales, harvesting trees, and reforesting the site.⁴⁰ So we recommend that the maximum density for forest land be one dwelling unit per 50 acres.

³⁹ Eric J. Gustafson & Craig Loehle, *Effects of Parcelization and Land Divestiture on Forest Sustainability in Simulated Forest Landscapes*, 236 FOREST ECOLOGY and MANAGEMENT 305, 313 (2006). Accessed most recently on June 21, 2013 at: http://nrs.fs.fed.us/pubs/jrnl/2006/nrs_2006_gustafson_001.pdf and enclosed with the paper original of Futurewise's April 27, 2011 letter to the Board of Commissioners for Okanogan County. Forest Ecology and Management is a refereed scientific journal, see the Forest Ecology and Management webpage enclosed with the paper original of Futurewise's April 27, 2011 letter to the Board of Commissioners for Okanogan County and available at: <http://www.elsevier.com/journals/forest-ecology-and-management/0378-1127/guide-for-authors>

⁴⁰ R. Neil Sampson, *Implication for Forest Production in Responses to "America's Family Forest Owners"* 102 JOURNAL OF FORESTRY 4, 12 (October/November 2004). Enclosed with the paper original of Futurewise's April 27, 2011 letter to the Board of Commissioners for Okanogan County. The Journal of Forestry is a peer reviewed scientific journal. See the Journal of Forestry Guide for Authors webpage available at: <http://www.safnet.org/publications/jof/guideforauthors.cfm> and enclosed with the paper original of Futurewise's April 27, 2011 letter to the Board of Commissioners for Okanogan County.

The Mineral Resource Lands policies on page 23 have the same defect. To protect these important resource lands we recommend a 20 acre minimum lot size.

Growth Management Act Requirements for Designating Forest Lands of Long-Term Commercial Significance

There are three required criteria for designating forest land of long-term commercial significance:

1. The land is "not already characterized by urban growth"⁴¹
2. "The land is primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, including Christmas trees subject to the excise tax imposed under RCW 84.33.100 through 84.33.140"⁴²
3. "[A]nd that has long-term commercial significance."⁴³

Like the Agricultural Lands criteria, the "Forest Lands of Long Term Commercial Significance" criteria on page 19 improperly include "urban zoning" in the not already characterized by urban growth criterion. They also do not address the "economically and practically managed" requirement. The land use map also fails to designate important forest lands.⁴⁴ Enclosed with this letter is the paper *The Nineteenth Annual Two-Day Conference on Washington's Growth Management Act: Goals 8 & 9: Natural Resource Lands and Recreation and Open Space: How We Are Doing, State of the Law, and Helpful Improvements*. This paper provides more detail on designating forest land of long-term commercial significance.

A recent report by the College of Forest Resources of the University of Washington documents the need to protect "anchor forests" and the private forest land near them to maintain the state's forest products industry, including the high paying jobs the industry supports.⁴⁵ The University of Washington study identifies many parcels in Okanogan

⁴¹ RCW 36.70A.170(1)(b).

⁴² RCW 36.70A.030(8); *Manke Lumber Co., Inc. v. Diehl*, 91 Wn. App. 793, 805, 959 P.2d 1173, 1179 – 80 (1998).

⁴³ *Id.*

⁴⁴ *Detail Maps of High Conversion Risk, High Value Private Forestland Near Anchor Forests in Washington - North Central and Northeast*. These maps were accessed most recently on June 21, 2013 at: <http://www.ruraltech.org/projects/wrl/sfr/maps/index.asp> and enclosed with Futurewise's April 27, 2011 letter to the Board of Commissioners for Okanogan County attached to the *Retention of High-Valued Forest Lands at Risk of Conversion to Non-Forest Uses in Washington State Final Report*.

⁴⁵ College of Forest Resources, University of Washington, *Retention of High-Valued Forest Lands at Risk of Conversion to Non-Forest Uses in Washington State Final Report* pp. 14 – 15 (Prepared for the Washington State Legislature and Washington Department of Natural Resources: March 25, 2009). Accessed most recently on June 21, 2013 at: <http://www.ruraltech.org/projects/wrl/sfr/pdf/RetentionReport.pdf> and enclosed with the paper original of Futurewise's April 27, 2011 letter to the Board of Commissioners for Okanogan County.

County as at risk of conversion.⁴⁶ This puts forest products jobs at significant risk.⁴⁷ Properly designating and protecting these lands will protect the land base and the jobs.

Chapter 4: Land Use - Rural Lands

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” But there are no policies or other provisions to protect groundwater.⁴⁸

In addition, policies in the rural element will pollute groundwater. There is no longer any minimum lots size or density in the Rural Lands Chapter. 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.⁴⁹ Lot sizes associated with ground water contamination cases ranged from less than a quarter acre to three acres.⁵⁰ More recent studies support these conclusions. For example, an “observational study identified septic system density as a risk factor for sporadic cases of viral and bacterial diarrhea in central Wisconsin children.”⁵¹ The greater the density of septic tanks the greater the likelihood of diarrheal disease.⁵² And the highest septic tank densities were one septic tank per 11 acres.⁵³ 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 areas in one

⁴⁶ *Id.* at pp. 8 – 14 & *Detail Maps of High Conversion Risk, High Value Private Forestland Near Anchor Forests in Washington – North Central and Northeast.*

⁴⁷ *Id.* at pp. 18 –19.

⁴⁸ Revised Final Draft 05/16/13 pp. 24 – 26.

⁴⁹ Marylynn V. Yates, *Septic Tank Density and Ground-Water Contamination* 23 GROUND WATER 586, p. 590 (1985). Accessed most recently on June 21, 2013 at: <http://info.ngwa.org/gwol/pdf/852537546.PDF> and enclosed with the paper original of this letter. Ground Water is a peer reviewed scientific journal. See the Ground Water Peer Review enclosed with the paper original of this letter and accessed on June 21, 2013:

<http://www.ngwa.org/Professional-Resources/publications/GW/Pages/Ground-Water-Peer-Review.aspx>

⁵⁰ Marylynn V. Yates, *Septic Tank Density and Ground-Water Contamination* 23 GROUND WATER 586, p. 590 (1985).

⁵¹ Mark A. Borchardt, 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 June 21, 2013 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 31, 2011 at: <http://ehp.niehs.nih.gov/journal-information/> and enclosed with the paper original of this letter.

⁵² Mark A. Borchardt, 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).

⁵³ *Id.* at 747.

part of the valley and 15 acres in three other parts.⁵⁴ So lots allowed by the Rural Chapter will likely pollute the groundwater drinking water sources.

Adverse impacts will also occur because the proposed densities are not matched to the available ground water resources. This is particularly important because a significant number of Okanogan County's subbasins and streams are already overappropriated.⁵⁵ 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.⁵⁶

The proposed comprehensive plan's decision not to designate and protect private agricultural lands could increase demand for water as the agricultural lands are converted to residential use.⁵⁷ This would make these water shortages even worse. The land use element, including Chapter 4, must be revised to protect the quality and quantity of groundwater as RCW 36.70.330(1) requires.

RCW 36.70.330(1) requires that the county's land use element must include "a statement of the standards of population density and building intensity recommended for the various areas in the jurisdiction and estimates of future population growth in the area covered by the comprehensive plan" The Rural Chapter does not include any population densities and building intensities. Again, this violates state law.

Chapter 8: Circulation Element. Please see pages 34 – 38 of the Revised Final Draft 05/16/13

The circulation element is a required comprehensive plan element and important to maintain the county's economy.⁵⁸ We appreciate that the Okanogan County has prepared a transportation element, however it is unclear if it meets the requirements for a circulation element and if it is part of the comprehensive plan. The Appendixes referenced on page 38, for example, are not included in the version of the comprehensive plan available on the county website. We recommend that an element complying with RCW 36.70.330(2) be included with the comprehensive plan.

⁵⁴ 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 June 21, 2013 at: <http://geology.utah.gov/online/ss/ss-134/ss-134text.pdf> and enclosed with the paper original of this letter.

⁵⁵ 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).

⁵⁶ 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); 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)

⁵⁷ 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).

⁵⁸ RCW 36.70.330(2).

Chapter 9: Essential Public Facilities. Please see page 39 of the Revised Final Draft 05/16/13

RCW 36.70.547 provides in relevant part that “[e]very county, city, and town in which there is located a general aviation airport that is operated for the benefit of the general public, whether publicly owned or privately owned public use, shall, through its comprehensive plan and development regulations, discourage the siting of incompatible uses adjacent to such general aviation airport.” Chapter 9 on page 39 states that “[t]he Comprehensive Plan creates policy designed to guide zoning and other development regulation to protect airports from incompatible land uses both on-site and on adjacent lands as encouraged by the Revised Code of Washington and required Federal Regulation.” However, the comprehensive plan, other than on pages 39 and 61, contains no mention of airports. Pages 39 and 61 do not discourage the siting of incompatible use as RCW 36.70.547 requires.

Further, the Okanogan County Land Use Designation Map – Draft designates the Winthrop / Methow Valley State Airport and Anderson Field as Rural.⁵⁹ The proposed Comprehensive Plan on page 25 provides that “[r]esidential uses are consistent with the rural designation.” However, residential uses are not compatible with certain areas near airports.⁶⁰ We recommend the county consult the enclosed *Airports and Compatible Land Use: Volume One An Introduction and Overview for Decision-Makers* and include policies and comprehensive plan designations for the airports in Okanogan County that are consistent with those recommendations.

Thank you for considering our comments. If you require additional information please contact me at telephone 206-343-0681 and email tim@futurewise.org

Sincerely,

⁵⁹ Washington State Department of Transportation Aviation Division, *Washington State Airport Reference Guide* p. 14 & p. 134 (Sept. 2007) accessed on June 20, 2013 at: <http://www.wsdot.wa.gov/NR/rdonlyres/8AC7D85B-F2EE-4751-9621-5979708F553B/0/AirportReferenceGuide.pdf> The Washington State Airport Reference Guide pages for each airport in Okanogan County are enclosed in the email with this letter.

⁶⁰ Washington State Department of Transportation Aviation Division, *Airports and Compatible Land Use: Volume One An Introduction and Overview for Decision-Makers* pp. 40 – 41 (Revised February 1999) accessed on June 20, 2013 at: <http://www.wsdot.wa.gov/NR/rdonlyres/5983B7EF-5061-48FF-8829-1359F783CD10/0/AirportsLandUse.pdf> and enclosed with email with this letter.

Appendix A

Area of Nonfederal Land In Okanogan County by Use in 1976, 1993, and 2006

Use Category	1976		1994		2006		Numeric Change 76-94		Numeric Change 94-2006	
	Thousand Acres	Percent	Thousand Acres	Percent	Thousand Acres	Percent	Thousand Acres	Percent	Thousand Acres	Percent
Wildland forest	943	50.1%	930	49.4%	926	49.3%	-13	-1.4%	-4	-0.4%
Wildland range	654	34.8%	639	34.0%	632	33.6%	-15	-2.3%	-7	-1.1%
Mixed range/agriculture	49	2.6%	50	2.7%	50	2.7%	1	2.0%	0	0.0%
Intensive agriculture	206	11.0%	209	11.1%	209	11.1%	3	1.5%	0	0.0%
Low-density residential	21	1.1%	45	2.4%	55	2.9%	24	114.3%	10	22.2%
Urban	5	0.3%	6	0.3%	6	0.3%	1	20.0%	0	0.0%
Other	1	0.1%	1	0.1%	1	0.1%	0	0.0%	0	0.0%
Total	1,880	100.0%	1,880	100.0%	1,880	100.0%	0	0.0%	0	0.0%

Source: Andrew N. Gray, David L. Azuma, Gary J. Lettman,; Joel L. Thompson, Neil. McKay, *Changes in Land Use and Housing on Resource Lands In Washington State, 1976-2006* p. 12 (Gen. Tech. Rep. PNW-GTR-881, U.S. Department of Agriculture, Forest Service, Pacific Northwest Research Station, Portland, OR: 2013). Accessed on June 21, 2013 at: <http://treesearch.fs.fed.us/pubs/42975>. A copy of this report is enclosed with the paper original of this letter.



**NORTHWEST
Land & Water, INC.**

Consulting in Hydrogeology

Northwest Land & Water, Inc. • 6556 37th Avenue NE • Seattle, Washington 98115

May 6, 2014

**Maggie Coon, President
Methow Valley Citizens' Council
Twisp, Washington**

Re: Review of Okanogan County documents regarding water quantity and water quality

Dear Ms. Coon:

At the request of your organization, I have reviewed the Okanogan County documents that were provided to me and have summarized my opinions with regard to aquifer recharge areas, water quantity, and water quality in the attached document (Expert Testimony of Laura Strauss, Hydrogeologist). I have provided the scientific basis upon which I have made my opinions. I hope that my review helps you to better understand subject areas in which the Okanogan County documents need improvement in order to provide adequate information to achieve the objectives identified within the legal framework that requires the documents to be prepared.

Respectfully, Northwest Land & Water, Inc.

Laura J. Strauss LG, LHg Principal Hydrogeologist

Expert Testimony of Laura Strauss, Hydrogeologist

1 Qualifications and Experience

I am a licensed hydrogeologist in Washington State (license #1002) and have been practicing as a consultant in hydrogeology since receiving my Master's degree in 1986 and in Washington since 1991. Much of the work I have done involves understanding and characterizing the hydrogeology of watersheds for the purpose of providing a scientific basis for planners and stakeholders to make decisions to work towards sustainable ground water supply while protecting surface water flows.

2 Materials Considered in Preparing this Expert Report

I reviewed the following Okanogan County documents:

- **Comprehensive Plan of Okanogan County, Final Draft, 5/16/2013 (Comp Plan)**
- **Draft Environmental Impact Statement, Revisions to the Okanogan County Comprehensive Plan, 5/16/2013 (DEIS)**
- **Critical Areas Regulations, Draft 3/19/2012 (CAO)**

In addition to these documents, I reviewed the following hydrological reports, specific to the Methow Valley, prepared by the United States Geological Survey (USGS), the Methow Basin Planning Unit, Aspect Consulting and Golder and Associates:

- **Hydrogeology of the Unconsolidated Sediments, Water Quality, and Groundwater/Surface-water Exchanges in the Methow River Basin, Okanogan County, Washington (USGS, 2005)**
- **Methow Basin (WRIA 48) Watershed Plan (Methow Basin Planning Unit, 2005)**
- **Final Detailed Implementation Plan/Methow River Basin (WRIA 48), (MWC 2009)**
- **Water Withdrawal Study (Aspect, 2011a)**
- **Instream Flow Reservation Tracking Database (Aspect, 2011b)**
- **DRAFT MEMO, Evaluation of Reservation Quantities Established by Chapter 173-548 WAC under Current and Potential Future Build-out Scenarios (Aspect, 2011c)**

In addition to these, I reviewed letters and comments responding to the County's documents. These include comments prepared by the Methow Valley Citizens' Council, the Department of Ecology, Futurewise, the Center for Environmental Law and Policy (CELP) and others.

The purpose of the following testimony is to offer my opinions regarding inaccuracies and omissions regarding groundwater resources in documents I reviewed. I was also asked to consider a series of questions put to me by the Methow Valley Citizens' Council regarding groundwater resources, aquifer recharge areas and the issue of groundwater quantity and quality in the Methow River basin of Okanogan County.

1.2. Groundwater Resources of the Methow Valley
A large number of hydrogeological studies have been conducted in the Methow Valley. These studies indicate that the principal sources of groundwater in the Methow Valley are from aquifers located in lowland basins and well-saturated areas. The aquifers are composed of unconsolidated materials deposited by rivers and glaciers during the Pleistocene.

In general, the Methow Valley aquifers are unconsolidated materials that are in the permeable layer (aquifers) above them. Such aquifers are water table aquifers. When the aquifers are saturated to the point of saturation, they are saturated with a confining layer. There are also some aquifers that are confined to more than one layer. It is possible for groundwater from land use activities and septic discharge to move down into the aquifer.

The water table aquifers in the Methow Valley are unconsolidated deposits of which are known to yield little water and are not considered a significant source of domestic water supply. These aquifers are in the Methow Valley, have a high dependence on the water table aquifer.

A map showing aquifer recharge areas to the Methow Valley is included here (see Figure 1.2.1). The map shows the recharge areas for the Methow Valley. The recharge areas are indicated by the shaded areas on the map.

1.3. Methow Valley Aquifer Recharge Areas
County to assist in the County's proposed (CA), there is, in my opinion, sufficient scientific information available to identify aquifer recharge areas and to

The following information is provided for your information. The land use plan for the County is shown in the map. The map shows the land use plan for the County. The map shows the land use plan for the County. The map shows the land use plan for the County.

3 Summary of Expert Opinions

3.1 General comment on County documents

It is my opinion that the documents I reviewed (the proposed Comp Plan and CAO) fail to meet what I understand state mandated requirements to be, in terms of using best available science to identify and protect the quality and quantity of groundwater used for potable water.¹ This includes failure to identify or acknowledge in either the Comp Plan or CAO the known aquifers in the Methow Valley, which have been described and mapped by hydrogeologists in published documents. It also includes failure to acknowledge hydrogeologic studies conducted for the Methow Watershed Council that indicate there is not enough water in parts of the Methow Valley to support the planned growth and zoning.

3.2 Principal Sources of Potable Water in the Methow Valley

A large number of hydrogeological studies have been conducted in the Methow Valley. They indicate that the principal source of potable water in the Methow Valley is from aquifers located in lowland benches and valley bottoms within the basin. The aquifers are composed of highly permeable, unconsolidated materials deposited by rivers and glaciers over bedrock.

In general, the Methow Valley aquifers are unconfined, meaning there is no impermeable layer (aquitard) above them. Such aquifers are water table aquifers. Water table aquifers tend to be more susceptible to contamination than aquifers with a confining layer above because there is very little to intercept contamination. It is possible for contaminants from land use activities and septic discharge to move directly into the aquifer.

The water table aquifers in the Methow Valley are underlain by bedrock deposits, which are known to yield little water and are not considered a significant source of domestic water supply. This means residents in the Methow Valley have a high dependence on the water table aquifers.

A map showing aquifer recharge areas in the Methow Valley is included here (see Methow Basin Aquifer Recharge Areas, Figure 4A and 4B² in the attachments). The recharge areas indicated are coterminous with the water table aquifers.

3.3 Critical Aquifer Recharge Areas

Contrary to assertions made in County's proposed CAO, there is, in my opinion, sufficient scientific information available to identify aquifer recharge areas and to

¹ The Planning Enabling Act, under RCW 36.70.330 (1) states the following: "The land use element (of the Comprehensive Plan) shall also provide for the protection of the quality and quantity of groundwater used for public water supplies..."

² Methow Basin (WRIA 48) Watershed Plan page 31.

classify *critical* aquifer recharge areas.³ Indeed, as noted above, aquifer recharge areas have already been identified in the Methow Valley.

Classifying critical recharge areas⁴ involves identifying the following: 1) aquifers used or suitable for potable water and their associated recharge areas, 2) aquifer recharge areas *susceptible* to groundwater contamination based hydrogeological conditions, and 3) aquifer recharge areas *vulnerable* to contamination based on existing and proposed land uses. The combination of these factors is the basis for classifying critical aquifer recharge areas.

In my opinion, it would not be unreasonable for the County to consider the areal extent of the water table aquifers in the Methow Valley (the recharge areas shown in Figures 4A and 4A) as critical aquifer recharge areas. My opinion is based on the following: 1) the importance of the water table aquifers as a source of potable water, 2) the generally high contamination susceptibility of water table aquifers, and 3) the potential for groundwater-polluting development as planned in the County's proposed Comp Plan that directly overlies the primary aquifer and includes septic systems and other permitted uses in areas zoned for one acre lots.

Additional scientific investigation could be done to further delineate and evaluate critical aquifer recharge areas, and is advisable over the long term. But the aquifer information currently available and described here is sufficient to inform decisions made by the County regarding land use, zoning and critical area regulations.

3.4 Water Quantity

The County documents do not acknowledge the important findings of recent hydrological studies conducted by Aspect Consulting for the Methow Watershed Council.⁵ Report findings indicate there is not enough groundwater to support additional further subdivision of land in what it outlines as the Lower Methow sub-basin. According to a report submitted to County by the Methow Watershed Council⁶ and analysis of data included in the Aspect report⁵, draft estimates indicate that without any further subdivision, there is not enough water for 1,092 existing lots to drill a well in the Lower Methow without threatening to exceed the 2 cfs reservation. If developed to its full zoned potential (which includes substantial areas of one acre zoning), the gap between water available and potential demand is

³ The Washington Administrative Code (WAC) Chapter 365-190 uses the following definition "Areas with a critical recharging effect on aquifers used for potable water are areas where an aquifer that is a source of drinking water is vulnerable to contamination that would affect the potability of the water."

⁴ Outlined in the Critical Aquifer Recharge Areas Guidance Document, published by the Department of Ecology.

⁵ *Water Withdrawal Study and the Instream Flow Reservation Tracking Database WRIA 48*

⁶ Methow Watershed Council. WRIA 48 Watershed Planning Information for the Okanogan County Planning Commission, July 9, 2013. (Included in the attachments.)

dramatic—with up to 24,313 lots not able to withdraw water without threatening to exceed the 2 cfs reservation.

The potential to exceed groundwater capacity is high in the Lower Methow. It would be reasonable for the County to modify zoning in order to reduce potential groundwater withdrawals in these areas. Salient information from the 2011 Aspect reports is described in later sections of this document to substantiate this opinion.

3.5 Water Quality

It should be a matter of concern that the proposed Comp Plan could allow extensive development that relies on septic systems on small lots where the Methow Valley aquifers are located and primary recharge occurs. High-density septic systems on small lots, especially in the one-acre range, have been shown to be a significant source of groundwater contamination in similar hydrogeologic settings. They pose an even greater threat where aquifers, such as the water table aquifers in the Methow, tend to have high hydrogeologic susceptibility. Groundwater contamination from anthropogenic sources has already been documented in the Methow Valley (Konrad, 2003).

3.6 Steps the County Could Take

The Methow Valley's aquifers and principal sources of public water supplies have been identified. Its recharge areas have been mapped. We know that the aquifers generally have a high susceptibility to contamination. The County needs only to identify potential sources of contamination, which should include areas where septic systems are concentrated.

In my opinion there is sufficient information to designate critical aquifer recharge areas in the Methow Valley. I would further say, based on Department of Ecology guidelines, that the alluvial deposits which coincide with the recharge areas shown on Figures 4A and 4B, could be considered critical recharge areas.

The Lower Methow sub-basin deserves special attention, due to indications the sub-basin is over-allocated. The potential for concentrations of septic systems and a wide range of commercial and industrial uses, which are allowed under both current and proposed zoning, also poses a higher threat of contamination from multiple sources than elsewhere in the valley. Further subdivision should be limited here, new guidelines for septic drainfield construction to reduce nitrates considered, and special regulation of commercial and industrial development instituted in this area.

4 Detailed Discussion of Expert Opinions

The following provides further discussion and substantiation of opinions presented in the above section as summary statements.

4.1 Recharge areas

A significant body of work has been done on the hydrogeology of the Methow Valley. In my opinion, this work is sufficient to identify aquifer recharge areas and classify critical recharge areas for the purposes of land use planning. This section presents the relevant studies, briefly describes the hydrogeology and aquifers, the criteria for classifying critical recharge areas, and outlines how the County could classify critical recharge areas in the Methow River valley.

4.1.1 Hydrogeologic Studies

A comprehensive list of relevant documents for the Methow Valley is available online through the Methow Watershed Council's website and included in the bibliography and reference sections of the series of studies produced by the Council and Aspect Consulting. None of this work has been cited or used in the critical aquifer recharge area section of the County's proposed Comp Plan or CAO. Two reports are particularly important and relevant to understanding recharge areas in the Methow River Basin and are described below and used in subsequent sections:

1. Hydrogeology of the Unconsolidated Sediments, Water Quality, and Groundwater/Surface-Water Exchanges in the Methow River Basin, Okanogan County, Washington, by *Christopher P. Konrad, Brian W. Drost, and Richard J. Wagner, USGS Water Resources Investigation Report 03-4244, August 4 2005*
2. Methow Basin (WRIA 48) Watershed Plan (Methow Basin Planning Unit, June 20 2005)

The above referenced USGS report describes the hydrogeology in the Methow basin. The study reviewed well logs for thousands of wells and compiled well log data for 488 wells. The report describes:

- the occurrence of aquifers,
- groundwater and surface water quality, and
- the relationship between surface water and groundwater.

The USGS report described the spatial extent, depth, and lithology of the unconsolidated sediments that form the hydrogeologic framework for the shallow groundwater system, which is the primary groundwater resource in the Methow basin.

The USGS report indicates that the majority of groundwater wells are completed in the shallow unconsolidated deposits aquifer. More specifically,

"the unconsolidated sediments directly beneath the main Methow River valley form the most productive aquifers where the ground water is closely connected to the flow in the Methow River. The median value for static depth to ground water in 184 wells from June through August 2001 was 27 ft below land surface, with a range from 1.2 to 218 ft."(Konrad, 2005, pg 14)

These are the principal aquifers from which existing potable supplies are drawn (Konrad, 2005 pg 2); they are underlain by bedrock deposits that are known to yield little water and are not considered to provide substantial yield to wells. The extent of the unconsolidated aquifers is reflected on the figures included in the attachments, Methow Basin Aquifer Recharge Areas, Figure 4A and 4B.

4.1.2 Summary of Aquifer Description

The principal potable water supply in the Methow Valley is from aquifers located in lowland benches and valley bottoms within the basin. The aquifers comprise highly permeable sand and gravel deposited by rivers and glaciers – referred to as alluvium and glacial outwash deposits on the surficial geology map (Stoffel, et al, 1991). In general, the groundwater in these aquifers is unconfined and the aquifers are characterized as water table aquifers. While locally the aquifers may be semi-confined (where layers of limited extent, fine-grained sediment occur between land surface and groundwater), regionally Methow Valley aquifers may be considered to be largely unconfined. Such unconfined aquifers are, by definition, water table aquifers. Water table aquifers tend to have a higher susceptibility to contamination due to the fact that there is very little to intercept contamination from land-use activities. Water table aquifers that occur at shallow depths are more susceptible to contamination than deeper water table aquifers.

The recharge areas shown on Figures 4A and 4B are coterminous with the shallow alluvial aquifers. Precipitation incident on these areas recharges the underlying aquifers. In addition the aquifers are recharged by infiltration from surface water sources including the Methow and Twisp rivers and underflow from adjacent bedrock. While the bedrock is not a viable water supply for wells, regionally it may provide water to the shallow alluvial aquifers. The volume of water contained in the aquifers is a function of volume of the alluvial deposits comprising the aquifer, the porosity, and the groundwater elevation.

4.1.3 Guidance document for classifying critical recharge

The Department of Ecology's Critical Recharge Area Guidance Document indicates that best available science should be used to identify critical recharge areas and describes the methods to identify Critical Aquifer Recharge Areas (Section 4, p 26). Basic steps involved are the following:

- 1) identify the principle aquifers used for potable water supplies,
- 2) analyze susceptibility of aquifers to contamination, based on hydrogeologic characteristics, and
- 3) identify existing and potential sources of aquifer contamination.

The combination of susceptibility and contamination potential are used to classify the relative vulnerability of the aquifer which forms the basis for identifying "critical" recharge areas.

4.1.4 The County Should Classify Critical Recharge Areas

It is evident from the USGS report and Figures 4A and 4B that science is available to identify recharge areas. The County should use available studies to identify critical aquifer recharge areas, using the methods described Ecology's guidance document.

The first step in this process has been essentially completed for the Methow Valley. The aquifers that are principal sources of potable water and aquifer recharge areas have been identified. With nominal additional research and mapping, there is sufficient information to identify relative hydrogeologic sensitivity.

Step 2 of the basic steps, is to identify aquifers used for water supplies that are highly susceptible to contamination. Susceptibility is a function of factors outlined in both the Critical Areas Assistance Handbook and the Critical Aquifer Recharge Areas Guidance Document, published by the Department of Ecology.

Based on these guidelines and on my review of the available science, I believe it is reasonable for the County to consider the aquifer recharge areas identified on Figures 4A and 4B in the attachments as having a high potential susceptibility to contamination due to the relatively shallow depth to the water table and the very permeable subsurface material that would transport contaminants from the surface or near-surface directly to the aquifer.

Due to the susceptibility of the aquifer and the crucial nature of its groundwater supply, it would be reasonable for the recharge areas shown in Figures 4a and 4b to represent critical aquifer recharge areas. Alternatively, the County could use Figures 4a and 4b to identify and rank sub-areas within the recharge areas that have the greatest hydrologic susceptibility and would be the most critical to protect. For example, these might include areas where water table levels are the shallowest and areas within proximity of surface waters and Class A public water supply wells.

4.2 Water Quantity

This section presents a brief discussion of the regulations governing streamflow in the Methow River, a brief description of the relationship between groundwater water and streamflow, a summary of work done to quantify groundwater withdrawal and associated concerns, and steps the County could take to address water quantity concerns.

4.2.1 State Regulations on Streamflow in the Methow River

The Instream Flow Rule (Rule) for the Methow River was established in 1976 as Chapter 173-548 of the Washington Administrative Code (WAC). The Rule established a reservation of 2 cubic feet per second (cfs) of water in each of seven reaches of the Methow River watershed for future single domestic and stock water uses. The 2 cfs reservation in each reach is expressed as a reduction in stream flow associated with the consumptive use of aggregate instantaneous withdrawals authorized under the rule.

4.2.2 Groundwater Withdrawal and Associated Concerns

The hydrogeological firm, Aspect Consulting, was contracted by Methow Watershed Council to do a series of reports, funded by the Department of Ecology, on water use and water withdrawal in the Methow watershed. Results of these studies indicate a need for concern regarding over-allocation of groundwater.

4.2.2.1 Groundwater Withdrawal Studies

Reports done by Aspect in 2011, *Water Withdrawal Study* and the *Instream Flow Reservation Tracking Database WRIA 48*, indicate that if full build-out of current zoning (which in many areas allows division of land into one acre lots) occurs, water use from exempt wells in the Lower Methow would dramatically exceed the 2 cfs per sub-basin reserved for domestic or stock water use, especially during low flow when daily pumping reflects maximum water use.⁷ Salient information from the 2011 Aspect reports is described below:

Aspect Consulting conducted a series of rigorous studies in the Methow Valley that quantified the existing number of exempt wells in each sub-basin, estimated pumping rate for exempt wells and water consumption use for domestic use. Aspect defined the boundaries of each sub-basin,

⁷ The Instream Flow Rule (Rule) for the Methow River was established in 1976 as Chapter 173-548 of the Washington Administrative Code (WAC). The Rule established a reservation of 2 cubic feet per second (cfs) of water in each of seven reaches of the Methow River watershed for future single domestic and stock water uses. The 2 cfs reservation in each reach is expressed as a reduction in stream flow associated with the consumptive use of aggregate instantaneous withdrawals authorized under the rule.

and then, compiling data from many sources, counted developed parcels for each sub-basin and assumed an exempt well in each parcel that was designated developed and not served by a public system. Studies also estimated the maximum number of exempt wells that would occur at full build-out on existing lots and full build-out on lots that could be created under existing zoning regulations.

The *Water Withdrawal Study WRIA 48* (Aspect, 2011a, page 4) reports that average annual consumptive use for exempt wells was calculated to be 205 gpd and maximum consumptive use was calculated to be 725 gpd per residence served by an exempt well.

The *Instream Flow Reservation Tracking Database WRIA 48* (Aspect, 2011b) summarizes in Table 8 the estimated number of exempt wells in each sub-basin subject to the instream flow rule assuming full build-out; Table 9 summarizes Estimated Exempt Well Parcels Subject to the Instream Flow Rule at Build-out with Current Parcel Size (Reduced Build-out); and Table 10 summarizes Estimated Exempt Well Parcels Subject to the Instream Flow Rule at Full Build-out - Assuming No Additional Development within Closed Basins.

Comparison of exempt well water use to instream flow appropriation

The appropriation for exempt wells of 2 cubic feet per second (cfs) per sub-basin is equivalent to 1,292,544 gallons per day (gpd) for the combined 7 sub-basins that comprise the Methow watershed. Assuming the average annual consumptive use of 205 gpd, 6,305 exempt wells would use the equivalent of 2 cfs; assuming the maximum consumptive use of 725 gpd, 1783 exempt wells would use the equivalent of 2 cfs.

Table 8 (Aspect, 2011) indicates that 25,834 exempt wells could occur in the Lower Methow sub-basin if full build-out occurs, assuming the zoning as of 2011 (which is the current zoning). Full build-out represents the upper limit for the maximum number of exempt wells. While it is unlikely that full build-out will occur, it is clear from these estimates that water use from exempt wells in the Lower Methow would exceed the 2 cfs appropriated for exempt wells.

Table 1, prepared for this letter, summarizes the water use for the estimated number of exempt wells summarized in Tables 7, 8, 9, and 10 in the *Instream Flow Reservation Tracking Database* report (Aspect, 2011) for the four different exempt well water use estimates reported in the *Water Withdrawal Study* (Aspect, 2011). Table 1 shows the effect of the different assumptions for per well water use on the total exempt-well water use for each sub-basin. Table 1 indicates that the Lower Methow sub-basin would be over-allocated with respect to the instream flow

reservation of 2 cfs for all conditions of build-out and assumptions for water use except for full build-out under existing parcel size configuration for which over-allocation would occur for the maximum annual pumping and maximum consumptive water use but would not occur for the lower estimates of water withdrawal and consumptive use. Similarly, the Upper Methow sub-basin would be over-allocated for conditions of full build-out assuming current zoning and the larger estimate for water withdrawal and consumptive use.

4.2.2.2 Concern regarding water quantity

Draft estimates indicate that even without further subdivision of current parcels in the Lower Methow sub-basin 1092 lots would not be able to draw water from the aquifers without threatening to exceed the 2 cfs reservation for exempt wells that is identified for each sub-basin in the instream flow rule for the Methow River (Letter from Methow Watershed Council, 2011). Water use by sub-basin, summarized in Table 1, indicates in red the build-out conditions for which water withdrawal would exceed the 2 cfs reservation. These data support the statement made in the Methow Watershed Council letter (2011) regarding 1092 lots with respect to full buildout under *current parcel size*; Table 1 also indicates that if full buildout occurred under current zoning (current parcels subdivided according to current zoning rules) 24,313 lots in the Lower Methow sub-basin would not be able to draw groundwater without threatening to exceed the 2 cfs reservation (assuming 710 gpd consumptive use). Exceedance of 2 cfs from any of the sub-basins could reduce streamflow in the Methow river below the minimum required under chapter 173-548 WAC (Methow Watershed Council, 2013). Maintaining minimum streamflow is necessary to sustain anadromous fish populations.

4.2.3 Steps the County Could Take to Address Water Quantity Concerns

In my opinion, the County Comp Plan should include steps it will take to manage future growth in the face of increasing demands on limited water resources.

4.2.3.1 Identify specific areas of concern

The Upper and Lower Methow sub-basins of the Methow basin are clearly areas of greater concern because the likelihood that exempt well withdrawal will exceed the 2 cfs reservation is greatest within these sub-basins (Table 1). Based on studies by Aspect Consulting for the Methow Watershed Council, possibly the Upper Methow and most certainly the Lower 1Methow reaches are over-allocated for water with respect to WAC 173-548. (Hatcher, 2011)

Development in the Lower Methow deserves special attention. The alluvial deposits within this sub-basin should be designated a critical

aquifer recharge area (Figure 4B) If, as indicated in recent studies by Aspect Consulting, there is not enough water in the aquifers to supply the number of lots that *currently exist*, further subdivision of land would be unwise until a plan to resolve the forecast water shortages has been developed.

4.2.3.2 Modify zoning regulations

Allowing continued subdivision of land under the current zoning would exacerbate the problem. An estimated potential of 24,313 lots could be created if all property is subdivided to its zoned potential, but would not be able to drill a well.

The County could modify the zoning rules to prevent or minimize subdivision of existing parcels to reduce the potential number of exempt wells and thus reduce impact on groundwater resources and stream flow.

4.2.3.3 Concentrate development in areas served by municipal supply

Concentrating future residential, commercial and industrial growth in areas where water is supplied by municipal wells with limited water rights while simultaneously allowing low-density residential and agricultural uses in lowland areas of the valley where aquifers are located, would provide stronger safeguards to groundwater resources than the proposed Comp Plan offers.

4.2.3.4 Other steps

Limiting development density over aquifers may not be enough to protect groundwater resources, nor is it the only means to do so. Water conservation and regulatory measures to prevent contamination from residential, commercial, industrial and agricultural sources may be necessary over the long run.

4.3 Water Quality

In my opinion, it is a matter of concern that the proposed Plan could allow extensive development that relies on septic systems on small lots (in the one acre range) where the aquifers are located and primary recharge occurs. High-density septic systems (on small lots) have been shown to be a significant source of groundwater contamination and pose an even greater threat where aquifers, such as the water table aquifers in the Methow, tend to have high hydrogeologic susceptibility.

It is my opinion, based on the USGS report of water quality in the Methow Basin (Konrad, 2003) and the many USGS reports regarding nitrate contamination (in shallow groundwater in the vicinity of La Pine, Oregon), the County documents do not adequately address potential concerns of water quality.

This section presents a summary of the risk of nitrate contamination from septic systems in similar water table aquifers, the hydrogeology that is relevant to water quality concern, relevant reports on the hydrogeology, and steps that the County could take to address concern for groundwater and surface water quality.

4.3.1 Risk of nitrate contamination from septic discharge

Increased residential development outside of municipal service areas (sewered) would not only increase exempt wells and affect issues of water quantity, but the associated increase in septic system density could impact groundwater quality. The strong hydraulic continuity with the Methow River indicates that groundwater contamination from septic discharge could also impact surface water quality. Nitrate is the primary contaminant of concern from septic discharge. Ideally, the nitrate released into septic drainfields is taken up by plants and removed from the water. However, in practice, the nitrate commonly infiltrates below the root zone to the underlying water table before the nitrate is removed or sufficiently reduced.

Not only is elevated nitrate in groundwater harmful to those who drink it, when it discharges to surface water it impacts riparian habitat. Elevated nitrate can cause increased algae growth which results in decreased dissolved oxygen which is harmful to most animals and disruptive to an aquatic ecosystem.

4.3.2 Hydrogeology

The alluvial aquifer in the Methow River valley is susceptible to contamination from surface activities and septic discharge because the depth to the water table is shallow, the subsurface deposits are permeable and allow relatively fast travel time to the groundwater. These conditions provide much less opportunity for contaminants to be removed by adsorption to sediment.

4.3.3 Relevant reports

The USGS report (Konrad, 2005) indicates that the majority of groundwater wells are completed in the shallow unconsolidated deposit aquifers (or water table aquifers.) More specifically, *the unconsolidated sediments directly beneath the main Methow River valley form the most productive aquifers where the ground water is closely connected to the flow in the Methow River. The median value for static depth to ground water in 184 wells from June through August 2001 was 27 ft below land surface, with a range from 1.2 to 218 ft.)*

The report also finds evidence of groundwater contamination: *"nitrate concentrations were greater than 3 mg/L in five groundwater samples and may be an indicator of anthropogenic sources of contamination."* This indicates there is a legitimate concern for contamination from a high density of septic systems. (Konrad, 2005 pg 25)

Elevated concentration of nitrate in groundwater in La Pine, Oregon from

septic discharge is well documented and studied (Williams, et al, 2007). La Pine, Oregon, is in the Deschutes basin, east of the Cascade Mountains and has a similar climate as parts of Okanogan County. Groundwater from a shallow unconsolidated deposit aquifer supplies water to the residents of La Pine and discharges to the Deschutes River or tributaries to the Deschutes. Elevated nitrate concentration in shallow groundwater from septic drain fields has been discharging into the aquifer for decades but has taken a while to show up in many wells because of slow groundwater flow rate. The USGS reports indicate that 58% of lots are less than 1 acre and 82 % are less than 2 acres.⁸

4.3.4 Steps to address potential water quality concerns

4.3.4.1 Identify sources of aquifer contamination

Classification of critical aquifer recharge areas is an important step to protect groundwater quality. As discussed above, the guidelines outlined in the Critical Aquifer Recharge Areas Guidance Document published by the Department of Ecology describe the science necessary to identify critical aquifer recharge areas and were summarized in three basic steps:

- 1) identify the principle aquifers used for potable water supplies,
- 2) analyze susceptibility of aquifers to contamination, based on hydrogeologic characteristics,
- 3) identify existing and potential sources of aquifer contamination

As discussed in the section on critical recharge areas, step 1 has essentially been completed, and with nominal additional research and mapping, there is sufficient information to identify relative hydrogeologic sensitivity for step 2.

The County should complete the final task, which County planning staff would have the expertise to do—identify and map the risk of contamination from existing and potential future land uses.

4.3.4.2 Restrict parcel subdivision

Okanogan County has an opportunity to prevent impact to groundwater quality by learning from the LaPine study that suggests that zoning of 1-acre parcels may have allowed the density of septic discharge that resulted in nitrate contamination. Zoning regulations that restrict or minimize subdivision of current parcels would reduce risk to water quantity, as discussed above. It would also reduce septic system density and potential groundwater contamination from nitrate.

⁸ USGS reports regarding nitrate contamination in aquifers in the vicinity of La Pine, Oregon are found at http://or.water.usgs.gov/proj/or186/new_site/reports.html

4.3.4.3 Concentrate development in sewerred areas

Concentrating future residential, commercial and industrial growth in sewerred areas (where water is supplied by municipal wells) while simultaneously allowing low-density residential and agricultural uses in lowland areas of the valley where aquifers are located, would reduce risk of contamination from septic drainfields .

4.3.4.4 Septic drainfield regulations and guidelines

The County could provide new guidelines and criteria for septic drainfield construction, installation, and maintenance to reduce nitrate input to the groundwater.

4.3.4.5 Zoning and regulations for other sources of contamination

Zoning regulations should specifically restrict and/or regulate development in critical recharge areas that would be a source for other potential contamination identified in step 3 (described above).

5 Reference Documents

Aspect Consulting, 2011. Water Withdrawal Study, Water Resources Inventory Area 48, Twisp, Washington, Project 080180-003 May 10, 2011 Draft

Aspect Consulting, 2011. Instream Flow Reservation Tracking Database, Water Resources Inventory Area 48, Project 080180-003, May 11, 2011 Draft

Aspect Consulting, 2011. DRAFT of Reservation Quantities Established by Chapter 173-548 WAC under Current and Potential Future Build-out Scenarios.

Department of Ecology, 2005. Critical Aquifer Recharge Areas, Guidance Document, Publication Number 05-10-028.

Konrad, C. P., B.W. Drost and R. J. Wagner, 2005. Hydrogeology of the Unconsolidated Sediments, Water Quality, and Groundwater/Surface-Water Exchanges in the Methow River Basin, Okanogan County, Washington, *USGS Water Resources Investigation Report 03-4244*.

Methow Watershed Council, 2009. Final Detailed Implementation Plan/Methow River Basin (WRIA 48).

Methow Watershed Council, 2011. Letter to Okanogan County Commission, June 14, 2011 signed by Greg Knott.

Methow Watershed Council, 2013. *WRIA 48 Water Planning Information for the Okanogan County Planning Commission*, July 9, 2013. Recommendations from the Methow Watershed Council Instream Flow Rule Revision Committee, Drafted by Hans Smith, Instream Flow Rule Revision Committee Chair

Stoffel, K. L., et al, 1991. Geologic Map of Washington – Northeast Quadrant. Washington Division of Geology and Earth Resources Geologic map G-39, Washington State Department of Natural Resources.

Williams, J.S., D.S. Morgan, S.R. Hinkle, 2007. Questions and Answers About the Effects of Septic Systems on Water Quality in the La Pine Area, Oregon. USGS Fact Sheet 2007-3103, prepared in cooperation with Deschutes County and Oregon Department of Environmental Quality.

6 Curriculum Vitae

Method Waterworks, owned 2013, NWLA, 12/1/2013
for the Oregon County Planning Commission, July 4, 2013
Recommendations from the Method Waterworks County Planning
Flow Rate Revision Committee, dated by the Board, 12/1/2013
Flow Rate Revision Committee

Stout, K. L. et al. 1991. Geologic Map of Washington - Northwest
Geological Survey, Division of Geology and Earth Resources
Geologic map of Washington State, Department of Natural
Resources

Winters, J. S. 2007. 2007. Guide, 2007. Questions and Answers
About the Effects of Sewer Systems on Water Quality in the Lake
Area, Oregon, WSA, Fact Sheet 2007-2102, prepared for
approval use with Douglas County and Oregon Department of
Environmental Quality



Resume for Laura Strauss, PG, LG, LHg

Years of Experience: 26

Laura Strauss has technical experience in many areas related to water resource planning and hydrologic impact analysis:

Education:

*M.S. Hydrology, 1986
University of Arizona*
*B.A. Geology / Environmental Studies, 1983
University of California,
Santa Barbara*

- ▶ Hydraulic continuity analysis
- ▶ Groundwater flow modeling
- ▶ Aquifer storage and recovery feasibility
- ▶ Groundwater recharge analysis
- ▶ Environmental isotope hydrogeochemistry
- ▶ Water quality analysis
- ▶ Water rights investigations
- ▶ Aquifer testing and analysis

Professional Registration:

*Registered Geologist,
Arizona*
*Licensed Geologist /
Licensed Hydrogeologist,
Washington*

Ms. Strauss skillfully identifies project goals, objectives, and key issues. She moves fluidly between the big picture and the details of technical analysis.

Major Areas of Expertise:

Aqueous geochemistry
*Isotope sampling and
analysis*
Geochemical modeling
*Groundwater flow
modeling*
*Artificial recharge
assessment*
Database development
Aquifer test analysis
*Environmental impact
analysis*
*Geographic Information
Systems*

Ms. Strauss uses her proficiency in computer applications to seamlessly manage data, bringing it in and out of analytical computer applications, to convey results in a meaningful and useful way. She has used various models to conduct groundwater flow modeling: analytical element models (*GFlow2000*), and finite difference models for saturated (*MODFLOW*) and unsaturated (*VS2D*) groundwater conditions. She uses various geochemistry applications to characterize groundwater and to understand the geochemical reaction paths. She is proficient with geographic information systems (GIS) and databases to manage and analyze large and varied water quality, hydrogeologic and land-use data sets. Through merging her *GIS*, *CAD*, and database skills, Laura has developed 3-D hydrogeologic models using *View-Log*, an application that manages, displays, and creates subsurface visualization images (e.g. cross-sections).

In addition, she specializes in the analysis of isotopic data. Laura has designed programs for sampling isotopes of carbon, hydrogen, and oxygen, and has used her knowledge to evaluate groundwater flow and recharge-discharge patterns. This expertise has often been an integral, cost-effective way to understand hydraulic relationships that were not apparent using traditional methods.

Representative Project Experience

West Plains (WRIA 54) & Lower Hangman Creek Watershed (WRIA 56) Hydrogeologic Characterization. This project was an extension of a hydrogeologic characterization conducted for the middle- and upper-Hangman Creek watershed. It involved construction of monitoring wells in the West Plains and Lower Hangman. A conceptual model of the West Plains was developed using hydro-



Resume for Laura Strauss, PG, LG, LHg

Summary of non-standard software commonly used to conduct analytical office work:

ArcGIS
MODFLOW
MODSURFACT
MODPATH
GFLOW2000
VS2D
Groundwater Vistas
AQTESOLV
AutoCAD
MS Access
ViewLog
NETPATH
PHREEQE
Rockware Suite

Summary of software and other equipment commonly used to conduct field work:

Pressure Transducers and dataloggers:
Geokon
Campbell Scientific
INW

geologic cross sections, analysis of groundwater geochemistry, age dates, water levels, and flow directions.

Hydrogeologic Framework for the Goldsborough Creek Sub-Basin & Johns Creek Vicinity. Developed a framework for a 90 square mile area. This work entailed constructing 33 working cross section from 385 well logs. Hydrogeologic unit layers were converted to model layers that are currently be used by Ecology to assist with water management decisions.

Spokane County Conservation District – Hangman Creek Watershed (WRIA 56) Hydrogeologic Study. Planned field testing and analyzed hydrogeologic, geochemical, and water level data for Columbia River Basalt Group aquifers and connected creeks to develop a conceptual model of the groundwater and surface water flow system. The conceptual model was developed using 100s of wells and constructed using 10s of cross sections in a visualization program called *Viewlog*. Geochemistry (stable isotopes) and age-dating (tritium, C14) were used to identify distinct aquifers and their connection to creeks. An exempt water use build-out analysis was also completed to identify areas of expected future water demand.

Upper Deschutes Basin Groundwater Modeling. Modeled the effects on the surface water and groundwater flow system in the upper Deschutes Basin, Oregon, due to pumping from a proposed destination resort. The study entailed using the MODFLOW model constructed for the basin by the USGS. The stratigraphy of the study area is dominated by basalt flows. The study included summarizing groundwater level data, evaluating ground-water level trends, and summarizing streamflow data.

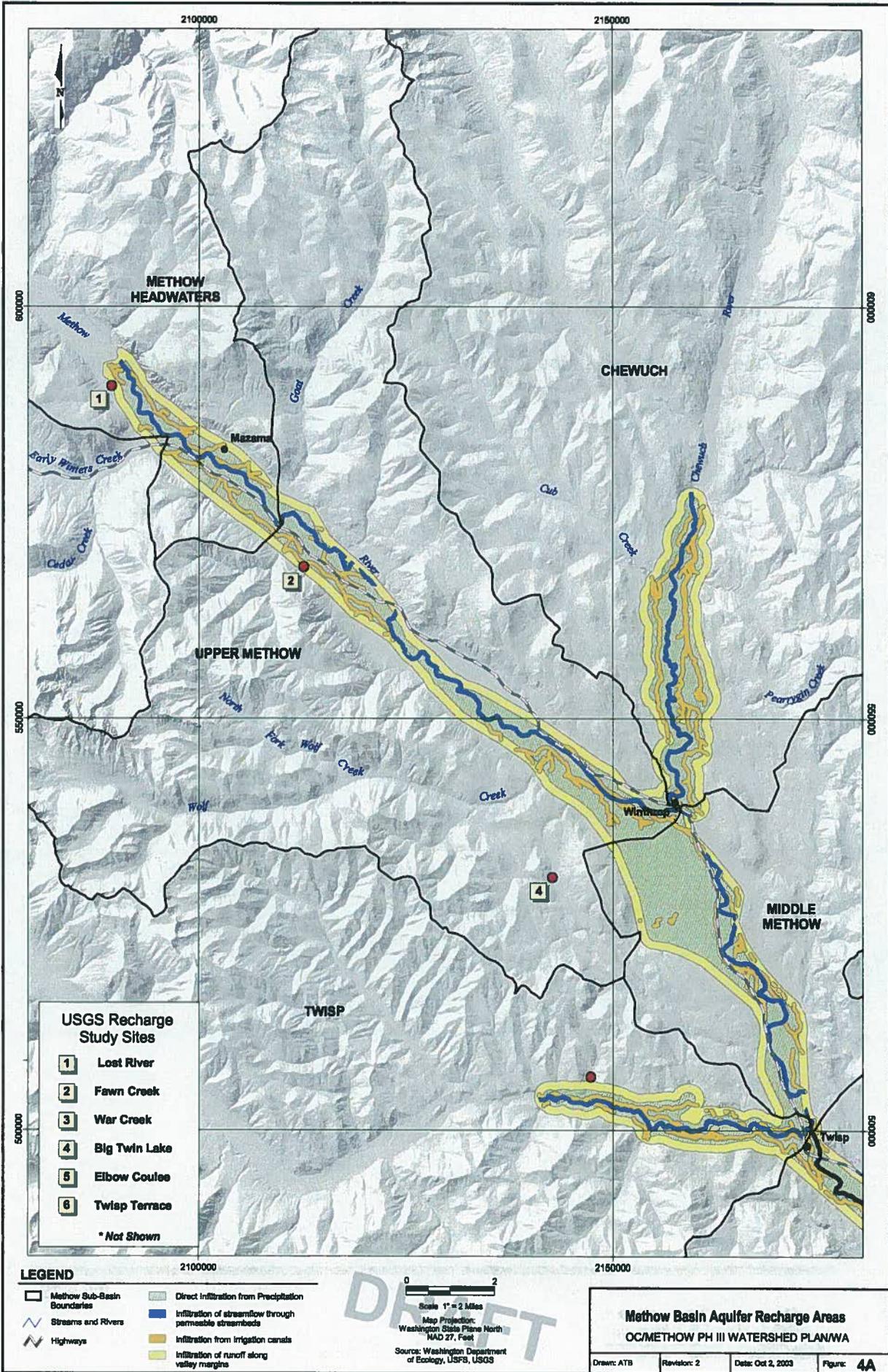
WRIA 14 Hydrogeologic Characterization. Conducted a hydrogeologic characterization of a 60-square-mile study area using *Viewlog* to develop a three-dimensional conceptual model to construct cross-sections and to assist in selecting wells for a multi-aquifer monitoring network. The study included collecting samples for analysis of routine chemistry and stable isotopes; data was evaluated to better understand the dynamics of the groundwater flow system. This study resulted in data for water resource decisions in the watershed.

Groundwater Age / Flow Analysis. Analyzed radiocarbon, tritium, stable isotope, and major ion data collected for different projects in Washington. The data was used to constrain possible interpretations of the flow dynamics and develop a conceptual flow. This tool was used for groundwater flow systems in basalt aquifer systems in eastern Washington.



7 Attachments

- Methow Basin Aquifer Recharge Areas, Figure 4A and 4B
- Methow Watershed Council. WRIA 48 Watershed Planning Information for the Okanogan County Planning Commission, July 9, 2013.
- Methow Watershed Council Letter to Okanogan County Commission, June 14, 2011 letter



USGS Recharge Study Sites

- 1 Lost River
- 2 Fawn Creek
- 3 War Creek
- 4 Big Twin Lake
- 5 Elbow Coulee
- 6 Twisp Terrace
- * Not Shown

LEGEND

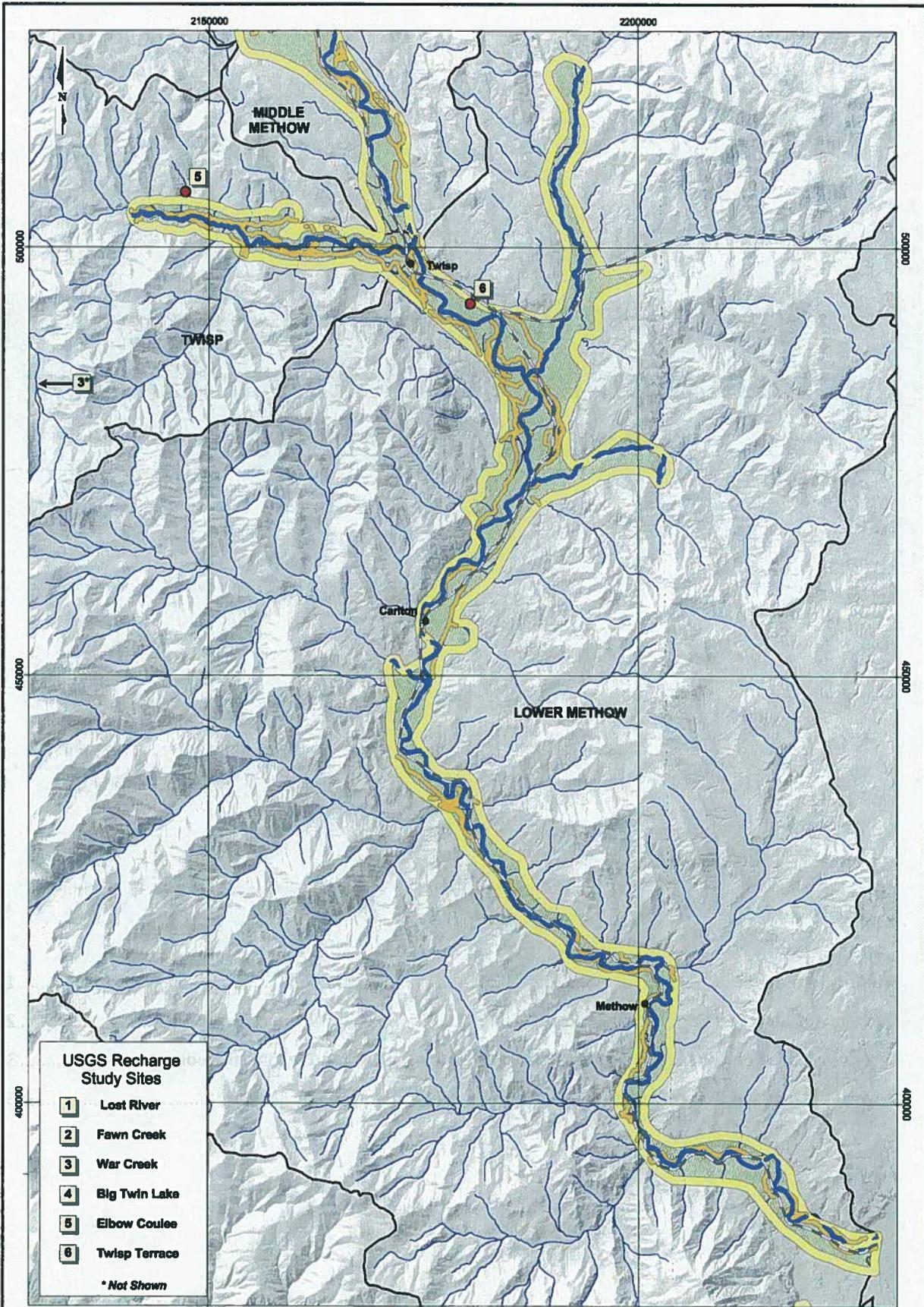
- Methow Sub-Basin Boundaries
- Streams and Rivers
- Highways
- Direct infiltration from Precipitation
- Infiltration of streamflow through permeable streambeds
- Infiltration from irrigation canals
- Infiltration of runoff along valley margins

DRAFT

Scale 1" = 2 Miles
 Map Projection: Washington State Plane North
 NAD 27, Feet
 Source: Washington Department of Ecology, USFS, USGS

Methow Basin Aquifer Recharge Areas
 OC/METHOW PH III WATERSHED PLAN/WA

Drawn: ATB	Revision: 2	Date: Oct 2, 2003	Figure: 4A
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- USGS Recharge Study Sites**
- 1 Lost River
 - 2 Fawn Creek
 - 3 War Creek
 - 4 Big Twin Lake
 - 5 Elbow Coulee
 - 6 Twisp Terrace
 - * Not Shown

- LEGEND**
- Methow Sub-Basin Boundaries
 - Streams and Rivers
 - Highways
 - Direct Infiltration from Precipitation
 - Infiltration of streamflow through permeable streambeds
 - Infiltration from irrigation canals
 - Infiltration of runoff along valley margins

DRAFT

Scale 1" = 2 Miles
 Map Projection: Washington State Plane North NAD 27, Feet
 Source: Washington Department of Ecology, USFS, USGS

Methow Aquifer Recharge Area 2
 OC/METHOW PH III WATERSHED PLAN/WA

Drawn: ATB	Revision: 2	Date: Oct 2, 2003	Figure: 48
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WRIA 48 Watershed Planning Information for the Okanogan County Planning Commission

July 9, 2013

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Recommendations from the Methow Watershed Council Instream Flow Rule Revision Committee

Drafted by Hans Smith, Instream Flow Rule Revision Committee Chair

Briefing Summary

- Recent comments received by Okanogan County on the current draft Comprehensive Plan rightfully point out a need to better address consistency with the County approved 2005 Methow Watershed Management Plan and water availability issues stemming from the legislatively adopted 1976 Methow Watershed Instream Flow Rule.
- Technical studies recently completed by the Methow Watershed Council indicate that the 2 CFS reserves established for single family permit exempt use under the 1976 Methow Watershed Instream Flow Rule are insufficient to meet the water demand associated with full build out of single family permit exempt wells in two regulated reaches of the Methow River.
- The studies produced by the Methow Watershed Council will inform future decisions by the Washington State Department of Ecology to determine the availability of water for new development in the Methow Watershed moving forward.
- Property values and land use potential in the undeveloped lots of the deficient regulated reaches will be adversely impacted once Ecology determines that the 2 CFS reserve of that reach has been fully appropriated.
- An effective strategy for ensuring water availability for all currently developable parcels is revising the Methow Watershed Instream Flow Rule as prescribed through the 2005 Methow Watershed Management Plan.
- Revising the Methow Watershed Instream Flow Rule is also a key strategy in ensuring adequate water supplies exist to support growth within municipalities in the Methow Watershed. Current municipal supplies are vastly deficient.
- Lack of consistency between the Comprehensive Plan and the approved 2005 Methow Watershed Management Plan will impede the potential that Instream Flow Rule revision can ever be accomplished.
- This issue has previously been brought forward to the County by the Methow Watershed Council, as is exemplified by the April 2011 letter (attached) sent to the County Commissioners by the Methow Watershed Council.

Overview of Attached Content

Strengthening the ties between the County's Comprehensive Plan and proposed revisions to the Methow Basin (WRIA 48) Instream Flow Rule is of critical importance to the economic and development future of the Methow Valley and Okanogan County. At risk is the ability of local citizens to affect water resource decision making through the watershed planning process, the likelihood that revisions to the WRIA 48 Instream Flow Rule will ever be accomplished, and the likelihood that the Methow Basin will experience state imposed development moratoriums based on legal water availability. Please see the attached letter provided to the Okanogan County Commissioners in April 2011 with regard to these issues.

The 2005 Methow Basin Watershed Plan and the recent technical studies completed by the Methow Watershed Council provide the best available information on legal water availability for future development in the Methow Watershed. The Methow Watershed Plan is a critical planning document adopted by the County Board of Commissioners to guide water resource decision making in the Methow Valley where the possibility of water scarcity has become a major economic and development issue since the legislative adoption of the WRIA 48 Instream Flow Rule in 1976 and other historic regulatory actions. Since 2005, the Methow Watershed Council has been working to enact the recommendations of the County's 2005 Methow Watershed Plan to ensure adequate water supplies exist to support sustainable growth and economic development. Chief among the Watershed Council's concerns is providing water to towns that never acquired or have lost adequate water rights to supply future growth, and avoiding state imposed development moratoriums on undeveloped lots based on exceeding surface water withdrawal limits designated in the Instream Flow Rule reserves.

What follows for the Planning Commission's convenience is:

1. A short chronology of pertinent policy making, plan adoption, and technical studies that, taken together, help to explain the importance of the 2005 Methow Basin Watershed Plan, and why the Methow Watershed Council's work should be considered for further referencing within the Comprehensive Plan.
2. Suggestions on more detailed language that could be included in the Comprehensive Plan to reiterate the guiding resource goals and objectives stated in the 2005 Methow Basin Plan and to encapsulate the current understanding of water resource availability according to the Watershed Council technical studies.

It is hoped that by providing this information, the Okanogan County Planning Commission will take steps to insert adequate language into the draft Comprehensive Plan to ensure coordination of land use planning with water resource planning, which is critically needed to protect future development opportunities in the Methow Valley.

Chronology of important water resource planning policies, plans, and technical studies:

- The Methow Basin Instream Flow Rule was adopted by the State Legislature in 1976 (<https://fortress.wa.gov/ecy/publications/publications/wac173548.pdf>).
 - The Rule dramatically limited the availability of future water appropriations for most types of consumptive beneficial uses.
 - The Rule created 2 CFS reserves in seven reaches of the Methow Basin, with priority to supply new single domestic exempt wells (this has supplied all new growth to date since 1976 in the Methow Valley with the exception of existing Town Municipal Rights, which are dwindling in Twisp and Winthrop).
- In 1997, the Town of Twisp lost a 570 acre foot water right through a Washington State Supreme Court Ruling, resulting in a situation where the Town could not supply adequate water with its existing water rights portfolio to meet annual demand for roughly ten years (in 2005 the town declared a multi-year development moratorium due to the deficiency). This deficiency remains a severe restriction on development in the Town of Twisp today.
- In 1999, Okanogan County citizens in the Methow Valley undertook the watershed planning process as prescribed in RCW 90.82. Pursuant to RCW 90.82, the “Methow Basin Planning Unit” was created by Okanogan County, the Town of Twisp, and the Methow Valley Irrigation District as Initiating Governments. The Planning Unit immediately set about developing a Watershed Management Plan for the Methow Basin for adoption by the County, Ecology, and local jurisdictions to guide water resource policy decision making.
 - One specific outcome of this process was a decision that revisions to the Instream Flow rule were necessary so that water availability could be better optimized based on economic need and growth trends and be consistent with land use planning objectives.
- In 2005, the Methow Basin Watershed Plan was completed by the Planning Unit and adopted by resolution by the Okanogan County Board of Commissioners after going through a thorough public review process (<http://www.methowwatershed.com/methowwatershedplan.html>).
 - The primary purpose of the 2005 Plan was to assess current water supply and use and to develop strategies to increase water supplies in the management area to provide for future out of stream uses while satisfying minimum in-stream flows for fish.
 - Based on recommendations in the 2005 Plan, Instream Flow Rule modification became a major focus of the Planning Unit. Along with ensuring adequate water supply for agriculture and towns, redefining access to the 2 CFS reserves to gain water rights to municipalities and prevent state imposed development moratoriums on undeveloped lots were major priorities of the Plan.
 - Ecology and the Watershed Council set about determining what data gaps needed to be filled in order for Rule Revision objectives to be accomplished.
- In 2005 the Methow Basin Planning Unit became the Methow Watershed Council, but retained all of the watershed planning requirements and responsibilities of the Planning Unit.
 - Okanogan County, the Town of Twisp, and MVID continued to serve as the three initiating governments of the Watershed Council
 - The Town of Twisp became the lead entity supporting Planning Unit administration.

Chronology of important water resource planning policies, plans, and technical studies:

- Consistent with the Watershed Planning Act, from 2005 to 2009 the Watershed Planning Unit created and adopted the Detailed Implementation Plan which provides further detail on how major objectives contained in the 2005 Watershed Plan would be achieved, including providing more detail on the range of studies needed to accomplish rule revision (<http://www.methowwatershed.com/methowwatershedplan.html>).
 - Principal among the information gaps identified was a need to quantify the amount of reserve water currently allocated to exempt wells installed after rule adoption in 1976 and creating a reserve tracking system to understand reserve positions as development continues.
- In 2011, Aspect Consulting LLC, as a consultant to the Methow Watershed Council, completed the Methow Basin Water Withdrawal Study and the Instream Flow Reservation Tracking Database which provided new comprehensive information on water withdrawal rates associated with exempt domestic wells in the Methow Valley and provided the first ever assessment of the 2 CFS reserves position by reach as of May 2011 (<http://www.methowwatershed.com/methowwatershedplan.html>).
 - The results of these studies indicate that:
 - With future build-out assuming no new parcels and existing parcel size regulations, the Lower Methow reach (Town of Twisp to Pateros) 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 permit-exempt well.
 - Assuming full build-out of all possible parcels, 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 permit-exempt wells.
- In April 2011, the Methow Watershed Council provided a letter to the Okanogan County Board of Commissioners detailing the recent completion of these studies and suggesting the County take into account the study results while undergoing the process to update the County's Comprehensive Plan (see attached).
- As stated in the April 2011 letter, which about brings us up to date:

"At present, land use planning and water management planning in the Methow are on separate tracks and we believe that it would serve both our interests to bring our parallel tracks closer together. We suggest that you develop the Okanogan County Comprehensive Plan (Comp Plan) only after due consideration of our information on current water use and anticipated future permit-exempt domestic and stock use based on existing lot sizes so that it supports zoning and development review processes responsive to this information. We feel that it would be counterproductive to propose, now or in the future, a Comp Plan which results in an overallocation of permit-exempt use under WAC 173-548, the rule that currently restricts total permit-exempt groundwater withdrawals in any of 7 reaches to 2 c.f.s (898 gals/min)."

Suggested language that could be included in the Updated Comprehensive Plan:

• DESCRIPTION OF PROCESS

- At present, Lines 112 to 116 state that “The work of watershed councils is on-going. These plans will be reviewed for consistency with the Comprehensive Plan. They will be adopted by ordinance in separate processes”.
 - Obviously, this statement is factually incorrect and ignores the approval of the 2005 Methow Basin Watershed Plan by Okanogan County and Ecology.
 - Suggested replacement language starting on Line 114:

The work of watershed councils is on-going. The Methow Watershed Plan approved by Okanogan County Commissioners in 2005 represents the best statement of the public’s will on water resource management in that part of Okanogan County. It is the intent of this Comprehensive Plan to provide consistency with the resource and policy goals and objectives embodied in the Methow Basin Watershed Plan. Watershed plans in other Water Resource Inventory Areas in Okanogan County will be reviewed for consistency with the Comprehensive Plan as they are drafted and will be approved in separate processes”.

• PLANNING OBJECTIVES

- After line 225, insert the following:

Water resource availability will be a major planning focus for Okanogan County given the critical connection between water resources and economic development. In the Methow Watershed, where water availability is presently constrained by the 1976 WRIA 48 Instream Flow Rule, Okanogan County will continue to consult with the Methow Watershed Council to accomplish the goals and objectives set forth in the 2005 Methow Basin Watershed Plan and to ensure land use designations contained in this Comprehensive Plan are consistent with water resource planning objectives as defined by the residents of the Methow Watershed.

• PRIVATE PROPERTY AND WATER RIGHTS

- 331 – Water Rights
- After Line 351 include the following:

This Comprehensive Plan recognizes that water availability limitations exist for new appropriations in the Methow Basin per Chapter 173-548 of the Washington Administrative Code. As such, the County will continue to work with the Methow Watershed Council to accomplish the goals and objectives set forth in the 2005 Methow Basin Watershed Plan, which seeks to maintain and possibly increase water availability for new beneficial uses while also maintaining adequate instream flows for environmental resources. Aligning land use planning to compliment the revisions of WAC Chapter 173-548 as

Suggested language that could be included in the Updated Comprehensive Plan:

embodied in the 2005 Methow Basin Watershed Plan will help increase the availability of appropriable water in Okanogan County and is a major County objective.

- Chapter 3 - RESOURCE LANDS - AGRICULTURAL LANDS OF LONG TERM SIGNIFICANCE
 - All Types
 - DENSITY –
 - Insert the following bullet:
 - Availability of legally appropriable water in consideration of legislatively established Water Resource Programs (such as those established in WAC Chapter 173-548).

- Chapter 4 – LAND USE OF RURAL LANDS

- PURPOSE –
 - Change the complete paragraph starting at line 664 to read as:

The ability of lands in the rural designation to support density and permitted/conditional uses will be affected by other bodies of required regulation such as Critical Areas Ordinance, Shoreline Master Program, and legislatively established Water Resource Programs. This must be taken into account when the adequacy of land in the rural designation is reviewed.

- DENSITY –
 - Insert the following bullet:
 - Availability of legally appropriable water in consideration of legislatively established Water Resource Programs

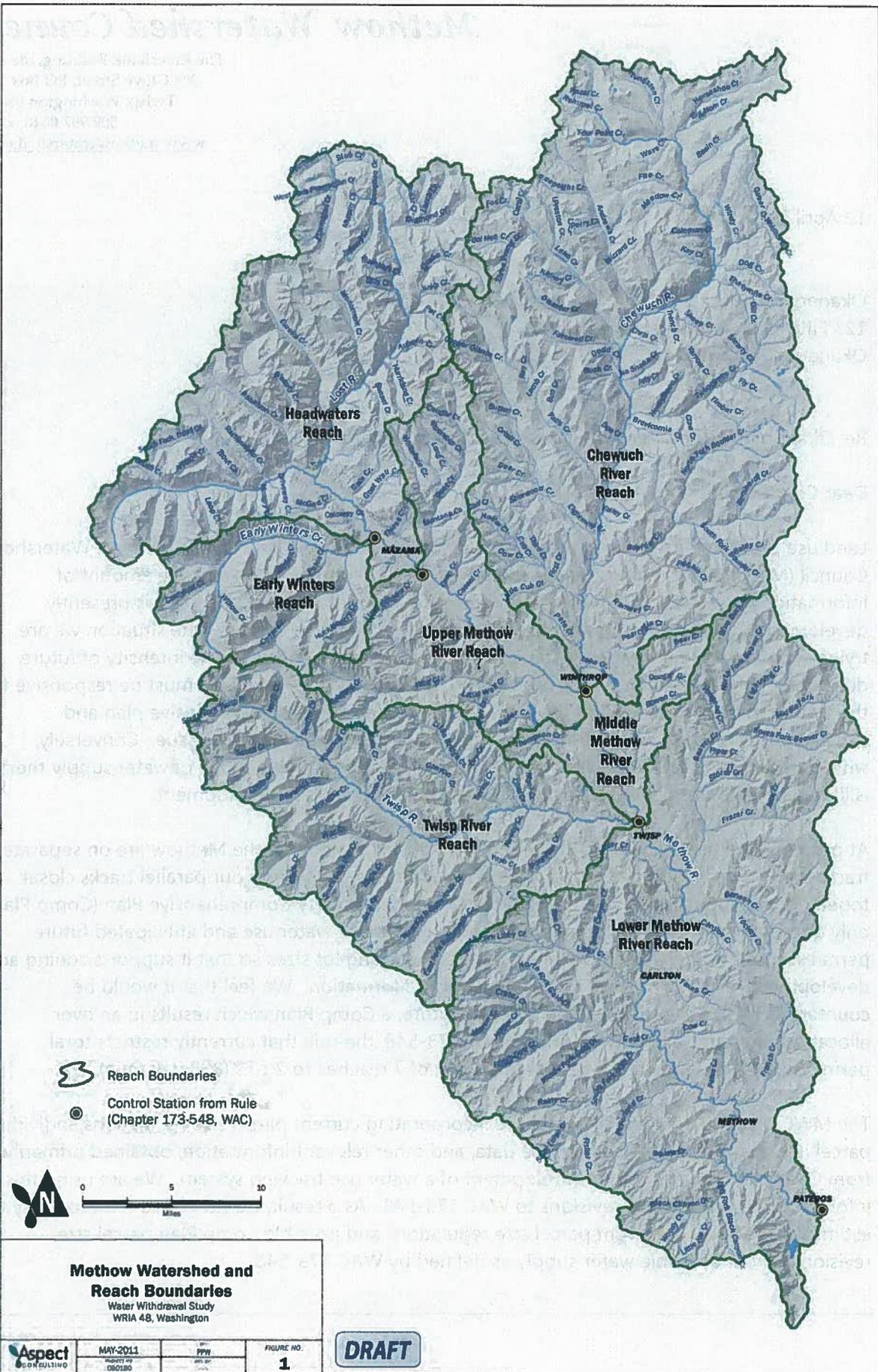
- Chapter 5 – UNINCORPORATED TOWNS AND NEIGHBORHOOD COMMERCIAL CENTERS LAND USE

- PURPOSE –
 - Add after line 722:

The ability of lands in the unincorporated towns and neighborhood commercial centers designation to support density and permitted/conditional uses will be affected by other bodies of required regulation such as Critical Areas Ordinance, Shoreline Master Program, and legislatively established Water Resource Programs. This must be taken into account when the adequacy of land in the unincorporated towns and neighborhood commercial centers designation is reviewed.

- FUTURE NEIGHBORHOOD COMMERCIAL CENTERS
 - Alter the paragraph on starting at line 756 to read:

Proposals for new neighborhood commercial centers should be reviewed in accordance with the designation criteria, other bodies of required regulation such as Critical Areas Ordinance, Shoreline Master Program, and legislatively established Water Resource Programs, and general planning objectives found previously stated in this section.



Methow Watershed and Reach Boundaries
 Water Withdrawal Study
 WRIA 4B, Washington

Methow Watershed Council

The RiverBank Building, Ste 101
206 Glove Street, PO Box 278
Twisp, Washington 98856
509.997.0640 x266
www.methowwatershed.com

12 April 2011

Okanogan County Commission
123 Fifth Avenue North, Room 150
Okanogan, Washington 98840

Re: Okanogan Comprehensive Plan and watershed planning

Dear Commissioners:

Land use planning and water management planning are closely linked. The Methow Watershed Council (MWC) over the past decade has collected and compiled an extensive amount of information about past and present water uses in the Methow Watershed and is presently developing a process to estimate future demands on our water supply. One situation we are trying to analyze is if and when water adequacy will necessarily dictate the intensity of future development in the Methow. It is our belief that the comprehensive plan must be responsive to this data. Obviously the level of development permitted in the comprehensive plan and subsequent zone code will greatly affect when water supply becomes an issue. Conversely, where areas in the watershed are already under greater pressure in terms of water supply there is little reason to designate those areas to support more intense development.

At present, land use planning and water management planning in the Methow are on separate tracks and we believe that it would serve both our interests to bring our parallel tracks closer together. We suggest that you develop the Okanogan County Comprehensive Plan (Comp Plan) only after due consideration of our information on current water use and anticipated future permit-exempt domestic and stock use based on existing lot sizes so that it supports zoning and development review processes responsive to this information. We feel that it would be counterproductive to propose, now or in the future, a Comp Plan which results in an over-allocation of permit-exempt use under WAC 173-548, the rule that currently restricts total permit-exempt groundwater withdrawals in any of 7 reaches to 2 c.f.s (898 gals/min).

The MWC recently developed a database incorporating current parcel size regulations, individual parcel information, metered water use data, and other relevant information, obtained primarily from Okanogan County, in our development of a water use tracking system. We are using this information as we propose revisions to WAC 173-548. As a result, we now have the capability to estimate the effects of current parcel size regulations and possible Comp Plan parcel size revisions on our available water supply as defined by WAC 173-548.

Recently, the MWC received a DRAFT *Instream Flow Reservation Tracking Database* report prepared at our request. Each stage of the tracking database development was closely reviewed by our Technical Subcommittee and approved by the full Council, including the rationales and assumptions applied to the data to arrive at estimates of current and future permit-exempt water use. Three scenarios estimating maximum consumptive permit-exempt use were presented: current (existing) conditions, future build-out assuming no change in the number of existing parcels under existing parcel size regulations, and future build-out assuming all possible parcels were developed (i.e. by further subdivision) to the maximum extent allowable under existing parcel size regulations. All scenarios assumed a maximum monthly average consumptive use of 710 gallons/day (gpd) per parcel. This maximum consumptive use is expected to occur in July, when irrigation demands (outdoor uses) are highest.

Under current conditions, all seven reaches defined by RCW 173-548¹ have water remaining in their reserve, ranging from 100% (Early Winters) to 48% (Lower Methow).

With future build-out assuming 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 permit-exempt well.

Assuming full build-out of all possible parcels, 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 permit-exempt wells.

After taking into consideration the fact that these are DRAFT estimates of water use based on conservative assumptions which could over-estimate water use, the MWC still feels that they are accurate enough to conclude that, under existing parcel size regulations, possibly the Upper Methow and almost certainly the Lower Methow reaches are over-allocated for water with respect to WAC 173-548. This applies to the Lower Methow even if no further subdivision of existing parcels is allowed.

As partners in planning for sustainable growth, also known as smart growth, we think it would serve residents in the Methow Watershed if our work informs your land use planning and results in a revised Comp Plan and a revised WAC 173-548 that work together to ensure an adequate future water supply in the Methow.

A copy of this DRAFT report has been provided to your representative on the MWC and has been forwarded to the Washington State Department of Ecology for their review and comment. After your review, if you have any questions or wish to pursue more detailed discussions about our tracking database and these DRAFT results, please feel free to contact us.

¹ *Headwaters, Early Winters, Upper Methow, Chewuch, Middle Methow, Twisp River, Lower Methow*

Sincerely,

The Methow Watershed Council

For the Council

Greg Knott – Methow Watershed Council Chair

¹ *Headwaters, Early Winters, Upper Methow, Chewuch, Middle Methow, Twisp River, Lower Methow*

DRAFT MEMORANDUM

Project No.: 080180

May 13, 2011

To: Methow Watershed Council – WRIA 48

From: **Joseph N. Morrice, LHG**
Senior Hydrogeologist

William M. Sullivan, LHG
Project Hydrogeologist

Timothy J. Flynn, LHG, CGWP
Principal Hydrogeologist

Re: **DRAFT Evaluation of Reservation Quantities Established by Chapter 173-548 WAC under Current and Potential Future Buildout Scenarios**

The Instream Flow Rule (Rule) for the Methow River was established in December 1976 as Chapter 173-548 of the Washington Administrative Code (WAC). The Rule established a reservation of 2 cubic feet per second (cfs) of water in each of seven stream management reaches (reaches) of the Methow River watershed for future single domestic and stock water uses (Figure 1). The 2 cfs reservation in each reach is expressed as a reduction in streamflow associated with the consumptive use of aggregate instantaneous withdrawals authorized under the Rule.

This memorandum presents:

- A summary of results of the *Water Withdrawal Study* (Aspect, 2011a) and *Instream Flow Reservation Tracking Database* (Aspect, 2011b);
- Estimated quantities of water currently remaining in the reservation for each reach, accounting for existing developed residential parcels subject to the Rule; and
- Estimated quantities of water that would be utilized and remaining reservation in each reach under two future buildout scenarios.

Summary of Water Withdrawal and Buildout Analyses

Consumptive Water Withdrawals

The *Water Withdrawal Study* estimated total and consumptive use associated with a typical residence served by a water right permit-exempt well (exempt well) in the Methow River Watershed. Because the reservation establishes maximum allowable instantaneous consumptive impacts (total withdrawal minus return flow) to surface water flows in each of the reaches, the maximum month consumptive use rate is of most relevance for allocating exempt well withdrawals under the reservation.

The estimated maximum month consumptive water use rate (expressed as gallons per day) established in the *Water Withdrawal Study* is 710 gallons per day (gpd) or about 0.0011 cfs per residence served by an exempt well. This maximum consumptive use is expected to occur in July.

May 13, 2011

when irrigation demands (outdoor uses) are highest. This value includes estimated year-round, indoor consumptive use of 30 gpd, July irrigation consumptive use of 650 gpd for irrigation of 0.1 acres, and stock-water consumptive use of 30 gpd. Although there is likely considerable variation in individual exempt well use, the use of a single value for maximum month use is justified when considering the averaging effect of a large number of exempt wells geographically distributed throughout the watershed.

Current Development and Buildout Scenarios

The *Instream Flow Reservation Tracking Database* report presented estimates of the current number of residential parcels subject to the Rule (i.e., parcels served by permit exempt wells and developed after adoption of the Rule), and the potential number of parcels that could be developed in each reach under two different future buildout scenarios. A total of 2,730 currently developed parcels subject to the Rule were identified in that report. The total number of parcels and parcels per reach subject to the Rule are summarized on Table 1.

The **first buildout scenario** (Full Buildout) assumes that all developable parcels will be subdivided and developed as residential parcels to the greatest extent allowed by current zoning regulations. These assumptions result in a total of more than 32,000 residential parcels in the watershed, with about 80 percent located in the Lower Methow reach. The disproportionate number of developable parcels in the Lower Methow in this scenario is due to the relatively small minimum parcel size allowable under existing zoning in much of this reach; current parcel configurations in the Lower Methow are generally well in excess of the minimum parcel sizes. The estimated number of residential parcels under this scenario is unrealistically high, and this should be thought of as an absolute worst case scenario of future development and associated water demands on the reservations.

For example, a parcel that is subdivided and developed with more than six residential lots would likely require a water right from Ecology and would not be allowed to rely on exempt wells. As such, development of many parcels in the watershed, especially in the Lower Methow where relatively large existing parcels could theoretically be subdivided into a large number of small parcels, would require some source of water other than the reservation and would not be debited to the reservation.

The **second buildout scenario** (Buildout without Parcel Subdivision) assumes that all existing developable parcels are developed with a single residence, but without subdividing the parcel. This provides a point of comparison to the Full Buildout scenario, and likely represents a more realistic estimate of future buildout. Of note, the Lower Methow reach is most sensitive to the different assumptions of the Full Buildout and Buildout without Parcel Subdivision scenarios. For the Lower Methow reach, the increase in the number of parcels from the Buildout without Parcel Subdivision scenario to the Full Buildout scenario is nearly a factor of nine; for the other reaches, the increase is less than a factor of two.

Although it is difficult to predict future land use, development, and population growth in the watershed, it is expected that maximum future buildout in all but the Lower Methow reach should fall somewhere between the two buildout scenarios. For the Lower Methow reach future buildout of parcels relying on the reservation is expected to be closer to the Buildout without Parcel Subdivision

scenario than the Full Buildout scenario, due to restrictions on developing large numbers of parcels under the water right permit exemptions.

Evaluation of Current Conditions

Table 1 shows, for each reach, the estimated number of developed residential parcels currently subject to the Rule, aggregate maximum month consumptive use (calculated as the per parcel consumptive use times the number of parcels in the reach), and water remaining in the reservation (equal to the initial two cfs reservation minus the aggregate use). Under current conditions, all the reaches have water remaining in the respective reservations. The minimum remaining reservation is the Lower Methow reach, which has allocated slightly more than half the original reservation.

Evaluation of Full Buildout Conditions

Table 2 shows, for each reach, the estimated number of residential parcels subject to the Rule under the Full Buildout scenario, aggregate maximum month consumptive water use rate, and remaining water or shortfall of water in the reservation. Also shown are the number of additional residential parcels that could be accommodated after buildout, or if a negative value, the number of residential parcels that would need some source of water supply other than the reservation.

Under this worst case buildout assumption, all reaches except Upper Methow and Lower Methow would have sufficient water in the reservations to meet future water demands. Excess water in all reaches (i.e., water not required to meet future growth under the Full Buildout condition) totals about 5 cfs or enough water to serve about 4,560 additional residences. The Upper Methow reach would have a shortage of 0.14 cfs, or about 127 residences that would need a source of water other than the reservation. The Lower Methow reach would have a shortage of nearly 27 cfs, or more than 24,000 residences that would need some source of water other than the reservation.

These are considered absolute maximum buildout conditions, and likely provide an unrealistic estimate of future development in the Lower Methow reach. Because of the conservative assumptions, these estimates provide a degree of certainty that the reservations are more than adequate to accommodate the maximum possible growth in five of the reaches, and over 90 percent of the possible growth in the Upper Methow reach.

Evaluation of Buildout without Parcel Subdivision Conditions

Table 3 summarizes the estimated number of residential parcels subject to the Rule under the Buildout without Parcel Subdivision scenario, consumptive water use, remaining water or shortfall of water in the reservation, and the number of additional residential parcels that could be accommodated after buildout. Under this scenario all reaches, except the Lower Methow, would have sufficient water to meet future water demands. Excess reservation water in these six reaches (excluding the Lower Methow) totals about 7.2 cfs, or enough water to serve about 6,580 additional residences. The Lower Methow reach would have a shortage of about 1.2 cfs, or nearly 1,100 residential parcels that would need some source of water other than the reservation.

DRAFT MEMORANDUM

May 13, 2011

Project No.: 080180

References

Aspect Consulting, LLC (Aspect), 2011a, Draft Water Withdrawal Study, Water Resource Inventory Area 48, Twisp, Washington, Prepared for Methow Watershed Council, May 10, 2011.

Aspect Consulting, LLC (Aspect), 2011b, Draft Instream Flow Reservation Tracking Database, Water Resource Inventory Area 48, Prepared for Methow Watershed Council, May 11, 2011.

Limitations

Work for this project was performed and this memorandum prepared in accordance with generally accepted professional practices for the nature and conditions of work completed in the same or similar localities, at the time the work was performed. It is intended for the exclusive use of Methow Watershed Council for specific application to the referenced property. This memorandum does not represent a legal opinion. No other warranty, expressed or implied, is made.

Attachments

- Table 1 – Estimated Maximum Consumptive Use Rate under the Reservation, Current Conditions
- Table 2 – Estimated Maximum Consumptive Use Rate under the Reservation, at Full Buildout Conditions under Current Zoning
- Table 3 – Estimated Maximum Consumptive Use Rate under the Reservation, Buildout without Parcel Subdivision Conditions under Current Parcel Size
- Figure 1 – Methow Watershed and Reach Boundaries

W:\080180 WRIA 48\Deliverables\Eval of Reservation Quantities\WRIA 48 Reservation Memon draft rev.doc

Table 1 - Estimated Maximum Consumptive Use Rate under the Reservation, Current Conditions¹

WRIA 48 Water Withdrawal Study Project No. 080180

Stream Management Reach	Estimated Developed Residential Parcels Currently Subject to the Rule	Estimated Maximum Month Consumptive Use Rate per Parcel (gpd)	Aggregate Maximum Month Consumptive Use Rate (gpd)	Aggregate Maximum Month Consumptive Use Rate Instantaneous (cfs)	Remaining Reservation (cfs)
Headwaters	220	710	156,200	0.24	1.76
Early Winters	0	710	0	0.00	2.00
Upper Methow	467	710	331,570	0.51	1.49
Chewuch	415	710	294,650	0.46	1.54
Middle Methow	406	710	288,260	0.45	1.55
Twisp River	263	710	186,730	0.29	1.71
Lower Methow	959	710	680,890	1.05	0.95
TOTAL	2,730	--	1,938,300	3.00	11.00

Notes:

Chapter 173-548 of the Washington Administrative Code (WAC) establishes reservation a 2 cfs of water per stream management reach for future single domestic and stock water uses.

Maximum month consumptive use is from the *Water Withdrawal Study* (Aspect, 2011a) and accounts for indoor, irrigation, and stock water uses.

Estimated developed parcels subject to the instream flow rule are from the *Instream Flow Reservation Tracking Database* (Aspect, 2011b).

gpd - gallons per day

cfs - cubic feet per second

¹ Parcels with exempt wells that serve water only for stock (without home) are not included.

Table 2 - Estimated Maximum Consumptive Use Rate under the Reservation, at Full Buildout Conditions under Current Zoning

WRIA 48 Water Withdrawal Study Project No. 080180

Stream Management Reach	Estimated Residential Parcels at Full Buildout Subject to the Rule	Estimated Maximum Month Consumptive Use Rate per Parcel (gpd)	Aggregate Maximum Month Consumptive Use Rate (gpd)	Aggregate Maximum Month Consumptive Use Rate Instantaneous (cfs)	Remaining Reservation after Buildout (cfs)	Parcels that could be Served with Remaining Reservation after Buildout
Headwaters	953	710	676,630	1.05	0.95	865
Early Winters	4	710	2,840	0.004	1.996	1,817
Upper Methow	1,948	710	1,383,080	2.14	(0.14)	(127)
Chewuch	1,291	710	916,610	1.42	0.58	528
Middle Methow	1,618	710	1,148,780	1.76	0.22	200
Twisp River	678	710	481,380	0.74	1.26	1,147
Lower Methow	26,133	710	18,554,430	28.71	(26.71)	(24,313)
TOTAL	32,625	---	23,163,750	35.84	(21.84)	(19,883)

Notes:

Chapter 173-548 of the Washington Administrative Code (WAC) establishes reservation a 2 cfs of water per stream management reach for future single domestic and stock water uses.

Maximum month consumptive use is from the *Water Withdrawal Study* (Aspect, 2011a) and accounts for indoor, irrigation, and stock water uses.

Estimated number of parcels at full buildout subject to the Instream Flow Rule are from the *Instream Flow Reservation Tracking Database* (Aspect, 2011b).

Full buildout assumes all developable parcels will be subdivided and developed to the greatest extent allowed by zoning regulations.

A negative remaining reservation value indicates that the existing reservation is not sufficient to meet water demands at buildout.

A negative value for parcels that could be served with the remaining reservation is the number of parcels that would not have access to the reservation at buildout.

gpd - gallons per-day

cfs - cubic feet per second

Table 3 - Estimated Maximum Consumptive Use Rate under the Reservation, Buildout without Parcel Subdivision Conditions under Current Parcel Size

WRIA 48 Water Withdrawal Study Project No. 080180

Stream Management Reach	Estimated Residential Parcels at Reduced Buildout Subject to the Rule	Estimated Maximum Month Consumptive Use Rate per Parcel (gpd)	Aggregate Maximum Month Consumptive Use Rate (gpd)	Aggregate Maximum Month Consumptive Use Rate Instantaneous (cfs)	Remaining Reservation after Buildout (cfs)	Parcels that could be Served with Remaining Reservation after Buildout
Headwaters	697	710	494,870	0.77	1.23	1,120
Early Winters	4	710	2,840	0.004	1.996	1,817
Upper Methow	1,069	710	758,990	1.17	0.83	756
Chewuch	937	710	665,270	1.03	0.97	883
Middle Methow	1,131	710	803,010	1.24	0.76	692
Twisp River	512	710	363,520	0.56	1.44	1,311
Lower Methow	2,913	710	2,068,230	3.20	(1.20)	(1,092)
TOTAL	7,263	---	5,156,730	7.97	6.03	5,487

Notes:

Chapter 173-548 of the Washington Administrative Code (WAC) establishes a reservation of 2 cfs of water per stream management reach for future single domestic and stock water uses.

Maximum month consumptive use is from the *Water Withdrawal Study (Aspect, 2011a)* and accounts for indoor, irrigation, and stock water uses.

Estimated number of parcels at reduced buildout subject to the Instream Flow Rule are from the *Instream Flow Reservation Tracking Database (Aspect, 2011b)*.

Reduced buildout assumes all existing developable parcels are developed with one residence, without subdividing them.

A negative remaining reservation value indicates that the existing reservation is not sufficient to meet water demands at buildout.

A negative value for parcels that could be served with the remaining reservation is the number of parcels that would not have access to the reservation at buildout.

gpd - gallons per day

cfs - cubic feet per second

COPY

Methow Watershed Council

The RiverBank Building, Ste 101
206 Glover Street, PO Box 278
Twisp, Washington 98856
509.997.0640 x266

www.methowwatershed.com

June 14, 2011

Okanogan County Commission
123 Fifth Avenue North, Room 150
Okanogan, Washington 98840

Re: Okanogan Comprehensive Plan and watershed planning

Dear Commissioners:

Land use planning and water management planning are closely linked. Over the past decade, the Methow Watershed Council (MWC) has collected and compiled an extensive amount of information about past and present water uses in the Methow Watershed and is presently developing a process to estimate future demands on our water supply. The MWC is seeking to analyze if and when water adequacy will determine the intensity of future development in the Methow. The MWC takes the position that the comprehensive plan must be responsive to this data. It is clear that the level of development permitted in the comprehensive plan and subsequent zone code will greatly affect when water supply becomes an issue. Conversely, where areas in the watershed are already showing increasing demand in terms of water supply there is little reason to designate those areas to support more intense development.

At present, land use planning and water management planning in the Methow are on separate tracks and we believe that it would serve our mutual interests to bring these tracks closer together. The MWC suggests that you develop the Okanogan County Comprehensive Plan (Comp Plan) only after due consideration of our information on current water use and anticipated future permit-exempt domestic and stock use based on existing lot sizes so that it supports zoning and development review processes responsive to this information. It would be counterproductive to propose, now or in the future, a Comp Plan which results in an over-allocation of permit-exempt use under WAC 173-548, the rule that currently restricts total permit-exempt groundwater withdrawals post 1977 in any of 7 reaches to 2 c.f.s (898 gals/min. To our knowledge there is no additional, non interruptible, water available above the amounts allowed in WAC 173-548.).

The MWC recently developed a database incorporating current parcel size regulations, individual parcel information, metered water use data, and other relevant information, obtained primarily from Okanogan County, in our development of a water use tracking system. We are

using this information as we recommend revisions to WAC 173-548. As a result, the MWC now has the capability to estimate the effects of current parcel size regulations and possible Comp Plan parcel size revisions on the Methow's available water supply as defined by WAC 173-548.

Recently, the MWC received a DRAFT *Instream Flow Reservation Tracking Database* report prepared at our request. Each stage of the tracking database development was closely reviewed by our Technical Subcommittee and approved by the full MWC. The report includes the rationales and assumptions applied to the data to arrive at estimates of current and future permit-exempt water use. Three scenarios estimating maximum consumptive permit-exempt use were presented: current (existing) conditions, future build-out assuming no change in the number of existing parcels under existing parcel size regulations, and lastly future build-out assuming all possible parcels are developed (i.e. by further subdivision) to the maximum extent allowable under existing parcel size regulations. All scenarios assumed a maximum monthly average consumptive use of 710 gallons/day (gpd) per parcel. This maximum consumptive use is expected to occur in July, when irrigation demands (outdoor uses) are highest.

Assuming current conditions, all seven reaches defined by RCW 173-548¹ have water remaining in their reserve, ranging from 100% (Early Winters) to 48% (Lower Methow).

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.

Even considering the fact that these are DRAFT estimates of water use based on conservative assumptions which could over-estimate water use, the MWC position is that they are accurate enough to conclude that, under existing parcel size regulations, possibly the Upper Methow and almost certainly the Lower Methow reaches are over-allocated for water with respect to WAC 173-548. This applies to the Lower Methow even if no further subdivision of existing parcels is allowed.

As partners in planning for smart and sustainable growth, we feel it would serve residents in the Methow Watershed if the MWC's work

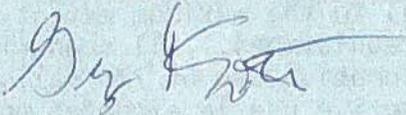
¹ *Headwaters, Early Winters, Upper Methow, Chewuch, Middle Methow, Twisp River, Lower Methow*

informs your land use planning and results in a revised Comp Plan and a revised WAC 173-548 that work together to ensure an adequate future water supply in the Methow.

A copy of this DRAFT report has been provided to your representative on the MWC and has been forwarded to the Washington State Department of Ecology for their review and comment. After your review, if you have any questions or wish to pursue more detailed discussions about our tracking database and these DRAFT results, please feel free to contact our Secretary Jackie Moriarty (509-997-4081) at the Twisp Town Hall to make arrangements. ,

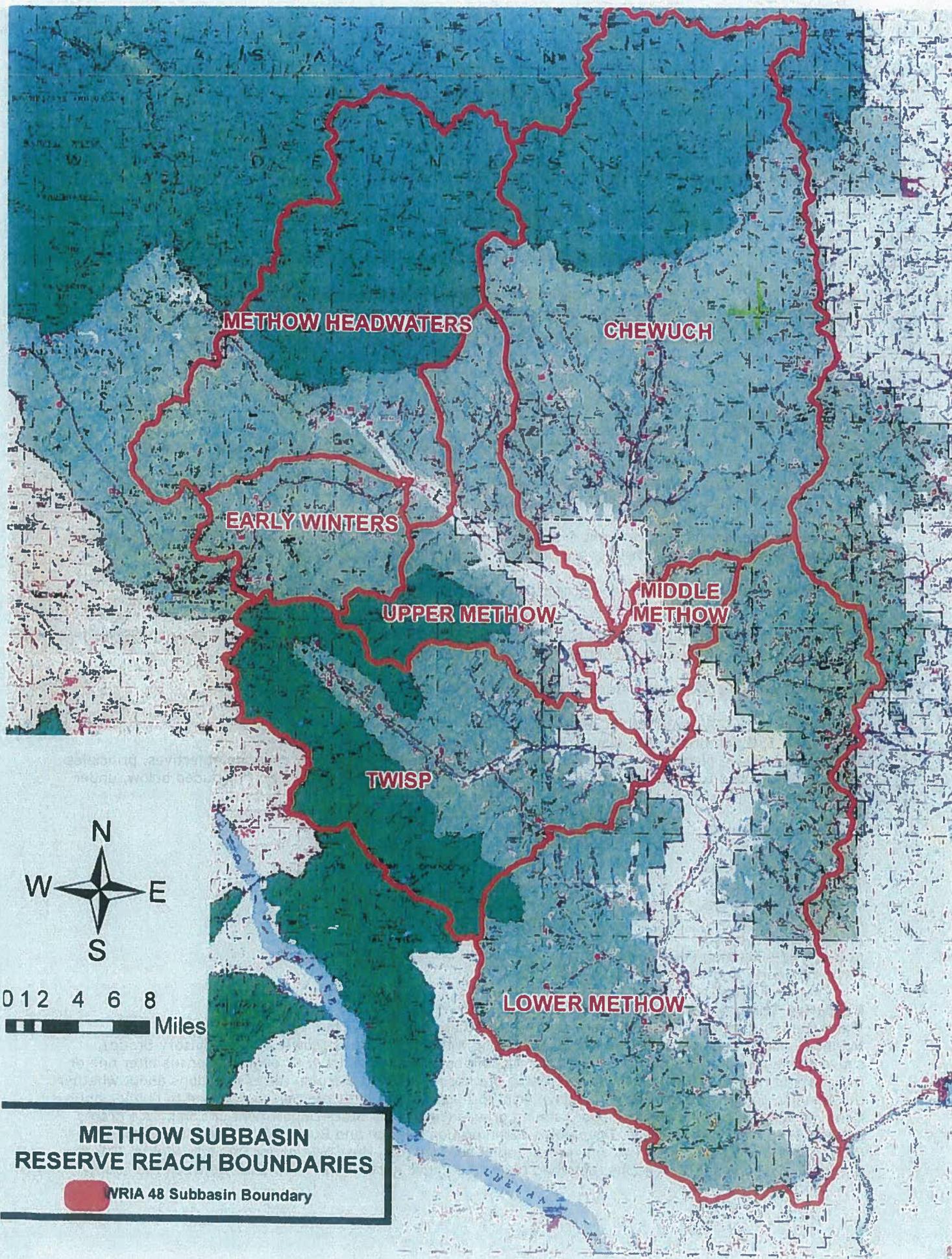
Sincerely,

The Methow Watershed Council



For the Council
Greg Knott - Methow Watershed Council Chair

¹ *Headwaters, Early Winters, Upper Methow, Chewuch, Middle Methow, Twisp River, Lower Methow*



Perry Huston, Planning Director, Okanogan County Office of Planning & Development,

123 5th Ave. N, Suite 130, Okanogan, WA 98840, (509) 422-7160 phuston@co.okanogan.wa.us

c/o Brenda Crowell, 123 Fifth Avenue North, room #150, Okanogan WA 98840 bcrowell@co.okanogan.wa.us

Methow Valley Citizen's Council Response

To Okanogan County Comprehensive Plan (DRAFT 3/12/11)

Legal requirements and authorities

The Comp Plan and the EIS should be addressed at the same time, but they are being addressed separately.

The EIS was closed for comments prior to the completion of Hearings on the Comp Plan.

For your reference:

1. Current Draft Comp Plan, dated 12/27/10

2. Current Comp Plan map, 10/14/10: Best viewed on website of the Okanogan County Commissioners, far right-hand side

3. Planning Enabling Act (Comp Plan is under these statutes)

<http://apps.leg.wa.gov/rcw/default.aspx?cite=36.70>

Note: Applicable law cites at the front of several sections are from Planning Enabling Act unless otherwise indicated. Some elements of this Act are required in the Comp Plan, others are optional.

The following document is organized according to chapters in the 12/27/10 draft Comp Plan.

Alternatives: There is no discussion of Alternatives. They do not appear in the Comp Plan or the EIS where only a "no action" alternative is mentioned.

Chapter One: The Okanogan County Comprehensive Plan (pp. 1 – 10)

APPLICABLE LAW (FROM PLANNING ENABLING ACT)

RCW 36.70.330 Comprehensive plan — Required elements.

The comprehensive plan shall consist of a map or maps, and descriptive text covering objectives, principles and standards used to develop it, and shall include each of the following elements: (included below, under subsections)

Executive Statement:

Vision Statement

Neighborhood Groups

Technical Committees

Description of Process

Adoption Process

Amendment Process

County Wide Planning Policies

Private Property and Water Rights

Executive Statement

The statement that all viewpoints were considered is false and misleading. Ignoring the input of Neighborhood Groups convened by the county, some with official status (Lower Valley Advisory Group), subverts the public process. The fact that the recommendations (arrived at through consensus after one or two years of regular meetings) by these citizens are not reflected in the plan raises questions about whether the planning commissioners and BOCC gave disproportionate weight to private, as opposed to public, input. None of the input of the neighborhood planning groups (funded by State Department of Commerce grants totaling \$125,000) was included. Instead the Planning Commission and Board of County Commissioners (BOCC) crafted the plan to satisfy only one group of constituents, the Coalition for Property Rights. This fact is apparent in the communications (obtained under the Public Records Act) that exist between the county

and CPR and the shifting emphasis in succeeding drafts that eliminate anything that could be construed as pertaining to environmental protections or effective planning.

"The existing plan did not provide the policy level guidance which directs the specific land use regulation creating the necessary permitting tools to adequately preserve the property rights of private land owners and at the same time preserving the land and environmental resources for future generations." Changes from the existing document suggest that this draft, as presented, was designed to enhance the financial position of a few rather than for the good of the community.

The comparison of the current Draft Comprehensive Plan to the current (1965) plan is a flawed comparison because the 1965 plan advocated for protection of productive agricultural lands, local food security and warned against the blight that would occur with sprawling development; it is a far superior comp plan. The minimum designation (1 acre minimums) does not reflect the content or vision of 1965 document.

Vision Statement

The vision statement in this 12/29 plan draft fails to capture and incorporate the "pro-development" stance that this plan personifies. It also fails to incorporate the input of those who participated in the neighborhood groups. Any references to environmental protections, i. e., a land ethic, stewardship values, responsible use, balance with nature, etc., that were included in the vision statements (see 1-09 draft plan) were eliminated. These references, which appear in the existing plan, have also been eliminated; there is much stronger language in the Methow plans. A few examples from 1964 plan: "To conserve and restore natural beauty and other natural resources." (p. 9) "Development of recreation (summer home) subdivisions is just beginning to occur in Okanogan County." "In approving the recreation subdivision the county is going to have to take extra care in assuring that the plats are furnished with an adequate and permanent water supply, that the lots are large enough so that stream pollution can be prevented, that road access to the plats is adequate, that public access to the waterfront can be preserved, and that provisions are made for fire safety." (p 28)

The statement that the county will provide for the health, safety and welfare of the citizens by "wise-use" of all the resources available to them is particularly egregious. For one thing, these resources are not even designated, except on public lands; for another, the term "wise-use" is a catchword phrase. It has an emphasis on using resources for private economic gain, rather than with an eye towards overall sustainability of the county's resources for all citizens, that flies in the face of the type of sustainable use mandated by the law.

While the existing plan contains concerns for protection of Methow Valley features valued by the community and visitors, the proposed plan has eliminated those elements under the influence of those whose primary interest is in personal enrichment through subdivision of open lands.

Description of the Process

This information should include the fact that after the first draft (January, 2009) was presented to the Planning Commission, a small group of vocal individuals (most of them CPR members) was able to convince the Commission and later the BOCC to withdraw all the neighborhood vision statements from the plan, and fail to include anything relating to the recommendations stated therein.

Adoption Process

If the county is to comply with the SEPA rules and laws they will need to submit an entirely new EIS, since the plan on which the former is based has been radically changed since the issuance of the first EIS in Spring of 2009. A portion of this (Addendum A) has only been done and presented to the public, but is inadequate for comprehensive EIS comment.

Amendment Process

Public Services

Future amendments to the comprehensive plan should consider a process for discussion amongst school districts, fire districts, local governments, and other service providers to establish future level of service projections and a methodology for analysis of impacts to level of service. This should be dealt with in the current CP revision process.

On pages 5 and 6, the draft incorrectly states that appeals would be pursuant to the Land Use Petitions [sic] Act. That law prescribes the process for appealing individual project permits, not a comp plan. An appeal of the comp plan would probably have to be pursuant to a writ of review.

The development of the County's Comprehensive Plan cannot be inconsistent with the county's duty under

RCW 36.70A.170(1) to designate:

- (a) Agricultural lands that are not already characterized by urban growth and that have long-term significance for the commercial production of food or other agricultural products;
- (b) Forest lands that are not already characterized by urban growth and that have long-term significance for the commercial production of timber;
- (c) Mineral resource lands that are not already characterized by urban growth and that have long-term significance for the extraction of minerals; and
- (d) Critical areas.

Moreover, the Planning Enabling Act, RCW 36.70.330 requires that the County include the following elements in its Comprehensive Plan:

A land use element which designates the proposed general distribution and general location and extent of the uses of land for agriculture, housing, commerce, industry, recreation, education, public buildings and lands, and other categories of public and private use of land, including a statement of the standards of population density and building intensity recommended for the various areas in the jurisdiction and estimates of future population growth in the area covered by the comprehensive plan, all correlated with the land use element of the comprehensive plan. The land use element shall also provide for protection of the quality and quantity of groundwater used for public water supplies and shall review drainage, flooding, and storm water run-off in the area and nearby jurisdictions ...

Any supporting maps, diagrams, charts, descriptive material and reports necessary to explain and supplement the above elements.

As set forth below, it appears that the current draft of the Comprehensive Plan fails to comply with these requirements by: (1) failing to fully designate natural resource lands; (2) failing to provide for the protection of the quantity and quality of groundwater; and (3) failing to protect critical areas, in particular, habitat necessary for fish and wildlife.

All the following comments are on county policies: RCW 36.70A.170 requires that "Counties must designate Agricultural lands, Forest lands, Mineral lands, and Critical Areas".

The Vision Statement includes reference to the "great diversity in occupation and lifestyle" of County residents. "With the farmers and cattlemen came a greater stewardship of the land and appreciation of the need to look ahead with a vision to ensure that future generations could prosper and enjoy this economic vitality."

As Okanogan County has grown "recreation, hunting and fishing has also become an economic generator to our local businesses". These are the reasons Resource Land designations must assure agricultural lands for future generations, as well as protection of environmental values that have become more important as "economic generators" - a "plan for the County as a whole".

Neighborhood groups were formed to facilitate this process: they included the Middle Methow; a Lower Methow Advisory Group was appointed by the county and the Mazama Advisory Committee is referenced in the existing Comp Plan.

The neighborhood groups began work in June of 2007 with an official kick-off at Growth Summit I in August of 2007. The groups, supported by County Planning Staff, contracted planning professionals, and citizen volunteers discussed densities, compatible uses, affordable housing, along with additional elements within a geographic boundary they identified as their area of interest.

Unfortunately the vision statements, goals, and policies created after more than two years of meetings by these resident neighborhood groups, nor the Lower Valley Advisory Group, are not incorporated in this draft.

"A revised draft was presented for review under SEPA in January of 2009. The SEPA review is ongoing as the plan is reviewed and revised. A refined draft emerged from the initial SEPA process and was scheduled for hearings in front of the Planning Commission in March of 2009 and followed by hearings before the Board of County Commissioners in [inserted late fall of 2010][deleted summer of 2009]. Adoption is anticipated by [inserted March 31, 2011][deleted December 31, 2009]." "The Shorelines Master Program and Critical Areas Ordinance is under review for update and scheduled for completion by December 31, [inserted 2010][deleted 2009]. The scheduling of this adoption process has continued to shift with resident input now limited to the mid-winter period (2010-2011) will unfortunately result in additional omission of constructive review.

"The Comprehensive Plan and Comprehensive Land Use Designation Map identify resource areas, compatible land uses, and densities in all unincorporated areas, including public lands. The Okanogan County Comprehensive Plan identifies existing incorporated boundaries of the Cities and Towns but has no authority within those boundaries." This suggests that the Board of Commissioners (BOC) has authority over public lands, but not for cities and towns. Although land use designation maps have not yet been available content of BOC correspondence and this draft suggests that the BOC is under the impression they can plan for all future crop and forest land needs to be met on public lands (Federal and State) and conservation easements. County Wide Planning Policy 6 "It is the expectation of Okanogan County that State, Federal, and Regional agencies will prepare, implement, and update plans and regulations consistent with the County's Vision Statement and Comprehensive Plan" also suggests that public land agencies are expected to conform their plans to those of the BOC.

County Wide Planning Policy 2 has deleted "It is the intent of Okanogan County to promote the coordination of all local planning initiatives and to integrate as appropriate other plans and priorities into the County Comprehensive Plan including, but not limited to: approved Watershed Plans, Economic Development Strategies, approved Salmon Recovery Plans, Recreation Plans, Comprehensive Flood Hazard Management Plans, Shoreline Master Programs, Community Wild Fire Protection Plans, and Transportation Plans." Included in its place is "The comprehensive plan will be used as a tool to protect the customs and cultures of Okanogan County". This change eliminates the "comprehensive" nature of the plan.

County Wide Planning Policy 3 states that "The County will develop and implement a public involvement strategy to ensure the opportunity for early and continuous citizen participation throughout the Comprehensive Plan Update process." This was to be the function of the Neighborhood Groups, but their input is excluded from this draft.

County Wide Planning Policy 4 stated that "The updated Comprehensive Plan will include County Wide Goals and Policies that address land use, natural resource lands, environmentally sensitive areas, natural hazards, community safety, economic development, transportation, housing, parks and recreation, utilities, essential public facilities, and capital facilities needs and priorities." This change also loses the "comprehensive" nature of the document in protecting county resources. It is unfortunate that this policy statement has been deleted from this draft.

The current County Wide Planning Policy 4 also states that "It is the intent of the County to ensure that the updated County Comprehensive Plan be sensitive to the diversity of unique landscapes and demography within the County. To allow for resident and geographic specific planning, the County will be divided into the following planning areas:" including Methow Valley (Mazama, Middle, Lower) areas. "The planning area boundaries were created to reflect different local conditions and to recognize historical service areas and transportation corridors." Methow Valley neighborhood groups (as did other neighborhood groups) endorsed this policy, but the current draft does not utilize it in future plans. The existing Methow addendums should be incorporated in the Plan or an appendix is essential to achieve this policy and avoid a considerable change from current conditions, environmental protections, and planning goals.

County Wide Planning Policy 5 calling for agency consultation was also deleted. It specified that "The County will consult with the incorporated cities, the Colville Confederated Tribes, and State and Federal organizations throughout the County Comprehensive Planning Process as necessary and appropriate." The current proposal that future crop and forest land needs can be met with public lands can not be considered in the absence of ongoing consultations.

County Wide Planning Policy 8 had stated "It is the intent of Okanogan County to actively involve and coordinate with the incorporated cities and towns throughout the County Comprehensive Planning process", but it also was deleted.

County Wide Planning Policy 11 "Okanogan County will establish criteria to identify and map environmentally sensitive areas and will prepare regulations to preserve and protect these areas utilizing the provisions of Best Available Science" This policy has been deleted. It was stressed by all of the Methow Valley neighborhood groups; its retention is in the best interests of our economy. This is not only important because of support by Methow groups but because, if the plan is not based on science, it is inadequate as a planning tool for the future. It's vital that it incorporate new knowledge about healthy streams, rivers, and aquifers; the need for uninterrupted wildlife corridors; soil science; and preparation for the effects of climate change.

County Wide Planning Policy 15 has inserted "Okanogan county will adopt a transportation element that

ensures the development and maintenance of a transportation system that is safe and efficient. Every effort will be made to make needed improvements to the transportation system concurrent with new land development", while deleting "Okanogan County will evaluate current and anticipated transportation opportunities to ensure the development of a transportation system that is efficient, safe, environmentally sensitive, serves a diverse population, and improves facilities concurrent with new land development". This alteration suggests that this draft was constructed to facilitate "new land development" without concern for the environment and the current population. The chapter on transportation has been deleted from this draft.

Concluding Statement of the Chapter:

Chapter 1 concludes with "This statement should not be construed in any manner that implies any interference with an owner's right to sell their water right to any buyer". This does not take into consideration the concern of neighborhood groups that water rights not be removed from current agricultural uses nor transferred out of the county. The county must retain water rights for agricultural needs within the county. A bill has been passed by the legislature that would make out-of-basin transfers illegal (SB 5555) and one of our County Commissioners, Andy Lampe, has testified in favor of it. [See attached Parlette letter.]

Chapter Two: Existing Conditions (p. 11)

The comprehensive plan shall consist of a map or maps, and descriptive text covering objectives, principles and standards used to develop it, and shall include each of the following elements:

(1) A land use element which designates the proposed general distribution and general location and extent of the uses of land for agriculture, housing, commerce, industry, recreation, education, public buildings and lands, and other categories of public and private use of land, including a statement of the standards of population density and building intensity recommended for the various areas in the jurisdiction and estimates of future population growth in the area covered by the comprehensive plan, all correlated with the land use element of the comprehensive plan. The land use element shall also provide for protection of the quality and quantity of groundwater used for public water supplies and shall review drainage, flooding, and storm water run-off in the area and nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute.

(3) Any supporting maps, diagrams, charts, descriptive material and reports necessary to explain and supplement the above elements.

In 2002, the average farm size was 858 acres. There were 1,486 farm operations utilizing 1.2 million acres (including public land) and half of the agricultural holdings that exceeded 160 acres were 1,280 acres or more. Only 11% of the earth's surface is suitable for agriculture and 2 acres are being lost each minute. In Washington 23,000 acres are being lost each year. Meanwhile the planet's population hit 7 billion this year and is expecting to explode to 9 billion in just 40 years. Our society with its "customs and culture" should be doing everything possible to protect its productive cropland. Without protection of our watersheds and ground water our agricultural Resource Lands will be lost.

Chapter Three: Land Use - Resource Lands (pp. 14 - 21)

LAND USE ELEMENT IN GENERAL:

REQUIRED: RCW 36.70.330

This Land Use Element does not fulfill the requirements of RCW 36.70.330.

The Land Use Element and Circulation elements are not correlated as required by RCW 36.70.330. The Land Use Element does not provide for protection of ground water quality and quantity as required by RCW 36.70.330

RCW 36.70.330 requires the County's Comprehensive Plan to "provide for protection of the quality and quantity of groundwater used for public water supplies." However, the draft completely fails to analyze the issue and to adopt development standards that reflect water limitations. The failure to plan taking into account limited water supplies will make it that much harder to develop a critical areas ordinance ("CAO") that protects fish, wildlife and aquifers. The less water protected now, the more stringent critical area regulations will need to be in the future. Given the limited availability of water, it is essential that the County meet its legal mandate to protect groundwater supplies.

(1) A land use element which designates the proposed general distribution and general location and extent of the uses of land for agriculture, housing, commerce, industry, recreation, education, public buildings and lands, and other categories of public and private use of land, including a statement of the standards of population density and building intensity recommended for the various areas in the jurisdiction and estimates of future population growth in the area covered by the comprehensive plan, all correlated with the land use element of the comprehensive plan. The land use element shall also provide for protection of the quality and quantity of groundwater used for public water supplies and shall review drainage, flooding, and storm water

run-off in the area and nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute.

The current draft Comprehensive Plan fails to meet these statutory obligations. The plan has no mention of the requirements to protect groundwater quality or quantity in the draft Comprehensive Plan and the SEPA document prepared for the Comprehensive Plan only references future, yet to be developed, documents as the basis for any development of protection measures. This fails to meet the requirements of RCW 36.70.330.

The information presented under "current use of the land" in Chapter 2 suggests that with over 2 million acres of "Minimum Requirement District" and over 27 thousand acres of "Valley Floor" less than 600 acres were identified as "Agricultural", although elsewhere the historical and economic importance of agriculture is stressed. See Chapter 3 "1,205,229 acres in agriculture (2007) \$208,758,000 value of agricultural products produced (2007)".

RESOURCE LANDS:

The draft Comprehensive Plan erroneously states that the County may not designate all qualifying resource lands, if more than the minimum necessary to sustain the industry. That is incorrect. The County must designate all lands that qualify as lands of long-term commercial significance. For example, under the Growth Management Act ("GMA"), Okanogan County must designate "[a]gricultural lands that are not already characterized by urban growth and that have long-term significance for the commercial production of food or other agricultural products." RCW 36.70A.170(1)(a). "Agricultural land" under the GMA is land that (1) is not already characterized by urban growth; (2) is "primarily devoted to" commercial agricultural production; and (3) has "long-term commercial significance" for such production. *Lewis County v. W. Wash. Growth Mgmt. Hearings Bd.*, 157 Wash.2d 488, 502, 139 P.3d 1096 (2006)(quoting RCW 36.70A.030(2).

This definition does not allow a county to exclude resource lands on grounds that they are "more than the minimum necessary." All resource lands meeting this definition must be designated. As the Growth Management Hearings Board stated in *Turtle Rock Homeowners Association v. Chelan County*, EWGMHB Case No. 07-1-0001 (FDO, July 17, 2007):

RCW 36.70A.170 requires all counties and cities to designate and conserve the natural resources by designating all forest lands, mineral resource lands, and agricultural lands that have long-term commercial significance. The legislature directed counties to do this as quickly as possible because many new rural developments were starting to take land away from farm, timber, and mining ventures. It was important for the legislature and the state of Washington to conserve these resources for future generations.

Instead of applying these standards, the draft Comprehensive Plan states that only 27,600 acres is needed to maintain a viable base for agriculture and 420,000 acres is needed to maintain a viable base for the cattle industry in the County. See Draft Comp. Plan at 17. This is insufficient. First, the draft Comprehensive Plan does not reference sources upon which they determined that number of cattle and land was sufficient and how it was determined that public lands would suffice to support cattle economy.

Second, even if this number is a correct goal, it greatly underestimates the amount of land needed for livestock purposes. Based upon current information from the public land managers there are at least 84,473 AUMs required per year in the County, which includes:

National Forest/ Okanogan Valley:	34,000 AUMs
National Forest / Methow Ranger District:	12,229 AUMs
BLM:	7,548 AUMs
DNR:	25,941 AUMs
DFW:	765 AUMs

The draft Comprehensive Plan asserts that 30,000 cow/calf pairs are required to sustain the current cattle economy in the County. Based upon that goal, 8 months x 30,000 AUMs amounts to 240,000 AUMs . According to above data, public lands only provide about one third of AUMs required to support current cattle economy. The remaining lands are private lands in the County, which must be designated to protect the county's rural economy. Moreover, this amount does not consider the amount of private land used to raise hay for winter feed, while cattle are on public land to graze. At a minimum, the County must examine all existing natural resource lands and designate these lands in an appropriate manner.

Agricultural Lands of Long Term Significance (pp. 16 – 19)

The Urban resource land category (included in earlier drafts) was eliminated. Irrigated agricultural land adjoining or in urban growth areas has no protection from development.

Non-compliance with RCW 36.70A.170.

The criteria for designation of resources –applicable to all counties-- does not specify that public lands can substitute for private land. "Needs of the industry" appear to be the only criteria being followed in resource lands designation. This principle is only one of the criteria cited in the Washington legal code. Failure to include other factors leads to:

1. Non-compliance with WAC 365-190-020 which states "It is more costly to remedy the loss of natural resource lands or critical areas than to conserve and protect them from loss or degradation. The inherent economic, ecological, social, and cultural values of natural resource lands and critical areas should be considered in the development of strategies designed to conserve and protect these lands..

2. Non-compliance with WAC 365-190-050 which requires that many other factors be considered in designating agricultural lands, For example, the classification of prime and unique farmland soils is a prime selection factor. Plan ignores and relies only on one factor for selection. The figures used to justify the "needs of the industry" are not backed up with any documentation or research from reputable sources. To cite "material submitted by advocate groups for Agriculture" as the standard by which resource land is excused from designation is arbitrary and capricious and outside the legal requirement.

To eliminate consideration of the above WACs and RCW by limiting selection to only the "needs of the industry" and proscribing inclusion of anything not in that category is an arbitrary and capricious standard. Designation of public lands as the county's resource lands gives no information as to the suitability of such lands for the purpose intended, including soils, water, climate, and the cumulative effects on public recreation and wildlife, including endangered species.

Federal and state agencies must accommodate county in use of their (public) lands as "resource lands" with all that implies. No MOA's or MOU's between county and agencies are included in appendices to indicate this has been done.

The draft also recognizes that as Okanogan County has grown "recreation, hunting and fishing has also become an economic generator to our local businesses". These are the reasons Resource Land designations must assure agricultural lands for future generations as well as protection of environmental values that have become more important as "economic generators". This draft proposes that all future food crop and forest land needs be met on public lands (Federal and State) and conservation easements and deletes the need for protections included in the existing plan. That proposal is not in the best interest of Okanogan County's economy.

Public lands and the few properties with conservation easements alone cannot supply the needs of the county.

A deleted section of Chapter 3 of the existing plan included the following: "As stated previously Okanogan County protects and promotes agriculture as not only an important foundation block of our local economy but as an integral part of our heritage. Okanogan County further recognizes that many of our agricultural operations fall in or near urban centers. As more pressure mounts on the transportation grid and the cost of transporting food and materials grows, it is important that local policies recognize a need to preserve the capacity to provide a local independent food supply. For future generations to thrive, it is imperative a local dependable food supply is possible." These concerns were expressed by the Methow Valley neighborhood groups and should be included in the Revised Comprehensive Plan. That objective cannot be obtained if currently productive croplands are not protected by county planning.

The Comp Plan draft now under consideration proposes that all current Commercial Forest and Agricultural private croplands be designated Rural-High Density, thereby assuring their potential for increased residential density. This draft suggests that all county resource lands are public lands and that those public lands are either "Commercial Agriculture or Forest"; only a small percentage of the public land acreage is in commercial production. Most commercially productive county agricultural lands are privately owned. This proposal is contrary to public land management practices and does not provide for the legislatively intended protection of privately-held productive forest and agricultural cropland.

The Resource Land designation is intended to promote zoning that minimizes the conversion of forest and crop lands to other uses and to discourage the permitting of incompatible uses. This Comp Plan draft has not included any private forest or crop-producing lands within that designation. The current draft attempts to remove the constraint of "regulatory restrictions" by omitting private Commercial Forest and Agricultural croplands from Resource Land designation. The constraint of topography assures that High-Density Rural build out would be concentrated on valley-bottom and bench-top Commercial Agricultural croplands. That

would produce unacceptable environmental impacts. Designation of private Forest Lands and Agricultural Lands as High-Density Rural will permit incompatible uses and decrease agriculture and resource based activity.

This proposed Comprehensive Plan does not recognize the importance of agricultural and resource based activities on the economics and lifestyle of Okanogan County. The policies in the current draft of the Comprehensive Plan do not recognize the importance of outdoor recreation to the economy and lifestyle for Okanogan County residents. The designation of productive forest lands and croplands on valley floors and benchlands as High-Density Rural will disperse and increase residential density with associated infrastructure. It is not compatible with "customs and culture" of the county and will decrease open space, impact aesthetic values, increase fencing associated with "open range", as well as decreasing opportunities for outdoor recreation and crop production critical to the county's economy. What is now open space will require extension of the existing transportation grid, expansion of utility infrastructure and increase associated costs. This proposal could result in great losses to utility ratepayers and providers who make services available to developments without permanent residents to reimburse costs.

The proposals presented in this draft of the Revised Comprehensive Plan if accepted would change the character of Okanogan County and be an economic loss to most of the people whose homes are on these lands.

As Commissioner Hover is well aware the entire lower Methow is "designated critical habitat" for the three listed salmonids (spring Chinook salmon, steelhead and bull trout). The productivity and abundance of these species is directly tied to habitat quality (in-stream and riparian, especially) degradation of which could cause a decrease in the parameters that measure recovery. Our Commissioner is the Chair of the Salmon Recovery Board responsible for the millions of dollars of public monies that have been and will continue to be spent to restore fish related habitat in the Methow and the success of these efforts will depend to some degree on land management in the watershed.

Regional salmon recovery planning efforts have identified a number of "limiting factors" and "biological strategies" to restore fish and these could be prevented or adversely impacted by increased development in floodplains/riparian areas in the lower valley. Best available science should require the restriction of increased residential density in the lower valley; it should be provided the same protection given to the upper valley to protect the "critical habitat" which is part of the recovery effort for these listed salmonids. An inventory of the water resources of the Methow watershed prepared in 2000 provides information that must be considered prior to designating Resource Lands in the Lower Methow (Salmon, Steelhead and Bull Trout Habitat Limiting Factors, Water Resource Inventory Area 48, Washington State Conservation Commission Final Report, Carmen Andonaegui, 7/18/00).

The following information was derived from this inventory:

Most of the subwatershed is federally owned and managed by the National Forest Service as the Okanogan National Forest. The majority of federal land is west of the Methow River, with only a small portion of federal land east of the Methow River in the upper reaches of the North Fork Texas Creek and upper French Creek. [All of these lands should be managed to protect the "critical habitat" of the salmonids discussed above.]

The Methow River valley floor, including the lower reaches of Libby, Gold, McFarland, Squaw, and Black Canyon Creek drainages and the majority of land east of the Methow River are a patchwork of private lands, DNR managed lands and WDFW managed lands. The lower elevation land adjacent to the river is mostly private and is occupied by orchards, field crops, rangeland, and family residences.

The lower Methow River is a migratory corridor for all anadromous salmonids and fluvial bull trout that spawn and rear in the Methow watershed. It also serves as rearing habitat for all salmonid species (spring chinook, summer chinook, rainbow/steelhead, and bull trout).

Libby Creek is over adjudicated, resulting in the dewatering of lower Libby Creek during low flow years. This results in direct mortality to steelhead juveniles, an ESA listed species, and a decrease in steelhead habitat. Management strategies should be implemented to avoid this occurrence. On USFS and private lands, manage livestock grazing to avoid and minimize impacts to existing riparian habitat and to allow for the recovery of riparian stands to mature stands. [Any increase in residential density with accompanying roads, wells, and septic systems on private lands or agricultural activity such as livestock production or irrigated crops on public lands would threaten the "critical habitat" of concern.]

The lower reaches of the mainstem and South Fork Gold Creek are privately owned. Roads parallel every major stream in the drainage having a major affect on aquatic habitat (USFS 2000f). Summer Chinook salmon spawn in the Methow River below the confluence with Gold Creek. Small numbers of spring chinook salmon spawn in the first 3 miles of Gold Creek (Edson 1990; USFS 2000f). Summer steelhead spawn and rear in the Gold Creek drainage (USFS 2000f). On private land in the lower reach of the South Fork Gold Creek alterations to the floodplain may be negatively impacting floodplain functions (TAG 2000). The conversion of riparian areas to agricultural and residential use in lower Gold Creek has degraded aquatic habitat (L. Hofmann, WDFW, pers. Comm., 2000). An assessment of water diversions and their affect on stream flow, aquatic habitat, and riparian habitat is needed, as well as an assessment of road location on sediment delivery and stream channel function. This should include both county and USFS roads. Sedimentation in the drainage should be addressed by identifying roads for closure, relocation, obliteration, and drainage improvements. There should be no increase in roads that would accompany designation of these lands as High-Density Rural.

Black Canyon Creek joins the Methow River at RM 8.1; summer steelhead spawn in the lower 0.4 miles of Black Canyon Creek (USFS 1999a). Sediment levels are very high in Black Canyon Creek, due to heavy management in the drainage (roading, timber harvesting, and cattle grazing), from highly erosive soils, and from two major fires in the drainage this century. Black Canyon Creek is entirely or substantially dewatered during periods of high irrigation water use in the summer and early fall months (Methow Valley Water Pilot Planning Project Planning Committee 1994).

The above information must be considered when a decision is being made regarding protection of the entire Methow watershed. This would involve extending the Methow Review District at least to Black Canyon as verified in the minutes of a regular meeting of the Okanogan County Regional Planning Commission held on Monday, October 26, 2009: "Director Huston verified that the Planning Commission had instructed Staff at a prior meeting to extend the zone Valley 5 and Upland 20 to Black Canyon and leave Methow Review District in tact. The Planning Commission verified that this was their request." In addition, the Commissioners expressed the intention to keep this provision in the Plan at a large public meeting on June 15, 2010 and directed the Planning director to proceed with the necessary arrangements. The draft now being reviewed does not include this decision, although no subsequent rationale has been presented for its exclusion. MVCC requests that this Planning Commission directive be incorporated in the Revised Comprehensive Plan.

RCW 36.70A.170(1)(d) requires the County to designate critical areas and RCW 36.70A.060(2) specifically requires the development of regulations to protect these areas, stating, "Each county and city shall adopt development regulations that protect critical areas that are required to be designated under RCW 36.70A.170." If the County adopts a new comprehensive plan with policies that subvert these requirements, the County will be in violation of the GMA. See also *Pilchuck v. Snohomish County*, CPSGMHB Case No. 95-3-0047 (FDO, Dec. 6, 1995) (Holding that the Legislature places a "higher order of directiveness" or "higher order of urgency" in regards to critical areas).

The GMA duty to "protect" critical areas is not served by a comprehensive plan that would damage and, in some cases, destroy vital critical areas. As outlined above, the current draft does not provide adequate protection for critical aquifer recharge areas (a GMA "critical area") nor does the draft plan adequately protect habitat of state and federally threatened species. Every county in the State of Washington is obligated and required to protect Threatened Species and their habitats.

Chapter Four: Land Use - Rural Lands (pp. 22 - 25)

(See also under "Sub Areas" for implications for the Lower Methow Valley.)

"Lands in the Rural designation will contain the greatest mix of existing and proposed uses because of the tremendous diversity of these lands." "Neighborhood commercial/service centers will become more necessary and must be appropriately sited. The existing mix of agriculture, resource based activities, recreation, and tourism should be maintained to provide diversity to our economic base." The current draft has deleted "These activities must be sited only when the review processes have identified adequate water supplies and the proximity of essential services."

"At the same time, lands in the Rural designation often contain areas of critical habitat, aquifer recharge areas, shorelines of state and local importance, wetlands, and other important features of the land and environment."

The following sentence has been deleted: "It is critical that the Comprehensive Plan and the Zone Code and permitting processes it generates achieve a successful balance of these important considerations."

Deleted General Planning Objectives include: "Land use proposals must be effectively reviewed to insure residential and other uses do not create an incompatible mix of densities and activities" and "Okanogan County shall provide innovative land use tools such as clustering to enable property owners the opportunity to preserve open space and other critical environmental features such as habitat, wetlands, and migration corridors concurrent with development proposals." These concerns were also recognized by the Methow Valley neighborhood groups.

The GPO "Agricultural activities shall be recognized and promoted in the rural designation" has been retained, but the balance of the sentence "to insure the opportunity for small scale operations. Development proposals shall be reviewed for impacts to existing agricultural operations" has been deleted.

"Areas moving away from transportation corridors, in areas where ingress/egress or the location of safe building sites is restricted due to topography, or areas with a demonstrated inability to provide adequate water resources will be designated rural low density."

"Lot sizes in areas designated rural low density will be 5 acres or greater in size" has been inserted and "Those areas currently designated for lot size in excess of twenty acres shall be designated as Rural Low Density" has been deleted.

The accompanying Map does not follow the criteria set forth in the plan's text. For example, the Middle Fork of Gold Ck is not in proximity to paved roads, major roadways, supply centers, or existing subdivisions. It is an inholding within USFS land with no road that is plowed in the winter and dirt USFS in summer. Yet it is designated Rural High Density.

Generally accepted densities would classify Rural High Density (1-5 acres) as urban. It also appears that Rural Low Density would be down to as small as 5 acres. This is hardly low density. The Rural 20 and Rural 10 should be reinstated in order to adequately configure the land to the existing uses in Okanogan and the great variety of topography.

How can there be sufficient water available for such dense development, especially on large new subdivisions in the lower valley? We are producing a situation in which land will be purchased for development and the owners will later discover they cannot obtain the necessary water. This is very poor planning.

The definition, densities and uses of rural lands should allow for protections once served by resource lands; however this is not the case. Only two choices of rural density are considered in the plan, either high (1acre minimum) or low (5 acre minimum). Requiring the entire county be designated either one or five acre "rural" is untenable and unrealistic. Such densities are not compatible with the land itself and the insufficient water resources.

Rural high density of one acre minimum does not comply with commonly accepted definition of "rural" under state law. One acre is an urban, not rural density. The proposed Plan states that high density rural will be located adjacent to urban areas and areas that demonstrate an enhanced ability to provide services. But the map shows high density rural development will be permitted in many areas that are remote and far from services. The fact that a road goes through is not an indicator of suitability for high density zoning!

Rural lands will be a catch-all for the greatest variety of permitted and conditional uses. For example, low density rural (5 acre minimums) allows as a compatible conditional use "non-resource based heavy industrial". Such a use demands an industrial zone designation, not low-density rural that is mainly on land now used for agricultural purposes.

Development proposals will no longer be reviewed as to impacts on existing agricultural operations. The Plan concedes that rural lands may contain important shorelines and critical areas, but offers no guidance as to how this is compatible with one acre parcel densities.

Lot sizes of 5 acres minimum are not low density. Areas with a "demonstrated inability to provide adequate water resources", as well as steep, hard to access areas and those used currently for agricultural and forest resources demand a much lower density. Even the previous 20 acre minimum is insufficient on much of the difficult and arid terrain. Much of this land is currently in forest and agriculture.

What public input can the county refer to, that drove them to zone remote areas, in Agricultural land use, with no public services and inadequate water resources, as urban densities of 1 acre minimums? How can the county explain the reduction in parcel sizes in low density rural and the removal of medium densities? In the Tunk Valley we have about 30,000 acres of contiguous shrubbe -steppe that now could be chopped into 1's and 5's? What is the rationale for that?

Chapter Five: Urban Lands (pp. 26 – 28)

This Section on Urban Lands deals with City Expansion Areas (CEAs) and Unincorporated Towns. These two sections were called "Urban Growth Areas" and "Limited Areas of More Intense Rural Development" (LAMIRDS), respectively, in prior drafts of the Comprehensive Plan. Details include the following. Point number 5 is one of the most important points.

1. The history section under CEAs is helpful and should also be included for Unincorporated Towns.
2. Definitions are needed for the processes of annexation, approval and adoption.
3. In designating CEAs, there should be a clear line of authority spelled out in the Comprehensive Plan going from proposal to designation to approval to adoption.
4. There is too much reliance on Development Agreements that are not cited or described. At the very least, it would be better to ensure compliance through a statement that "Development agreements must adhere to Okanogan County Code and must be consistent with all applicable land use regulations." A better suggestion might be to simply include this sentence and drop the requirement for Development Agreements entirely. Development Agreements have not existed long enough to demonstrate they will work.
5. Water and sewage facilities must be provided for prior to CEA authorization of development agreements, commercial development, high density residential development or other substantial development proposals. The document only states that "capital facilities" will be "planned for". Water supplies and sewage facilities need to be specifically included as requirements of the Comprehensive Plan. In addition, water supplies and sewage facilities need to be in place or have secured funding before CEAs can be granted authority to manage substantial developments.
6. The designation of CEAs should include provision of maps that can be reviewed by the public.
7. New or expanded CEAs should be subject to rights of appeal.
8. The authority to approve designations does not belong solely to the County, but is subject to federal, state and tribal laws as well.
9. Frequent references to "service centers" should be changed to "community services" to be more respectful and to acknowledge a broad range or typical amenities.
10. The section on Unincorporated Towns does should include meaningful coordination with the County. Designation should confer some benefits. This could include Planning Department assistance with projects. There should be a process for becoming Incorporated or in becoming a City.

Chapter 6: Unincorporated Towns (pp. 29 - 30.)

History

The creation of unincorporated towns and community centers has developed over time through development and transportation needs.

Purpose

Unincorporated Towns are the rural villages and service centers located in the County that are not incorporated. By designating those areas, the County recognizes the important role they play as a service center and focus point in providing community services for the surrounding neighborhood. The area within the designation should provide sufficient land area and services for the logical expansion of the Unincorporated Towns based upon the vision needs of the County residents and the ability of the area to provide services.

Designation Criteria

Unincorporated Towns will be may be designated developed based on the following criteria:

- Existence of services such as neighborhood retail, tourist retail and government services.
- Existence of urban density.
- Historical value as past settlement with existing tourist activities.
- Ability to support more intense development.
- Ability to provide community services such as trails or tourist attractions.

Future Unincorporated Towns

Due to the vast size of Okanogan County, it is important to locate necessary services in proximity to the residents. Settlement patterns will be driven by expansion of agriculture, forestry, and mining on the rural areas as well as an expansion of tourism. New service centers should be considered to minimize impacts to the transportation system brought about by longer trips to obtain basic services.

The Unincorporated Towns also serve as a focal point for area residents providing for a sense of community. The demand for new Unincorporated Towns will be created by the needs of the area residents and land owners.

Proposals for new Unincorporated towns should be reviewed in accordance with the designation criteria and general planning objectives found in this section. New Unincorporated Towns should attempt to provide for convenient transportation and access to community services.

General Planning Objectives

GPO – 6.1 Existing Unincorporated Towns act as neighborhood service community centers that contribute positively to the social and economic well being of the citizens of the County. Effective planning within the existing boundaries of the Unincorporated Towns and logical expansion nearby areas provides will benefit maintain or improve to the public by increasing the proximity of our citizens to necessary supplies and access to community services and facilities.

GPO – 6.2 Existing Unincorporated Towns should develop in such a manner that adequate water supplies are available and on-site septic systems are sufficient to provide for the users of the community provided within them.

GPO – 6.3 Existing Unincorporated Towns should plan for developments in such a manner that the impacts to the transportation system brought about by the increased users of the services provided are mitigated to avoid an erosion of the level of service provided that provide for inexpensive transportation.

GPO -6.4 Underlying zoning within Unincorporated Towns and their logical expansion areas should provide an effective mix of permitted and conditional uses that provide the for community services appropriate to a neighborhood service center without impacting the ability of the towns and cities to develop regional services within their existing boundaries or urban growth areas.

GPO – 6.5 Designated Unincorporated Towns shall retain their existing zoning. Rezoning to compatible zones will be on an elective basis

Chapter Seven: Sub-Areas (p. 31)

Applicable law: RCW 36.70.340

Comprehensive plan — Amplification of required elements.

The comprehensive plan may also be amplified and augmented in scope by progressively including more completely planned areas consisting of natural homogeneous communities, distinctive geographic areas, or other types of districts having unified interests within the total area of the county. Since this uses "may" why is it under "required elements"?

We Support the current inclusion of Sub Unit A and Methow Valley Plan and Methow Review District. Rewording by a Land Use attorney is recommended to avoid a legal challenge. Provision for Sub Areas has been removed from last draft and needs to be reinstated. Provide for future planning of sub areas, as in above "Amplification of required elements."

Lower Methow Valley should be included with the rest of the Methow Valley. There is supporting language in the Comp Plan and a rationale under the Circulation element – (the Lower Valley has the same characteristics as the rest of the Methow and the Circulation Element language supports this.) The Lower Methow should not be a bedroom community for services in upper valley – this is not a good planning strategy re Mid-Methow advice, traffic, gasoline, etc. Public support has been shown for stricter zoning. Data has been provided by Kurt Danison showing number of plats in three alternatives.

This should be coordinated with SMP/CAO in the Lower Methow. How can the overlap here on significant issues be addressed now that the SMP and CAO are not a part of the Comp Plan?

Without necessary protection of the Lower Methow Sub Area fish and wildlife (i.e., salmonids, grey wolves, grey squirrels, lynx) of federal and state concern may be threatened.

Three listed salmonids are using the lower river as critical habitat. The productivity and abundance of these species is directly tied to habitat quality (in-stream and riparian especially) degradation of which could cause a decrease in the parameters that measure recovery. Millions of dollars are being spent to restore fish related habitat upstream and the success of these efforts will depend to some degree on habitat conditions in other portions of the watershed. Regional salmon recovery planning efforts have identified a number of "limiting factors" and "biological strategies" to restore fish and these could be prevented or adversely impacted by increased development in floodplains/riparian areas in the lower valley.

Sub Areas in other areas of the county should be delineated. This plan is about guidance for future development. Why isn't it provided? Provision as to how other areas of county may be designated as sub-areas. ...not just the Methow. Possibilities are the Okanogan Highlands, upper Pine Creek, and Tunk Valley where scenic quality, lack of services, shortage of water and need for critical areas habitat are not being served by present zoning in plan.

Chapter Eight: Circulation Element (pp. 32 – 36)

APPLICABLE LAW: Required: RCW 36.70.330

REQUIRED: A circulation element consisting of the general location, alignment and extent of major thoroughfares, major transportation routes, trunk utility lines, and major terminal facilities, all of which shall be correlated with the land use element of the comprehensive plan; any supporting maps, diagrams, charts, descriptive material and reports necessary to explain and supplement the above elements.

Optional: a transit element as a special phase of transportation, showing proposed systems of rail transit lines, including rapid transit in any form, and related facilities,

The following information was derived from Kurt Danison's **2/14/11 Testimony on behalf of Omak, Tonasket, Brewster, Pateros and Twisp:**

It has been requested that the County provide meaningful opportunities for coordination of the county and incorporated community's long range planning efforts. Of special concern are airports and city expansion areas.

With one exception, Methow State Airport, all of the general aviation airports in the County are owned, maintained and incorporated into a nearby city or town. With the exception of the Twisp Airport, all of the municipal airports are incorporated islands several miles from the city that owns it, which means land use on the private ground surrounding the facilities falls under the jurisdiction of Okanogan County.

The cities and towns want to call the County's attention to RCW 36.70.547 that relates to planning in the vicinity of general aviation Airports. The cities and towns wish for the County to initiate the "Consultation" that is required before planning decisions, both Comprehensive and Zoning are finalized in the vicinity of their Airports. RCW 36.70.547 talks about preparation of land use plans around General Aviation Airports providing that the land use planning authority (county in this case) must discourage incompatible land uses and specifically provides as follows: Such plans and regulations may only be adopted or amended after formal consultation with: Airport owners and managers, private airport operators, general aviation pilots, ports and the aviation division of the department of transportation.

The cities and towns with airports have adopted resolutions (Brewster, Omak, Tonasket and Oroville all passed in June 2010 and sent signed copies to County Commissioners, Twisp is preparing to adopt) and in some cases (Brewster for example) have amended their comprehensive plans to provide clear policies related to protection of airports from incompatible land uses and their desire to cooperatively plan with the County. While the cities and towns would rather work with the county on creation of appropriate policies and land use designations for those lands surrounding the airports they also want to be on record as opposing use of the Rural High Density designation on these lands. If an existing designation is to be used, Rural Low Density or Resource would be more appropriate and less likely to create incompatible land uses.

The other area of concern to these communities is related to those areas on the comprehensive plan map labeled as City Expansion Areas. There are two issues with this concern, the types and densities of land uses and the standards for development. The cities and towns have identified urban growth or future service area boundaries, designated the future land use in these areas, conducted some analysis of the long term impacts on services based on the planned land uses and in most cases (Tonasket and Twisp are just completing updates) the City or Town Council has adopted the results as part of the Comprehensive Plan. As an official part of the Comprehensive Plan, the adopted growth areas and land use designations are integrated into and drive long range planning required for water, sewer, streets, etc..... each city and town must do. The cities

and towns are disappointed that the county's draft plan basically ignores the results of decades of planning by their communities.

Maps and other materials related to comprehensive planning in the cities and towns have been provided to the Planning Department as part of required public review processes over the years and adopted plans and maps were submitted to the County Planning Commission and County Commissioners (at the request of the Commissioners) as the County's draft plan was being developed. The cities and towns would like the County to amend the draft comprehensive plan map to accurately reflect adopted urban growth or future service areas (the Brewster and Omak City Expansion areas are not correct, Tonasket is preparing to adopt a new UGA) and an effort made to develop land use designations compatible with the adopted city or town plans for the adopted growth areas.

Another issue is related to the standards (streets, water, sewer) required for new development within the growth or expansion areas prior to annexation by the city or town. Because a city or town intends to eventually annex these areas, it is important that the infrastructure in and on the ground be compatible with city or town requirements. The cities and towns have requested that the comprehensive plan provide clear policies on how development in identified growth or expansion areas will be reviewed and conditioned in light of the city or towns development standards and what role the city or town will play in any development review.

County Wide Planning Policy 8 had stated "It is the intent of Okanogan County to actively involve and coordinate with the incorporated cities and towns throughout the County Comprehensive Planning process", but it was deleted.

Chapter Nine: Environmental Protection (p. 37)

Applicable law: RCW 36.70.350

Comprehensive plan — Optional elements.

A comprehensive plan may include -- (1) a conservation element for the conservation, development and utilization of natural resources, including water and its hydraulic force, forests, water sheds, soils, rivers and other waters, harbors, fisheries, wild life, minerals and other natural resources, (2) a solar energy element for encouragement and protection of access to direct sunlight for solar energy systems,

Climate change,

What will be the environmental impact of fewer grants from the state as a result of not including Climate Change?

The two critical environmental policies, the Shorelines Management Plan and the Critical Areas Ordinance should be referenced here?

Ground Water [See "water" and 2011 DOE letter attachments]

"The land use element shall also provide for protection of the quality and quantity of groundwater used for public water supplies." That is one of the rare places that the law uses a word like "shall" to create a mandatory duty (e.g., "shall review" drainage).

A duty to use the land use element to protect groundwater for public water supplies should be included. The county should analyze the issue in the EIS or other documents and reach conclusions regarding densities and land uses that would be allowed or prohibited in certain parts of the county to protect drinking water supplies and apply those concepts in the CP.

Okanogan County's water is produced by precipitation, and diminished by annual evaporation rates and consumptive use. The water retaining geology is the alluvial material along streams and rivers which is where water resources can be found according to the USGS and those waters supply little more than valley floor irrigation and scant domestic water. Many stream basins are over allocated, and produce very low, or no flow at the end of summer. University of Washington climate scientists predict water availability problems will be worse in the near future. How those tributaries can accommodate any more well drilling for newly cultivated Agricultural Lands and newly designated High-Density Rural developments on existing croplands should be explained.

As groundwater issues have increased across the State decisions for water quality have been made in Grays Harbor, Walla Walla, and Yakima Counties. Protecting groundwater stores from contamination and overdraft

should be a top priority for counties and cities across the state. The United States Geological Survey issued a study that showed that 8 in 10 of the wells in the Columbia Plateau showed a decline in water levels over the last 25 years. Many declines were over 100 ft and some as great as 300 ft, with the largest and most widespread declines in the Yakima River basin, and spanning the Idaho border in the Pullman-Moscow area. In May 2010, the United States Geological Survey issued a report that sampled public water supply wells in Washington State. More than one in five of the well water samples contained contaminants at concentrations greater than human health bench marks. In February 2010, the Washington State Department of Ecology, the U.S. Environmental Protection Agency and other agencies issued a report finding that almost 20 percent of the wells in the lower Yakima Valley are contaminated with nitrates and over 2,000 people, many of them poor and minority families, are drinking well water with contamination levels above health based drinking water standards.

Recently three appeals addressing county failures to protect drinking water sources in Walla Walla, Yakima, Grays Harbor Counties were won. In Walla Walla and Yakima Counties, the county decided not to protect aquifers that are important drinking water sources from pollution caused by new development. Washington's forward thinking Growth Management Act required all counties and cities to protect underground reservoirs of drinking water, referred to as aquifers, by either 1991 or 1992. Okanogan County should not fail to fulfill this basic duty of protecting our families' and businesses' drinking water supplies.

In Yakima County the situation was so dire that 12 percent of wells studied in the Lower Yakima Valley didn't meet drinking water standards due to heightened levels of nitrates, leaving many dependent on those wells for drinking water at higher risk for a number of serious health conditions. Bacteria contamination has also been detected in some of the area wells. Likely sources of the nitrate and bacteria contamination include urban and rural residences, land development, and certain agricultural activities. In Walla Walla, there have also been documented cases where the area's shallow gravel aquifer has been contaminated with nitrates and bacteria. The likely sources included urban and rural residences, land development, and certain agricultural practices.

Reductions in groundwater stores in affected areas can have devastating long-term effects on local farmers dependent on them for irrigation, and the contamination of water sources used for drinking water is a major public health issue. Cleaning up contaminated aquifers is costly and is often paid for by state and federal taxpayers.

Changes in groundwater levels can also have significant ecological ramifications. Groundwater plays an important role in supporting wildlife habitat and in sustaining the water cycle, as groundwater sustains many wetlands and provides the base flow for many streams and rivers.

Aesthetics

The comprehensive plan as proposed contains no design requirements or design review proposals that would impact aesthetics. The section regarding the use of overlays and the section of this EIS discussing the subdivision code will deal with the proposals for ridgeline protection and dark sky requirements.

This was a concern of many neighborhood groups and should be dealt with in the Revised Comprehensive Plan.

Light and Glare

The comprehensive plan as proposed contains no requirements that would impact light and glare. The section regarding the use of overlays and the section of this EIS discussing the subdivision code will deal with the proposals for ridgeline protection and dark sky requirements.

This second sentence appears to contradict the first.

Air Quality

"By reducing the potential for off-the-grid development and the subsequent use of generators for power production and wood fueled heat, the emissions generated by the use of these appliances should be reduced." It would be more effective to have requirements for clean-combustion wood-burning stoves than to suggest that any place that is off the grid is going to be more polluting. This ignores many aspects of traditional power use and the pollution it causes.

Air pollution affects the environment by harming soil, water, crops, forests, wildlife and visibility. Thus it affects not only residents but tourism and the economy. Air pollution also causes lung disease and decreases

lung function in children. It also worsens and increases the risk of dying from heart and lung disease and is associated with cancer.

The main sources of air pollution in Washington are motor vehicles (over 50%) and smoke from outdoor burning and wood stoves. The effects of auto emissions, resuspended dust, and particulate matter from wood burning are particularly severe in narrow mountain valleys. "Prescribed burning, wildfires, woodstoves, agricultural fires and residential burning all contribute during various seasons." (Accessed on 3/27/11 at <http://www.ecy.wa.gov/news/2005news/2005-003.html>)

RECOMMENDATIONS:

1. Permit no woodburning devices in any "development" except for the possibility of one in a lodge or public building.
2. Enforce the Washington State standard for opacity of any smoke column from a woodburning device. This is a limitation of 20 % opacity and is not difficult to enforce. It means, simply stated, that no smoke column should be visible from a wood burning device except when a fire is being started or fuel is being added. Information which demonstrates the ease of becoming certified to determine the opacity of smoke columns is available. This is much more easily enforced than laws tied to ambient air quality monitoring.
3. It is strongly recommended that the county train an employee to monitor opacity periodically across the county.
4. Any development which plans to hire employees should have at least one employee certified to determine opacity and that this employee would be assigned the task of monitoring smoke columns in the development for violations of the Washington State opacity requirements.

The Methow Valley and other mountain valleys with steep topography and local inversions are susceptible to extreme air quality situations. Since inversions in high mountain valleys are localized, they are not managed by state or regional air quality control agencies in our area. Okanogan county developed an air quality ordinance as mitigation required by the Record of Decision for the Early Winters ski area proposal in the 1980's, in order to maintain the clean air quality that was existing, in the face of expected development. This ordinance has since been abandoned. Thus, there does not exist any local control over air quality in sensitive areas such as the Methow Valley except generalized alerts designed for the region over-all. The Lower Methow in particular is very narrow with very steep sides. The currently low population density has protected it to some degree from the effects of inversions, particularly in the winter. 1-acre zoning could have a drastic effect upon the current situation. The following quotation of Sue Billings on a Department of Ecology website explains the situation further (Department of Ecology News Release - Jan. 5, 2005):

"Billings added that the Methow Valley is particularly sensitive to smoke due to its steep topography and local inversions. She encouraged Methow Valley residents to consider alternatives to burning, particularly when the air quality is bad. Alternatives to outdoor burning include composting, mulching and disposal at the local solid-waste facility.

The "air" section on page 8 does not identify the current air quality of the county, nor of the Methow Valley in particular. It does not attempt to compare the air emissions of any alternatives that were considered. It does not include air quality impacts to residential and rural areas at various levels of population density if wood heat is used, nor does it address the impacts to the Federal Class I air quality standards of the adjacent Pasayten Wilderness. It fails to address whether current regulation and enforcement would be sufficient to maintain Class I and Class II standards with the various population densities and related activities proposed in the Comprehensive Plan. In addition, it fails to address the impacts upon visibility that small minimum lot sizes (such as 1 and 5 acres) would have county-wide, particularly those areas which depend upon tourism and recreation.

Although several of the neighborhood groups named clean air as a vital concern for the Comprehensive plan, there is little or no provision in either the Comprehensive Plan nor the Zoning Codes to address this concern and goal of the citizens.

Chapter Ten: Coordination (pp. 38 - 39)

A point not dealt with in this review is the removal of language regarding consultation; it would seem that consultation with Federal Agencies with ESA responsibilities and the Tribe is a requirement on many issues, but has been removed from the Comp Plan. Instead of the above the Plan states that the Agencies have an obligation to support whatever the County comes up with.

Kurt Danison's testimony (referred to above) on Circulation Element document the county's lack of coordination with the years of work the towns have done on their possible expansion areas and the negative impact of 1-acre lots surrounding towns and airports.

Map:

APPLICABLE LAW: RCW 36.70.330

Required: The comprehensive plan shall consist of a map or maps, and descriptive text covering objectives, principles and standards used to develop it, and shall include each of the following elements:

(2) A land use element which designates the proposed general distribution and general location and extent of the uses of land for agriculture, housing, commerce, industry, recreation, education, public buildings and lands, and other categories of public and private use of land, including a statement of the standards of population density and building intensity recommended for the various areas in the jurisdiction and estimates of future population growth in the area covered by the comprehensive plan, all correlated with the land use element of the comprehensive plan. The land use element shall also provide for protection of the quality and quantity of groundwater used for public water supplies and shall review drainage, flooding, and storm water run-off in the area and nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute Puget Sound or waters entering Puget Sound; (3) Any supporting maps, diagrams, charts, descriptive material and reports necessary to explain and supplement the above elements.

It is not possible for the public to prepare adequate comments on this Comprehensive plan, due to a lack of information on the accompanying maps. Commissioner Lampe delivered a disclaimer at the beginning of each public hearing which stated that the Comprehensive Plan Map was not necessarily accurate and should not be considered in detail.

The public cannot comment adequately on Resource Lands because the map does not designate which lands are resources for agriculture, for forests, nor for mining. They are all lumped together. The public cannot deliver adequate comment on Rural Low and Rural High densities since the maps are apparently not yet accurate and not yet complete. It is not possible to know which lands are designated as low or high density.

No maps with sufficient detail to prepare adequate comments have been provided to the public other than a map on the website which is not available to anyone without a computer or one which depends upon slow telephone lines which cannot download large documents.

The available Map does not follow criteria set forth in plan's text.] For example, Middle Fork of Gold Ck, Tunk Valley, upper reaches of McFarland and Squaw creek. Properties within USFS land , many with no paved roads and no access in winter, are designated Rural High Density on the current map.

What public input can the county refer to, that drove them to zone remote areas, in Agricultural land use, with no public services and inadequate water resources, as urban densities of 1 acre minimums? How can the county explain the reduction in parcel sizes in low density rural and the removal of medium densities?

For the reasons set forth above, it appears that the current draft of the Comprehensive Plan fails to meet the requirements of RCW 36.70A.060(2), RCW 36.70.330, and RCW 36.70A.170(1). Accordingly, the plan should be redrafted consistent with the requirements of the law and re-circulated for public review.

Optional Elements under Planning Enabling Act not included in Comp Plan:

RCW 36.70.350

Comprehensive plan — Optional elements.

(6) a public services and facilities element showing general plans for sewerage, refuse disposal, drainage and local utilities, and rights-of-way, easements and facilities for such services, (7) a public buildings element, showing general locations, design and arrangements of civic and community centers, and showing locations of public schools, libraries, police and fire stations and all other public buildings, (8) a housing element, consisting of surveys and reports upon housing conditions and needs as a means of establishing housing standards to be used as a guide in dealings with official controls related to land subdivision, zoning, traffic, and other related matters, (9) a renewal and/or redevelopment element comprising surveys, locations, and reports for the elimination of slums and other blighted areas and for community renewal and/or redevelopment, including housing sites, business and industrial sites, public building sites and for other purposes authorized by law, (10) a plan for financing a capital improvement program, (11) as a part of a comprehensive plan the commission may prepare, receive and approve additional elements and studies dealing with other subjects which, in its judgment, relate to the physical development of the county.

Economic Impacts

The review processes that support the implementation of the comprehensive plan must be thorough enough to accomplish the effective review of project proposals for impacts but not onerous to the point the processes themselves become an obstacle to economic development. Without consideration of each alternative potential impacts cannot be considered.

Where possible, programmatic review should identify possible impacts of permitted uses and prescribe mitigations to those impacts prior to project application. This effort provides a level of predictability for land owners and project proponents and allows local government to anticipate impacts that economic development activities can cause to infrastructure and service delivery agencies. It is agreed this needs to be done before an EIS can be meaningful.

APPENDIX:

Lower Valley Advisory Group, Middle Methow Neighborhood Group, the Parlette letter and water (including 2011 related DOE letter) documents are attached.

Mark Schuppe (WDOE) letter regarding exempt wells is included here:

March 23, 2009
Perry Huston
Okanogan County Planning
123 Fifth Ave N Ste 130
Okanogan WA 98840

Re: Eagle Canyon Estates

Dear Mr. Huston:

I am writing this letter to clarify the Department of Ecology's position on the above referenced development proposal and to respond to comments attributed to Okanogan County Planning staff in the Okanogan Valley Gazette-Tribune. In a December 29, 2008, letter 11'om the Department of Ecology (Ecology) to Okanogan County Planning commenting on the mitigated determination of nonsignificance for the Eagle Canyon Development, it was stated, in part:

This project requires water rights.

The Attorney General's Opinion, (AGO 1997 No.6) regarding the status of exempt ground water withdrawals, states that a group of wells drilled by the same person or group of persons, at or about the same time, in the same area, for the same purpose or project should be considered a single withdrawal and would not be exempt from the permitting requirement contained in RCW 90.44.050, if the total amount withdrawn for domestic use exceeds 5,000 gallons per day or if a total of more than .5 acre of lawn and garden are irrigated.

The Attorney General's opinion suggests that caution should be used in finding developments to be exempt from needing a water right permit if the possibility exists that the development of the project will result in the ultimate withdrawal of water in excess of 5,000 gallons per day or the irrigation of more than .5 acre of lawn and garden.

Ecology has not retracted those comments.

In a February 26, 2009, article in the Okanogan Valley Gazette-Tribune one of your staff, Ben Rough, is quoted as making the following statement at a SEPA appeal hearing:

WSDOE very commonly addresses the need for a water right during the comment period. This is often followed up with a meeting with WSDOE and the proponent at which time the determination of needing a water right is overturned. The proponent for this project did have discussions with WSDOE and it was decided that eight exempt withdrawals is acceptable.

While I did have two telephone conversations with the project proponent's representative, at no time was the project's need for a water right "overturned". On the contrary, I stated that Ecology would not retract its SEPA comments as these comments were consistent with the law. I did state that, given the lack of staff resources, it was not likely that Ecology would appeal the County's SEPA threshold determination or land use

decision. Ecology's exercise of discretion in its enforcement authority should not be construed to mean that "eight exempt withdrawals is acceptable".

As an administrator of a government agency with enforcement authority, I am confident you understand the need to weigh many factors before you decide to pursue enforcement. To date, correspondence between Okanogan County Planning and Department of Ecology regarding the Eagle Canyon development has been through SEPA comments. I urge Okanogan County Planning staff to first contact the Department of Ecology before presuming Ecology has taken a position contrary to our comments stated in our SEPA letter mentioned above.

The current budget climate has placed Ecology in the position where I must prioritize my existing resources. In the context of our SEPA review for developments proposing to rely on the domestic exemption, I plan to continue to comment on development proposals and advise counties and developers on whether the use of the exemption is appropriate. In cases where Ecology believes that an exemption is inappropriate and an immediate threat to public health and safety, impairment of senior water right holders, or environmental harm will result, then I will direct my staff to engage to prevent such an action. An example of where Ecology is implementing this approach is in the Kittitas basin. However, in the absence of the threat of immediate harm, I must rely on counties to appropriately condition developments based on water availability under current law. If a county chooses to approve a project in a manner other than recommended by Ecology through our SEPA comments, then both the county and the developer are at risk in proceeding with the development.

As indicated in Director Manning's February 17, 2009 letter to the Legislature on a similar controversy around exempt stock watering uses, we plan to continue to work with stakeholders and the Legislature on a global solution to confusion surrounding the exemption. I believe this approach, along with targeted intervention by Ecology on projects that create significant impairment risk, is appropriate in the current budget climate.

Please understand if the county approves 8 exempt wells for the project that risk still exists for the project. While Ecology doesn't currently have enough resources dedicated to enforcement of exempt well use, we cannot speak to future situations.

I recognize it can be difficult when dealing with the groundwater exemption. I appreciate your patience and cooperation. If you have any questions please call me at (509) 454-4258.

Mark C. Schuppe, Acting Section Manager
Water Resources Program
MCS:gg/090324
cc: Scott DeTro
Robert Harris
Patrick Williams, Center for Environmental Law and Policy

Methow Valley Citizens' Council

P.O. Box 774

Twisp, WA 98856

mvcc@mvcitizens.org

509 997-2669

Okanogan County Board of Commissioners

123 Fifth Avenue North, Room 150

Okanogan, Washington 98840

Sent via email

June 20, 2013

RE: Comments on the 2013 Comprehensive Plan and Map, 05/16/13

Dear Commissioners:

Thank you for the opportunity to comment on the 2013 Comprehensive Plan and Map. These comments are submitted on behalf of the Methow Valley Citizens' Council, which works to maintain the rural and agricultural character of the Methow Valley through planning and conservation of the quality of our water, air and wildlife.

The development of the County's Comprehensive Plan cannot be inconsistent with the Planning Enabling Act, which under RCW 36.70.330 requires that the Comprehensive Plan include the following:

- 1) "a land use element which designates the proposed general distribution and general location and extent of the uses of land ... including a statement of the standards of population density and building intensity recommended for the various areas ... and estimates of future population growth ... correlated with the land use element of the comprehensive plan."**
- 2) a land use element that will "provide for protection of the quality and quantity of groundwater used for public water supplies," and**
- 3) "supporting maps, diagrams, charts, descriptive material and reports necessary to explain and supplement the above elements."**

The County is also required, under the Growth Management Act described in RCW 36.70A.170(1), to designate resource lands—including agricultural, forest and mineral resource lands—and critical areas.

As discussed in the following, the current draft of the Comprehensive Plan fails to comply with these requirements by: 1) failing to fully identify the "standards of population density and building intensity for various areas" under its land use classifications, 2) failing to provide for the protection of the quantity and quality of

groundwater, and 3) failing to protect critical areas, in particular, important groundwater resources and critical aquifer recharge areas.

Although the 2013 Comprehensive Plan and Map have been improved with regard to designation of resource lands, compared to the previous 2010 Revised Plan, and we are pleased to see the inclusion of a Methow Valley More Completely Planned Area (CPA),¹ this latest plan revision raises significant new issues. Our major comments and concerns are enumerated in the following:

1. The Plan fails to fully identify the “standards of population density and building intensity” as required under the Planning Enabling Act and should clarify the lot sizes and densities assigned to all land use classifications

Principal among our concerns with this latest draft of the Plan is the omission of references to specific lot sizes and densities associated with the land use designations. All former rural designations have been consolidated into one “Rural” classification with wide-ranging but undefined potential densities. (It now includes what had been designated Rural High Density² and Rural Low Density³ in the 2010 Revised Plan.)

In addition, no lot sizes are specified for Forest or Agricultural Resource Lands. Only in the Methow More Completely Planned Area (formerly the Methow Review District) and unincorporated towns⁴ does the Plan indicate what densities and zoning we might expect (no change from current zoning).

Defining the lot sizes or dwelling unit densities that are to be allowed under different land use categories—the “standards of population density and building intensity” referred to under the Planning Enabling Act—is fundamental to comprehensive planning. The density discussions in the Plan, such as those under the chapters on Forestry, Agricultural and Rural Lands, are wholly inadequate to meet this basic standard. Descriptions for all three classifications are virtually identical (see pages 18, 20 and 23), written as follows:

“Residential uses are consistent with” (insert either Forestry Lands, Agricultural Lands or Rural Lands). “Lot sizes, setbacks, height restrictions, and other considerations are specifically addressed in the underlying zone, subdivision regulation, and other regulation as appropriate. The lot sizes and overall density allowed in underlying zoning should consider the following

¹ The terminology in the Planning Enabling Act is “More Completely Planned Area,” or MCPA. This Comprehensive Plan uses both “More Completely Planned Area” and “Completely Planned Area” (CPA) interchangeably. Throughout our comments, we have used CPA to refer to these local plans.

² Minimum lot sizes one acre or smaller only with clustering or planned development

³ Minimum lot sizes five acres or smaller only with clustering or planned development

⁴ Methow, Carlton, Malott, Loomis, Wauconda, Chesaw, Molson, Ellisford, Mazama, Monse, Nighthawk, and Havillah

criteria:

- Proximity to transportation system.
- Proximity to city centers.
- Availability of potable water and water delivery systems.
- Availability of fire protection, police, and other emergency services.

Minimum lots should be sufficient in size to allow compliance with on-site sewage disposal and the protection of potable water sources. Lots in areas served by a sanitary sewer system, and so designated by the Board of County Commissioners, will be required to be served by the sewer system.”

Similarly generic is the description for Rural Lands, found in Chapter 4 under the Purpose section (page 24), which reads as follows:

“The objective of the rural designation is to provide an effective inventory of land for residential and other uses while avoiding unnecessary conflicts.... A mix of residential densities should be allowed to provide an adequate inventory of housing sites for those seeking a rural lifestyle and to provide worker housing in proximity to employment providers.”

“Okanogan County is large in size and varied in topography and climate. For these reasons, lands in the rural designation will exhibit great differences in terms of its ability to support residential density and other land use activities. Underlying zoning and/or the review processes that support and implement this Plan must be established with consideration for the ability of the land to support the proposed land use activity.”

Such descriptions are too broad and nonspecific to promote a sense of what is being envisioned, or to be able to draw conclusions about how the classifications will be translated into zoning. In the Rural designation, for example, we have to assume densities will be anywhere from one home per acre up to one home per twenty acres, based on the current zoning and proposals put forward under the 2010 Revised Plan. This is an extraordinarily broad range of possibilities.

Equally concerning is the fact that there is no discussion at all about the housing densities or lot sizes we might expect in Unincorporated Towns and Neighborhood Commercial Centers (Chapter 5) or City Expansion Areas (Chapter 6). Oddly, it is only under General Planning Objectives (on page 12) that we learn the zoning in unincorporated towns will remain unchanged. Similarly, it is only in the draft EIS (on pages 13 and 14) that we learn that the Molson and Barnholt Overlays are to be removed, but that it is likely the zoning will remain the same in these areas because “the density criteria support” those densities (Molson is zoned for 20 acre lots and Barnholt for 2 acre lots). These proposals should be stated clearly in the discussion of densities under the appropriate land use classification in the Plan.

Without identifying densities or permitted lot sizes, it isn't possible to assess the impacts of the proposed Plan against the current plan or plan alternatives. The citizens of Okanogan County and local municipalities need to know and be able to evaluate what is being proposed and how it might affect them. They also need to have some indication of what the ultimate zoning designations will be. The proposed Plan, as currently written, is insufficient to serve as a basis for a new zoning ordinance and map.

2. The Plan fails to provide for the protection of the quantity and quality of groundwater

In spite of the requirement under the Planning Enabling Act to protect groundwater in the land use element of the comprehensive plan, no policies in proposed Plan address groundwater. One of the few statements that can be interpreted as potentially addressing groundwater, in addition to the consideration of "the availability of potable water" cited in the preceding, is the following statement (on page 24) in the chapter on Rural Lands:

"Underlying zoning and/or the review processes that support and implement this Plan must be established with consideration for the ability of the land to support the proposed land use activity. The ability of lands in the rural designation to support density and permitted/conditional uses will be affected by other bodies of required regulation such as Critical Areas Ordinance and Shoreline Master Program. This must be taken into account when the adequacy of land in the rural designation is reviewed."

Since Aquifer Recharge areas are to be addressed in the Critical Areas Ordinance (CAO), it might be assumed that the County's obligation to provide for the protection of the quality and quantity of groundwater would be addressed there. However, the most recent draft of the CAO failed to incorporate "best available science" or make use of the substantial body of scientific information available on the County's groundwater resources submitted by our organization and others. In addition, the CAO provided no real measures to protect groundwater resources.

Water for domestic use and for agriculture is critical to Okanogan County's future. Scarcity in the face of competing demands among new development, agriculture and fish have long been issues in the County, prompting closure of a number of sub-basins and severely restricting water withdrawals in those areas. MVCC and others have submitted testimony and documents to the County describing the location and characteristics of the County's groundwater resources, the serious limitations of those resources, existing examples of depletion, the acute vulnerability of the County's groundwater to surface sources of contamination, including contamination from septic systems at the one home per five acre densities under consideration in the 2010 Revised Plan, and the related threats posed to surface water resources and

fish.⁵ To date, the County has shown no evidence of responding to any of the water-related issues that have been raised or to the volumes of information it has been given.

3. To protect groundwater, the County should use information available through the local watershed planning efforts of the Methow Watershed Council and the Okanogan Conservation District to determine lot sizes and densities—especially in critical sub-basins.

The Methow Watershed Council (MWC) sent an important letter, dated June 14, 2011, to the County Commission regarding the 2010 Revised Plan (See Attachment E). In the letter, the Council informed the Commission that, based on scientific studies and estimates of water use and resource capacity, there is not enough water in much of the Methow Valley to supply existing lots—let alone the number of new lots that could be created through future subdivision.

Rather than repeat the comments and volumes of information on groundwater already provided by us and others, which remain relevant to the proposed Plan and which are included in our attachments, we want to highlight some of the salient points in this letter. The following are excerpts:

“The MWC suggests that you develop the Okanogan County Comprehensive Plan (Comp Plan) only after due consideration of our information on current use and anticipated future permit-exempt domestic and stock use based on existing lot sizes so that it supports zoning and development review processes responsive to this information. It would be counterproductive to propose, now or in the future, a Comp Plan which results in an over-allocation of permit-exempt use under WAC 173-548, the rule that currently restricts total permit-exempt groundwater withdrawals post 1977 in any of 7 reaches⁶ to 2 c.f.s.”

“...the MWC now has the capability to estimate the effect of current parcel size regulations and possible Comp Plan parcel size revision on the Methow’s available water supply as defined by WAC 173-548.”

“Assuming future build-out with no new parcels and existing parcel size regulations, 6 reaches would have water remaining in their reserves. The Lower Methow⁷ would exceed its reserve, leaving 1,092 presently existing

⁵ See, for example, Attachments A, B, C, D, E, F, G, H, J, K, L.

⁶ The Methow watershed is divided into seven subbasin reserve reaches, shown on the map submitted with this letter in the attachments.

⁷ The Lower Methow reach is one of the largest and extends south from Twisp and the Beaver Creek drainage to Pateros.

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.”

This information points to the urgency of addressing the issue of densities and groundwater resources in the comprehensive plan, especially in the Lower Methow and other areas where critical groundwater resource shortages loom. For example, studies associated with the Okanogan Conservation District’s efforts in the Okanogan River watershed have documented similar problems or potential future problems in the Joseph, Osoyoos, Salmon, Sinlahekin, Tunk and Omak subbasins.

4. We support development of CPAs,⁸ but they are not a replacement for a sound comprehensive plan

We support the development and adoption of More Completely Planned Areas (CPAs) as provided for under RCW 36.70.3409. However, CPAs are no replacement for a sound comprehensive plan. Given the brevity and incompleteness of the proposed Plan, it would be wrong to rely on CPA plans to flesh out the kind of details that need to be addressed in the comprehensive plan. Permitting the development of CPAs should not be used in place of adopting a more adequate comprehensive plan. Moreover, the criteria listed for determining where and when a CPA will be prepared leave too much uncertainty about the County’s commitment to doing them.

Asking for a petition “from a majority of landowners within the newly proposed CPA” (on page 32) in order to be considered by the County Commissioners for CPA planning sharply contrasts with, for example, the 15% of landowner signatures required for initiating a process to form a parks and recreation district in the Methow Valley School District. This requirement unnecessarily limits consideration of citizen-initiated efforts, particularly in an area with many absentee landowners, such as the Lower Methow.

⁸ RCW 36.70.340 states the following: “The comprehensive plan may also be amplified and augmented in scope by progressively including more completely planned areas consisting of natural homogeneous communities, distinctive geographic areas, or other types of districts having unified interests within the total area of the county. In no case shall the comprehensive plan, whether in its entirety or area by area or subject by subject be considered to be other than in such form as to serve as a guide to the later development and adoption of official controls.”

In addition, the requirement (on page 33) that CPA plans shall “not exceed the requirements of the Planning Enabling Act or those portions of the Growth Management Act applicable to Non-GMA Counties” is not necessary and open to wide variation in interpretation. It is within the County’s purview to determine, when presented with a proposed CPA plan, whether or not to adopt recommendations.

Finally, in the face of the critical water resource issues facing many areas within the County, including the lower Methow Valley and other subbasins facing severe water limitations in documents produced by the Methow Watershed Council and Okanogan Conservation District,¹⁰ it makes sense to prioritize doing CPA plans in these areas. Such critical water resource areas should be identified in the comprehensive plan together with a schedule and an explicit commitment to doing CPA plans in these areas.

5. The policies of the Methow CPA should be extended to incorporate the Lower Methow

The serious water resource deficits in the Lower Methow subbasin, described in the MWC letter referred to in the preceding, require urgent action. We recommend that the policies and guidelines outlined in the Methow CPA be extended to incorporate the Lower Methow as part of the proposed Plan. This will help to slow the subdivision of land and the creation of parcels in excess of water resource capacities. It will also help to preserve groundwater for existing parcels.

Ultimately, a CPA plan should be completed for the Lower Methow and should be identified as a high priority in the comprehensive plan.

An advisory group (the Lower Valley Advisory Group (LVAG)) meeting most of the requirements described (on page 33) for creating a CPA plan was formed for the Lower Methow in 2007. It served as a special advisory group to the County, with a County-funded facilitator. This was done as part of initial efforts to revise the comprehensive plan and resulted in a Lower Valley Plan. The planning process involved a diverse committee, adequate public notice and advertising, invitations to join the committee and produced vision statements, goals, policies and density recommendations with a record of votes by the committee on the issues. (See Attachment A, file named “Lower Valley Advisory Group Docs”) that could be included in the proposed Plan as a foundation for completing a CPA in the Lower Methow.

6. The Methow Valley More Completely Planned Area (CPA) needs to be made more consistent

¹⁰ Including but not limited to the Joseph, Osoyoos, Salmon, Sinlahekin, Tunk and Omak subbasins.

The section on the Methow Valley More Completely Planned Area has not been consistently updated to apply to the Methow Valley School District (the Methow Review District)¹¹. Many parts of it instead refer only to the Upper Methow Valley (Mazama area or Sub Unit A). This does not accomplish the county's goal, as stated in the plan, that "it is the intent of the County to continue to utilize CPA Plans for the Methow Valley.

This section needs to include definitions of the Methow Valley, the Upper Valley, and any sub-areas within it. The following terms should be defined, eliminated, or consolidated: Methow Valley, Upper Methow Valley, Upper Valley, Methow Comprehensive Plan, Upper Methow Comprehensive Plan, Methow Review District, Methow Valley Plan, MVMCPA, MCPA, CPA, Subunit A, Mazama Plan, Lower Valley, Lower Methow Valley. There needs to be a clear description of the boundaries—both in narrative form and on a map—so that people can understand what geographic area is covered by the Methow Valley CPA.

7. Other Comments

The following includes comments as well as additional discussion on topics described above.

Table of Contents. Page 1

The Table of Contents should include the Methow Valley More Completely Planned Area on pages 42 through 96.

Vision Statement. Page 5

The Vision Statement on page 5 should recognize the important role of agriculture in the county economy. The Washington State Employment Security Department has documented that the "agriculture and government sectors were, and will be for the foreseeable future, the main driving force of the Okanogan County economy."¹²

Planning Objectives. Pages 9-10

Planning objectives have been consolidated in the 2013 Comprehensive Plan, whereas they were incorporated under different sections in the 2010 Revised Plan. The rearrangement is confusing and, without numbers, the objectives are hard to compare with the previous document. It would be good to number the objectives.

Chapter 2: Existing Conditions. Pages 14-15

¹¹ Note on wording: For consistency and clarity, we are using the terms Methow Review District or School District 350, since these are the descriptions and boundaries covered by the existing comprehensive plan.

¹² T. Baba Moussa, Okanogan County Profile p. 4 of 6 (Washington State Employment Security Department: January 2009), accessed on Feb. 8, 2010 at: <http://www.workforceexplorer.com/article.asp?PAGEID=94&SUBID=&ARTICLEID=9420&SEGMENTID=3>

Table 1 of existing comprehensive plan designations and zones on page 14 is confusing and bears no relationship to the same table on page 12 of the previous 2010 Revised Plan. Furthermore, the table should be updated to show the 2013 Comprehensive Plan and Map revision for comparison—so that the public understands the implications of the 2013 Plan.

The Figure 1: Historical Population Data 1960-2000 and Table 1: Historical Population For Growth Management And Other Purposes on pages 14 and 15 should be updated to include 2010 population data.

Figure 2: Total Projected Population for Okanogan County 2000-2030 is blank. There is no projected population graph.

Chapter 3. Resource Lands. Pages 16-18

Improvements addressing our concerns have been made in designating Resource Lands, compared to the 2010 Revised Plan, in that designations now include extensive lands under private ownership. However, designation criteria are somewhat vague and require stronger definition. We also have concerns that language inserted regarding “exclusion criteria” and “de-designation criteria” are vague and potentially weaken designations. Finally, there are no recommendations or provisions for protecting resource lands. Any references to permitted lot sizes and densities in Resource Lands have been omitted. The 2010 Revised Plan referred to 20-acre minimum lot sizes in Forestry Lands. Limiting lot sizes and densities in Resource Lands is essential to prevent their loss as a vital source of employment within the County and will reduce pressure to convert these lands to strictly residential uses. Large minimum lot sizes should be established to sustain the viability of both Forestry Lands and Agricultural Lands of Long-term Significance.

Agricultural Lands of Long Term Significance. Pages 17-18

The Washington State Supreme Court has held the following:

“...agricultural land is land: (a) not already characterized by urban growth (b) that is primarily devoted to the commercial production of agricultural products enumerated in RCW 36.70A.030(2), including land in areas used or capable of being used for production based on land characteristics, and (c) that has long-term commercial significance for agricultural production, as indicated by soil, growing capacity, productivity, and whether it is near population areas or vulnerable to more intense uses.”

Designation criteria on page 17 somewhat follow the minimum guidelines for designating agricultural lands under WAC 365-190-050(3)(c)¹³ but should more

¹³ (i) The classification of prime and unique farmland soils as mapped by the Natural Resources Conservation Service[.]” WAC 365-190-050(3)(c)(i).

“(ii) The availability of public facilities, including roads used in transporting agricultural products[.]” WAC 365-190-050(3)(c)(ii).

closely conform to the WAC. As written on page 17, the criteria in the 2013 Plan are awkward and incomplete. For example, designation on page 17 lists "tax status" but does not include the full statement written in the WAC which reads "Tax status, including whether lands are enrolled under the current use tax assessment under chapter 84.34 RCW and whether the optional public benefit rating system is used locally, and whether there is the ability to purchase or transfer land development rights."

In addition, designation criteria should include the definition under RCW 36.70a.030(2), which defines agricultural land as land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock, and that has long-term commercial significance for agricultural production."

Finally, the criteria should identify specific maps, documents, aerial photos and other sources used in identifying agricultural land, and how those sources are evaluated or interpreted in making the agricultural designations on the Plan Map.

Compatible Uses. Page 18

Page 18 lists the following compatible uses in Agricultural Lands of Long Term Significance: "Residential uses including all single family, extended family, and farm worker housing. The Farming Operations Disclosure will be required on plats creating new lots and site evaluations for existing lots." Please clarify and define what the Farming Operations Disclosure is and what it is intended to accomplish.

While low-density single-family residential development in agriculture areas is a compatible use, higher densities are not. Newcomers to the countryside often have little understanding of the business of farming or forestry. The conflicts between farmers and non-farm neighbors are well known. Lawsuits and the threat of suits can threaten viable commercial farming. The plan should include policies addressing these issues and show how it will deal with them. It should speak to the need for low-density zoning, defining a range of minimum lot sizes and other

"(iii) Tax status, including whether lands are enrolled under the current use tax assessment under chapter 84.34 RCW and whether the optional public benefit rating system is used locally, and whether there is the ability to purchase or transfer land development rights[.]" WAC 365-190-050(3)(c)(iii).

"(iv) The availability of public services[.]" WAC 365-190-050(3)(c)(iv).

"(v) Relationship or proximity to urban growth areas[.]" WAC 365-190-050(3)(c)(v).

"(vi) Predominant parcel size[.]" WAC 365-190-050(3)(c)(vi).

"(vii) Land use settlement patterns and their compatibility with agricultural practices[.]" WAC 365-190-050(3)(c)(vii).

"(viii) Intensity of nearby land uses[.]" WAC 365-190-050(3)(c)(viii).

"(ix) History of land development permits issued nearby[.]" WAC 365-190-050(3)(c)(ix).

"(xi) Proximity to markets[.]" WAC 365-190-050(3)(c)(xi).

measures to prevent the conversion of the County's agricultural resources to residential use and to preserve agriculture-related jobs.

Methow Valley More Completely Planned Area, Pages 42-96

We appreciate the County's efforts and provision of the mechanism provided by Chapter 7, More Completely Planned Areas, to accommodate the values, priorities, and goals of residents of the Methow Valley and of other areas within Okanogan County who may choose to do more localized planning.

We also appreciate that the section devoted to the Methow Valley CPA has been included in the body of the 2013 Plan, codifying the efforts of Methow residents over the past four decades to create a plan that reflects local values. The inclusion of this section is a reassuring confirmation of the commissioners' statements over the course of the comp plan revisions that they intend to preserve the protections and designations that have governed the Methow Review District since 1976, as codified in the two plans adopted by the commissioners as addendums to the county's comprehensive plan (the Methow Valley Plan of 1976 and the Upper Methow Valley Plan of 1989, revised in 2000).

Yet after reading the section on the Methow Valley CPA, we are concerned that the updating process for this part of the plan is incomplete. From the statement on page 32 ("It is the intent of the County to continue to utilize CPA Plans for the Methow Valley") and the introduction and other language in the CPA section ("The Methow Valley CPA covers an area previously described [as] the Methow Valley Plan including Sub Unit A of the Methow Valley Addendum to Okanogan County's Comprehensive Plan"), it appears that it was the intent of the commissioners to have this CPA section apply to the Methow Review District (Methow Valley School District 350), as in the current comprehensive plan.

However, after the introduction, much of the wording appears to describe only the Upper Methow Valley (also referred to as Sub Unit A or Mazama). Many of the references throughout the section are exclusively to Mazama, and other details, such as acreage, also do not encompass all of Methow Valley School District 350.

On page 49 in the current draft (May 16, 2013), under "Purpose and Scope," the plan reads, "In 1976, Okanogan County officials adopted the Methow Valley Addendum to the County's Comprehensive Plan. The Addendum addresses land use in all of School District 350 and included the area formally known as MVMCPA as one of four planning areas." The majority of the text throughout this section needs to be revised to encompass the entire Methow Review District and not only Mazama.

Other references, such as the 22,100 acres cited on page 43, are also inaccurate for the Methow Valley School District, which is about 200 square miles, or 128,000 acres, from Gold Creek to Mazama, the area covered by the Methow Valley CPA.

As one reads through the section on the Methow Valley CPA, the text becomes more confusing, because it alternates between references to the goals and conditions in the Upper Methow Valley and those in the Methow Review District.

Population data in the Methow Valley CPA chapter also need to be updated to use the most current numbers from the 2010 census. The statement that the Methow River is classified as class AA throughout the area of the Methow Review District is in error.

Rather than provide a line-by-line review of the Methow Valley CPA chapter, we propose convening a representative group of residents from the Methow Valley, including the Mazama Advisory Committee and Lower Valley Advisory Group, to work together to update the Methow Valley CPA chapter, in accordance with the provisions for more completely planned areas envisioned by the description on page 32, "to provide for land use planning at a sub-area scale, including the Methow Valley." This would ensure that the Methow Valley CPA section reflects current concerns and conditions and applies to Methow Valley School District 350, and the Lower Methow when added.

While the county has incorporated the two separate plans for the Methow Valley and Upper Methow as addendums to the previous comp plan, we agree that it is a clearer and a more effective planning tool to merge these documents into a single section to cover the Methow Valley CPA. This unified plan can address individual geographic areas where different conditions—in climate, vegetation, elevation or land use, for example—make more area-specific goals and protections appropriate.

We also reiterate MVCC's position, included in comments on previous drafts of the plan, that the area covered by the provisions and protections in the Methow Valley CPA section should be extended south to include the Lower Methow Valley. See, for example, the letter dated June 14, 2011, from the Methow Watershed Council (Attachment E). This letter describes the seven reaches in the Methow watershed and describes the boundaries of the Lower Methow reach as extending south from Twisp and the Beaver Creek drainage to Pateros. This is consistent with the guidelines for creating the boundaries of a more completely planned area, as described in chapter 7, as follows: "Logical natural and physical boundaries (highways, other CPA planning area boundaries, watersheds, etc.)."

Conclusion: We continue to find the comprehensive plan and map submitted in 2009 superior to recent plan revisions

The comprehensive plan and map submitted in 2009 was better, in most respects, than the 2010 Revised Plan or the 2013 proposed Plan. We provided testimony and submitted lengthy written comments documenting our concerns about the changes that were made to the 2009 plan during hearings on the 2010 Revised Plan. Most of

our earlier comments remain relevant to the issues presented by this 2013 proposed Plan, particularly in terms of protecting the quality and quantity of the County's groundwater.

We therefore incorporate by reference our comments on the previous drafts together with the comments of others who discussed similar or related concerns and raised issues we think are important. We also incorporate by reference, and include in our attachments, comments we made on the last version of the draft Critical Areas Ordinance (CAO) because the CAO is cited in the Final EIS on the 2013 Comprehensive Plan as a means of mitigating the impacts of development and of protecting potable water supplies. We believe the current draft of the CAO would not provide this protection, and our CAO comments explain this further.

We thank you once again for this opportunity to respond to the proposed 2013 Plan. If you have any questions about our comments or the attachments we have provided, please contact me. Our organization is more than willing to help the County improve the Comprehensive Plan in any way we can.

Sincerely,

Maggie Coon
Chair, Methow Valley Citizens Council

List of Attachments:

- ATTACH A. MVCC comments on the 2010 Revised Plan and EIS (3-12-11)
- ATTACH B. MVCC comments on the Critical Areas Ordinance, dated (4-23-12)
- ATTACH C. USGS Aquifer Map showing unconsolidated aquifers in Okanogan County
- ATTACH D. DOE Water Availability, Methow Watershed WRIA 48; and Okanogan Watershed WRIA 49) (August 2012)
- ATTACH E. Methow Watershed Council Letter to the Okanogan County Commission (6-14-11)
- ATTACH F. DOE comments on the 2010 Revised Plan and EIS (04-07-11)
- ATTACH G. Futurewise comments 2010 Revised Plan and EIS (4-27-11)
- ATTACH H. CELP comments on 2010 Comp Plan and EIS (4-8-11)
- ATTACH I. Bricklin comments on 2010 Comp Plan and EIS (4-8-11)
- ATTACH J. Salmon, Steelhead and Bull Trout Habitat Limiting Factors, WRIA 48 (7-18-00)
- ATTACH K. Okanogan Watershed Plan, Chapter 3, Recommendations

ATTACH L. Dight comments on groundwater impacts of 2010 Revised Plan and EIS 2011-12

ATTACH M. SEPA Handbook

ATTACH N. WAC173.200.030/Groundwater Anti-degradation policy.

We therefore incorporate by reference our comments on the previous drafts together with the comments of others who discussed similar or related concerns and raised issues we think are important. We also incorporated by reference and included our additional comments we made on the draft version of the EIS. Critical Areas Ordinance (CAO) because it will be that version that will be adopted. In a manner of speaking, the impact of development and other activities on groundwater is a key issue. We believe the current draft of the CAO would provide the protection and our comments explain this further.

We thank you once again for the opportunity to respond to the proposed EIS. If you have any questions about our comments or the attachments we have provided, please contact me. Our organization is more than willing to help you clarify the comments. Please let me know if you need any further information.

Sincerely,

Michelle Cook
Chair, Methow Valley Citizens Council

Michelle Cook

- ATTACH A. NWC comments on the 2010 Revised Plan and EIS (12-1-11)
- ATTACH B. NWC comments on the Critical Areas Ordinance (12-23-11)
- ATTACH C. NWC Aquifer Map showing unconsolidated aquifers in Skagit County
- ATTACH D. DOW Water Availability, Methow Watershed WRIA 5B and Oregon Watershed WRIA 43 (August 2011)
- ATTACH E. Methow Watershed Council Letter to the Skagit County Commission (8-4-11)
- ATTACH F. DOW comments on the 2010 Revised Plan and EIS (04-07-11)
- ATTACH G. DOW comments on the 2010 Revised Plan and EIS (8-23-11)
- ATTACH H. DOW comments on 2010 Ordinance (8-23-11)
- ATTACH I. DOW comments on 2010 Ordinance (8-23-11)
- ATTACH J. DOW comments on 2010 Ordinance (8-23-11)
- ATTACH K. DOW comments on 2010 Ordinance (8-23-11)

Article I Critical Areas Administration

General Comments: Language under Article I omits important detail about how the ordinance will be implemented and includes wording, most notably regarding exemptions, that could allow critical area regulations to be circumvented. References to state regulations the ordinance must comply with are missing. More significantly, best available science (as required under WAC 365-195) has not been fully considered in developing official critical area maps and regulations.

The review process, as currently delineated in the ordinance, relies heavily on "regulatory" critical area maps. While such maps are useful in theory, actual conditions on the ground should take precedence. If an area meets the criteria for a critical area but is not shown on the critical area maps, it must be regulated as a critical area. In addition, the critical area maps so far provided by the county are too general to be regulatory. Of particular concern is the incomplete mapping of fish and wildlife habitats and the lack of any mapping of critical aquifer recharge areas. Stronger guarantees need to be made *and documented* that best available science has been used as the basis for designating and mapping critical areas.

For the purposes of clarity, the ordinance should further detail the process by which critical area review is undertaken, criteria for determining whether a critical area exists, critical area report requirements, and the process by which new information about critical areas is incorporated in the ordinance and on maps on file at the county. We concur with concerns expressed by the Washington Department of Fish and Game in its comments regarding the need for a clear trigger.¹ Also of concern is clarifying when public notice will be given and procedures for gaining public comment regarding critical area determinations for specific development proposals. The county should consider the well-designed process outlined under "Critical Area Project Review Process" in the model ordinance provided in the Critical Areas Assistance Handbook.²

Finally, all definitions should be consistent with those outlined in related state and federal regulations and adopted county ordinances, and should be consistent with commonly accepted standards. Channel migration zone definitions and delineations, for example,

¹ "An important piece of a Critical Areas ordinance (CAO) that our agency looks for is a provision for "triggering" project review for protection of critical areas. In order to assure that projects avoid or minimize impacts to fish wildlife and their habitats protected by the CAO, it is important that the ordinance clearly triggers a review process. Building permit applications, preliminary plats, as well as large lot land segregations should trigger a review for consistency with wildlife goals and open space or biodiversity plans. This also applies to activities such as clearing and grading, which can have significant effects on wildlife habitat. A clearing and grading ordinance is an important local tool in planning for wildlife." Excerpt from comments submitted to Okanogan County, dated January 15, 2010. (Comments are included on the enclosed CD.)

² Critical Areas Assistance Handbook: Protecting Critical Areas Within the Framework of the Washington Growth Management Act, Appendix A, Example code Provisions for Designating and Protecting Critical Areas. Washington State Department of Commerce, (2003)

must be approved by Department of Ecology and included in the Shoreline Management Plan (SMP). Any changes that come about as a result of Ecology's current review of the SMP should be incorporated in this ordinance.

OCC 14.12.010 Purpose/Authority

Under item C (1), critical resource areas may be altered through exemptions made by "subsequent administrative rules." Allowing exemptions by this means could circumvent the public review process, potentially weakening the ordinance and undermining its purpose. Categorical exemptions, other than those already outlined in the ordinance, should be handled as amendments to the critical areas ordinance. The phrase "*or subsequent administrative rules*" in the last sentence under this section should be removed unless conditions are added clarifying when such action may be taken.

OCC 14.12.020 Administrative Implementation

Proposed new items D-E: For the purposes of legal clarity and specificity, the relevant state legislation the county's ordinance must comply with should be cited here. The following should be added under this section:

D. The regulations of this chapter are intended to protect critical areas in accordance with the Growth Management Act and through the application of the best available science, as determined according to WAC 365-195-900 through 365-195-925, and in consultation with state and federal agencies and other qualified professionals.³

E. This chapter is to be administered with flexibility and attention to site-specific characteristics. It is not the intent of this chapter to make a parcel of property unusable by denying its owner reasonable economic use of the property or to prevent the provision of public facilities and services necessary to support existing development and planned for by the community without decreasing current service levels below minimum standards (See RCW 36.70A.020(12)).⁴

Proposed new item F: SEPA and critical area review procedures should be evaluated to ensure project and environmental review are integrated. Prior to making a threshold determination, SEPA review should first rely on critical area review requirements and regulations to address environmental impacts. Also, pursuant to WAC 197-11-908, county-adopted categorical exemptions from SEPA should be amended so that exemptions for designated critical areas don't apply.⁵

The following should be added:

³ Ibid (Pg A-3)

⁴ Ibid

⁵ Ibid (Pgs 30-31)

F. These critical areas regulations shall apply concurrently with review conducted under the State Environmental Policy Act (SEPA), as locally adopted. Any conditions required pursuant to this chapter shall be included in the SEPA review and threshold determination.⁶

OCC 14.12.030 Exemptions

Add "clearing and grading" to the land use activities listed as being required to comply with OCC Chapter 14. These activities can severely impact critical areas. The fact that the county does not have a clearing and grading ordinance is a matter of concern as well, and we hope this will be addressed in the near future.

OCC 14.12.040 Preliminary Investigation/Site Visit

Under item A, wording makes performing a site visit to verify whether or not critical areas are present optional, at the discretion of the administrator or designee. This places emphasis on the quality of existing information and official critical area maps on file at the county, which are admittedly incomplete. Elsewhere in the ordinance (OCC 14.12.070) it says, "The distribution of critical areas within Okanogan County is described and displayed in reference materials and on maps maintained by the department. These reference materials, in the most current form, are intended for general information only and do not depict site-specific designations." Given the lack of detailed mapping of critical areas available at the county, detailed designation criteria together with site inspections become more important.

Similar wording makes consulting affected agencies optional when critical area maps show a critical area is present, but the county determines there are none present. Where conflicting information exists, the county should consult the agency of relevant expertise. It is also important to consider whether critical areas and any associated buffers that occur near the site may be impacted.⁷

Language under this section should be revised to read as follows:

"Upon receipt of an application, the Administrator or designee shall consult all critical area maps and relevant reference material. After referring to maps and reference material, the Administrator or designee may shall perform a preliminary site visit (the cost of which is included in the permit application fee) to determine by visual observation, together with the know scientific evidence, whether or not critical areas or critical area buffers may exist within or adjacent to ~~on~~ the development site, or whether the proposed development or use may

⁶ Ibid. (Pg A-4)

⁷ Ibid. (Pgs 35-36)

otherwise impact a critical area. Before the Administrator declares that critical areas do not exist, contrary to information provided on critical area maps and relevant reference material, the Administrator may shall consult the affected agencies of expertise.”

OCC 14.12.050 Special Studies and Map Amendments and OCC 14.12.070 Critical Areas—Maps and Inventories

The process and criteria for identifying critical areas needs further clarification to ensure critical areas will be protected. A more complete and detailed process is outlined under “Critical Area Project Review Process” outlined in the Critical Areas Assistance Handbook.⁸

The following reference materials should be consulted or included as the basis for identifying and mapping critical areas:

1. *Washington State Office of Community Development, Citation of Recommended Sources of Best Available Science for Designating and Protecting Critical Areas*
2. *U.S. Geological Survey landslide hazard, seismic hazard, and volcano hazard maps*
3. *Washington State Department of Natural resources, Slope Stability maps*⁴³.
Washington State Department of Natural resources, Official Water Type Reference maps
4. *Washington Dept. of Fish and Wildlife, Priority Habitat and Species maps*⁵⁶.
Washington State Dept. of Natural resources, Natural Heritage Program mapping data
6. *Washington Conservation Commission, Habitat Limiting Factors, Anadromous and Resident Salmonid distribution maps*
7. *Washington State Dept. of Natural resources, State Natural Area Preserves and Natural Resource Conservation Area maps*
8. *Washington State Department of Natural Resources, Liquefaction Susceptibility and Site Class Maps*
9. *U.S. Geological Survey, Groundwater Atlas of the United States—Idaho, Oregon and Washington, HA 730-H (1994)*
10. *U.S. Geological Survey, National Atlas, Principal Aquifers map*

OCC 14.12.080 Definitions

⁸ Critical Areas Assistance Handbook: Protecting Critical Areas Within the Framework of the Washington Growth Management Act, Appendix A. Washington State Department of Commerce, (2003) (Pgs A-17 through A-21)

Among the definitions, "high intensity land use" and "low intensity land use" are inconsistent with commonly accepted standards.⁹ Under low-intensity land use, for example, anything less than one dwelling unit per acre qualifies as a land use associated with low levels of human disturbance or low wetland impact. This statement is simply not defensible, scientifically or otherwise.

Under the definition for "riparian," riparian widths are to be measured on the slope of the land. Standard and commonly accepted practice, especially within areas under the jurisdiction of the Shoreline Management Act, is to measure horizontally.

Under definitions for "onsite compensation" and "offsite compensation," the word "wetlands" should be replaced by "critical areas." On and offsite compensation may apply to areas other than wetlands.

OCC 14.12.090 General Exemptions

Under item D, the exemption for "existing and ongoing agricultural activities legally conducted at the time of adoption of this chapter" should perhaps be amended. Consider adding a provision requiring any future expansion of existing and ongoing agricultural activities to comply the ordinance.

OCC 14.12.150 Application Requirements

Under item 6, add "structures."

OCC 14.12.170 Performance Bonds

Language changing "shall" to "may" in the first sentence under this section potentially weakens the county's ability to enforce critical area regulations. Enforcement will be stronger if the statement reads as follows:

"The Administrator shall require the applicant of a development proposal to post a cash performance bond or other security acceptable to the Administrator...."

OCC 14.12.180 Maintenance Bonds

Language changing "shall" to "may" in the first sentence under this section potentially weakens the county's ability to enforce critical area regulations. Enforcement will be stronger if the statement reads as follows:

⁹ Ibid. (See, for example definition on pg A-12)

"the Administrator shall require the holder of a development permit issued pursuant to this chapter to post a cash performance bond or other security acceptable to the Administrator...."

Article II Aquifer Recharge Areas

General Comments: Substantial revision of Article II is necessary. Contrary to statements made in the ordinance, there is sufficient information to map critical aquifer recharge areas in Okanogan County. The county should, at a minimum, map areas that are susceptible to contamination and depletion and develop regulations specific to those areas.

In revising Article II, the county should consult the Critical Aquifer Recharge Areas Guidance Document published by the Department of Ecology. The county should also incorporate water protection concepts outlined under RCW 90.44 (Regulation of Public Ground Waters), RCW 90.48 (Water Pollution Control Act), RCW 90.54 (Water Resources Act of 1971), and WAC 173-200 (Ground Water Quality Standards), Washington's anti-degradation policy.

Threats to groundwater supplies along with possible regulatory remedies have also been outlined and documented in previous information submitted to the county, and are included with comments here (Attachment B).

This section of the ordinance would also benefit from a purpose statement, in compliance with WAC 173-100-050, including language such as the following:

"It is important to regulate land use and development in critical aquifer recharge areas in order to protect the quality and quantity of groundwater; to meet future water needs while recognizing existing water rights; and to provide for effective and coordinated management of the groundwater resources."

OCC 14.12.200 Exemptions

Under item B, single-family development is exempted from critical area regulation in aquifer recharge areas. Given the substantial evidence that groundwater resources in Okanogan County are highly vulnerable to depletion and contamination, as outlined and documented in the attachments,¹⁰ this is a significant oversight and should be amended. Single-family development has a high potential for impacting groundwater quality and quantity, especially at currently zoned densities where septic systems are the principal means of waste disposal.

¹⁰ See Attachments A, B, C, E, F as well as documents provided on CD.

As discussed under Attachment B, the cumulative impacts to groundwater from development on septic systems can be safely mitigated if minimum lot sizes are increased.¹¹ Sewers or enhanced septic systems designed to remove nitrates are another solution. These are among measures the county should consider in protecting critical aquifer recharge areas, especially the unconsolidated aquifers found in the Methow and Okanogan valleys.

Under item C, the exemption is unclear. It seems to say that if less than 50% of a lot is covered with impervious surfaces, it is exempt from regulation, presumably to address issues of groundwater quantity. This is an excessive exemption (a one acre could cover 2000 square feet, a 10 acre lot could cover 10,000 square feet) and should be omitted. It fails to account for cumulative impacts and for development that, regardless of meeting the 50% standard, could still impact ground water quality.

OCC 14.12.210 Classification/Rating System and OCC 14.12.220 Designation/Mapping

Minimum guidelines for classifying critical aquifer recharge areas are outlined under WAC 365-190 (2), which states the following:

“Where no specific studies have been done, counties and cities may use existing soil and surficial geologic information to determine where recharge areas are. To determine the threat to ground water quality, existing land use activities and their potential to lead to contamination should be evaluated. Counties and cities shall classify recharge areas for aquifers according to the vulnerability of the aquifer. Vulnerability is the combined effect of hydrogeological susceptibility to contamination and the contamination loading potential. High vulnerability is indicated by land uses that contribute contamination that may degrade ground water, and hydrogeologic conditions that facilitate degradation.”

The county should, at a minimum, map aquifer areas that are susceptible to contamination and depletion and develop regulations specific to those areas. Contrary to statements made in the ordinance, there is sufficient existing information to do so. A significant number of hydrologic reports and studies have been conducted for the Methow and Okanogan, including recent studies associated with the watershed planning efforts of the Methow Watershed Council and the Okanogan Conservation District. Both

¹¹ According to Yates, EPA considers areas with septic system densities greater than one home per 16 acres as regions of potential groundwater contamination. In guidelines for operating onsite disposal systems, EPA indicates development within 1200 feet of a nitrogen-limited surface water on lots of at least 20 acres as being exempt from the need for septic system monitoring. The implication is that development on 20 acres would have minimal impact. (See Yates, Marylynn, “Septic Tank Density and Ground-Water Contamination,” Vol. 23, No. 5, Ground Water (September-October 1985) Accessed on March 15, 2011 at <http://info.ngwa.org.gwol/pdf/89104949.PDF>; see also Environmental Protection Agency. “Polluted Runoff (Nonpoint Source Pollution), B. Operating Onsite Disposal Systems Management” Accessed on March 15, 2011 at <http://www.epa.gov/owow/NPS/MMGI/Chapter4?ch4-5b.html>)

organizations have websites containing comprehensive lists of water and groundwater related studies conducted in Okanogan County. Notable is a recent warning from the Methow Watershed Council regarding the high potential for future groundwater depletion in the lower Methow Valley.¹² Based on the available science, the lower Methow, for example, could reasonably be considered a critical aquifer recharge area. Similar findings would argue for critical aquifer designation of the Tunk Valley.¹³

Regional maps of principal and unconsolidated aquifers¹⁴ with descriptions of their characteristics are published by the U.S. Geological Survey and provide useful information about Okanogan county aquifers.¹⁵

OCC 14.12.230 Regulations

The critical aquifer recharge area regulations are too nonspecific to adequately protect Okanogan County's groundwater supplies. For example, the ordinance identifies wellhead protection as a resource management tool, but doesn't specify where and under what conditions the provision allowing for expanded protection zones will be used, or cite the state regulation (WAC 246-280-135) that allows it. Critical areas need to be protected by regulatory measures that go *beyond* those used in non-critical areas. The regulations so far provided only represent current practices.

Article III Fish and Wildlife Habitat Conservation Areas

General Comments: This section of the ordinance does not apply best available science or meet minimum guidelines for designating fish and wildlife habitat conservation areas.¹⁶ The classification and rating system makes no mention of "sensitive species" or "other protected wildlife" as required under WAC 232-12-011. Of particular concern is the absence of any "special consideration" given to conservation or protection measures necessary to preserve or enhance anadromous fisheries, as required under WAC 365-195-925.

A vast number of fish and wildlife studies have been produced regarding the species and habitats found in Okanogan County. Such studies contain detailed information, including maps, plans and management recommendations.¹⁷ This includes, for example,

¹² See Attachment E

¹³ See Attachment F

¹⁴ See Attachment C

¹⁵ U.S. Geological Survey, Groundwater Atlas of the United States—Idaho, Oregon and Washington, HA 730-H (1994); U.S. Geological Survey, National Atlas, Principal Aquifers map

¹⁶ We share the concerns about Article III identified by Futurewise in earlier comments on the CAO submitted in 2010. We feel those concerns have not been fully addressed in this ordinance. A copy of the Futurewise letter is included under Attachment D.

¹⁷The following are just a few examples: Washington Department of Fish and Wildlife, Management Recommendations for Washington's Priority Habitats; Andonaegui, Carmen, Salmon, Steelhead and Bull Trout Habitat Limiting Factors, Water Resource Inventory Area 48, Washington State Conservation Commission, (2000); Connelly, J.W., Habitat Needs and Protection for Columbian Sharp-tailed Grouse in

information and recommendations resulting from the efforts of the Upper Columbia Salmon Recovery Board. The county needs to demonstrate that it has consulted the full range of resources available and incorporated that information in this ordinance. To aid in this effort, we have included additional resources on the enclosed CD.

OCC 14.12.250 Exemptions

Under item B, amend this section, for the purposes of clarity, to read:

“Removal of riparian vegetation within 30 feet of permitted additions that will be attached to structures existing as of the date of adoption of this Chapter.”

OCC 14.12.260 Classification/Rating System

Language under this section regarding Level 1 Habitats should be amended to ensure that the latest available information regarding threatened and endangered species is consulted and that both species identified on the Federal Register *and* the Washington State Listing are included. We suggest amending the definition to read as follows:

“Level 1 Habitat consists of areas that support Federal or State listed Endangered and Threatened species (as identified on the Federal Register and indicated under WAC 232-12-011 and WAC 232-12-014). This habitat includes designated habitat conservation areas administered by Federal, State, Tribal and/or local governments for conservation of those species.”

Level 2 and 3 Habitats could be grouped under a single category. Or, as an alternative, define Level 2 Habitats as those supporting state-listed rare species and species of concern. Level 3 Habitats could include other important habitats not necessarily containing rare species—such as mule deer winter range, natural area preserves, or parks and recreation areas. Level 2 and 3 Habitats might be defined as follows:

“Level 2 Habitat consists of areas that support one or more of the following species: (a) State listed Priority Habitats and Species (PHS); (b) sensitive wildlife species designated by the PHS program; (c) sensitive plant species listed by the Washington Natural Heritage Program.”

“Level 3 Habitat consists of areas that are designated by federal, state, tribal and/or local governments to protect important habitats and open space. These habitats may include wetlands, cliffs, riparian areas, caves, cliffs, islands, meadows, old-growth/mature forest, talus slopes, designated open space,

designated habitat for species of concern such as mule deer or whitebark pine, and shoreline setbacks that are habitat for fisheries.”

OCC 14.12.270 Designation/Mapping

Critical area maps of fish and wildlife habitats, as currently provided, are too general and incomplete to be useful in protecting critical habitats and leave out a significant amount of available information. At a minimum, the following sources should be incorporated by reference into the designation and mapping of critical areas for fish and wildlife:

1. *Washington Department of Fish and Wildlife, Priority Habitat and Species maps*
2. *Washington State Dept. of Natural Resources, Natural Heritage Program mapping data*
3. *Washington Conservation Commission, Habitat Limiting Factors report, Anadromous and Resident Salmonid distribution maps*
4. *Washington State Department of Natural resources, State Natural Area Preserves and Natural Resource Conservation Area maps*
5. *Washington Department of Ecology, Washington State Wetlands Rating System for Eastern Washington, with incorporated revisions*

OCC 14.12.270 Designation/Mapping

Regulatory measures included in the ordinance need further development in order to adequately protect fish and wildlife habitats. We are concerned about ill-defined statements such as the following under OCC14.12.330 B (1): “Note: Riparian vegetation should not be removed unless there is no other alternative.” We are similarly concerned about the statement under OCC 14.12.330 B (4), which allows the administrator to reduce riparian buffer widths for low intensity uses. As noted in our comments under OCC 14.12.080, we disagree that densities less than one home per acre is a low intensity use.

Article VI Wetlands

General Comments: We support the use of the Washington Wetlands Rating System for Eastern Washington as a sound basis for wetlands designation, and because it allows sliding-scale setbacks rather than fixed buffers. There is a statement that the county will use the Eastern Washington Ratings Guide as amended by *Okanogan County*. That should be changed to simply read “as amended.” There should be a brief preamble prior to discussing the management of categories. The material under 14.12.630 could be moved up and used as a preamble. It should be clear that the steps in ranking wetlands are as follows: 1) wetland determination, 2) wetland categorization, and 3) wetland delineation.

OCC 14.12.580 Exemptions

Under item A, the exemption from critical areas regulation for Category II and III wetlands less than 2,500 square feet and for category IV wetlands less than 10,000 square feet is unnecessary and should be omitted. Small wetlands are already addressed in the ratings form, and are the basis for the sliding scale buffer. Under the new rating system, the total area is part but not all of what determines the wetland category. Small wetlands perform important environmental functions and the cumulative impacts of not regulating numerous small wetlands should be taken into account.

Channel Migration Zones

General Comments: Channel migration zones are a hazardous area and the Shoreline Master Program Guidelines provide they must be protected from new development. We agree development should not be allowed in severe channel migration zones, in order to protect people and their property, but moderate channel migration zones should be similarly restricted.

Methow Valley Citizens' Council

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Okanogan County Board of Commissioners

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Sent via email

June 20, 2013

RE: Comments on the 2013 Comprehensive Plan and Map, 05/16/13

Dear Commissioners:

Thank you for the opportunity to comment on the 2013 Comprehensive Plan and Map. These comments are submitted on behalf of the Methow Valley Citizens' Council, which works to maintain the rural and agricultural character of the Methow Valley through planning and conservation of the quality of our water, air and wildlife.

The development of the County's Comprehensive Plan cannot be inconsistent with the Planning Enabling Act, which under RCW 36.70.330 requires that the Comprehensive Plan include the following:

- 1) "a land use element which designates the proposed general distribution and general location and extent of the uses of land ... including a statement of the standards of population density and building intensity recommended for the various areas ... and estimates of future population growth ... correlated with the land use element of the comprehensive plan."
- 2) a land use element that will "provide for protection of the quality and quantity of groundwater used for public water supplies," and
- 3) "supporting maps, diagrams, charts, descriptive material and reports necessary to explain and supplement the above elements."

The County is also required, under the Growth Management Act described in RCW 36.70A.170(1), to designate resource lands—including agricultural, forest and mineral resource lands—and critical areas.

As discussed in the following, the current draft of the Comprehensive Plan fails to comply with these requirements by: 1) failing to fully identify the "standards of population density and building intensity for various areas" under its land use classifications, 2) failing to provide for the protection of the quantity and quality of

groundwater, and 3) failing to protect critical areas, in particular, important groundwater resources and critical aquifer recharge areas.

Although the 2013 Comprehensive Plan and Map have been improved with regard to designation of resource lands, compared to the previous 2010 Revised Plan, and we are pleased to see the inclusion of a Methow Valley More Completely Planned Area (CPA),¹ this latest plan revision raises significant new issues. Our major comments and concerns are enumerated in the following:

1. The Plan fails to fully identify the “standards of population density and building intensity” as required under the Planning Enabling Act and should clarify the lot sizes and densities assigned to all land use classifications

Principal among our concerns with this latest draft of the Plan is the omission of references to specific lot sizes and densities associated with the land use designations. All former rural designations have been consolidated into one “Rural” classification with wide-ranging but undefined potential densities. (It now includes what had been designated Rural High Density² and Rural Low Density³ in the 2010 Revised Plan.)

In addition, no lot sizes are specified for Forest or Agricultural Resource Lands. Only in the Methow More Completely Planned Area (formerly the Methow Review District) and unincorporated towns⁴ does the Plan indicate what densities and zoning we might expect (no change from current zoning).

Defining the lot sizes or dwelling unit densities that are to be allowed under different land use categories—the “standards of population density and building intensity” referred to under the Planning Enabling Act—is fundamental to comprehensive planning. The density discussions in the Plan, such as those under the chapters on Forestry, Agricultural and Rural Lands, are wholly inadequate to meet this basic standard. Descriptions for all three classifications are virtually identical (see pages 18, 20 and 23), written as follows:

“Residential uses are consistent with” (insert either Forestry Lands, Agricultural Lands or Rural Lands). “Lot sizes, setbacks, height restrictions, and other considerations are specifically addressed in the underlying zone, subdivision regulation, and other regulation as appropriate. The lot sizes and overall density allowed in underlying zoning should consider the following

¹ The terminology in the Planning Enabling Act is “More Completely Planned Area,” or MCPA. This Comprehensive Plan uses both “More Completely Planned Area” and “Completely Planned Area” (CPA) interchangeably. Throughout our comments, we have used CPA to refer to these local plans.

² Minimum lot sizes one acre or smaller only with clustering or planned development

³ Minimum lot sizes five acres or smaller only with clustering or planned development

⁴ Methow, Carlton, Malott, Loomis, Wauconda, Chesaw, Molson, Ellisford, Mazama, Monse, Nighthawk, and Havillah

criteria:

- Proximity to transportation system.
- Proximity to city centers.
- Availability of potable water and water delivery systems.
- Availability of fire protection, police, and other emergency services.

Minimum lots should be sufficient in size to allow compliance with on-site sewage disposal and the protection of potable water sources. Lots in areas served by a sanitary sewer system, and so designated by the Board of County Commissioners, will be required to be served by the sewer system.”

Similarly generic is the description for Rural Lands, found in Chapter 4 under the Purpose section (page 24), which reads as follows:

“The objective of the rural designation is to provide an effective inventory of land for residential and other uses while avoiding unnecessary conflicts.... A mix of residential densities should be allowed to provide an adequate inventory of housing sites for those seeking a rural lifestyle and to provide worker housing in proximity to employment providers.”

“Okanogan County is large in size and varied in topography and climate. For these reasons, lands in the rural designation will exhibit great differences in terms of its ability to support residential density and other land use activities. Underlying zoning and/or the review processes that support and implement this Plan must be established with consideration for the ability of the land to support the proposed land use activity.”

Such descriptions are too broad and nonspecific to promote a sense of what is being envisioned, or to be able to draw conclusions about how the classifications will be translated into zoning. In the Rural designation, for example, we have to assume densities will be anywhere from one home per acre up to one home per twenty acres, based on the current zoning and proposals put forward under the 2010 Revised Plan. This is an extraordinarily broad range of possibilities.

Equally concerning is the fact that there is no discussion at all about the housing densities or lot sizes we might expect in Unincorporated Towns and Neighborhood Commercial Centers (Chapter 5) or City Expansion Areas (Chapter 6). Oddly, it is only under General Planning Objectives (on page 12) that we learn the zoning in unincorporated towns will remain unchanged. Similarly, it is only in the draft EIS (on pages 13 and 14) that we learn that the Molson and Barnholt Overlays are to be removed, but that it is likely the zoning will remain the same in these areas because “the density criteria support” those densities (Molson is zoned for 20 acre lots and Barnholt for 2 acre lots). These proposals should be stated clearly in the discussion of densities under the appropriate land use classification in the Plan.

Without identifying densities or permitted lot sizes, it isn't possible to assess the impacts of the proposed Plan against the current plan or plan alternatives. The citizens of Okanogan County and local municipalities need to know and be able to evaluate what is being proposed and how it might affect them. They also need to have some indication of what the ultimate zoning designations will be. The proposed Plan, as currently written, is insufficient to serve as a basis for a new zoning ordinance and map.

2. The Plan fails to provide for the protection of the quantity and quality of groundwater

In spite of the requirement under the Planning Enabling Act to protect groundwater in the land use element of the comprehensive plan, no policies in proposed Plan address groundwater. One of the few statements that can be interpreted as potentially addressing groundwater, in addition to the consideration of "the availability of potable water" cited in the preceding, is the following statement (on page 24) in the chapter on Rural Lands:

"Underlying zoning and/or the review processes that support and implement this Plan must be established with consideration for the ability of the land to support the proposed land use activity. The ability of lands in the rural designation to support density and permitted/conditional uses will be affected by other bodies of required regulation such as Critical Areas Ordinance and Shoreline Master Program. This must be taken into account when the adequacy of land in the rural designation is reviewed."

Since Aquifer Recharge areas are to be addressed in the Critical Areas Ordinance (CAO), it might be assumed that the County's obligation to provide for the protection of the quality and quantity of groundwater would be addressed there. However, the most recent draft of the CAO failed to incorporate "best available science" or make use of the substantial body of scientific information available on the County's groundwater resources submitted by our organization and others. In addition, the CAO provided no real measures to protect groundwater resources.

Water for domestic use and for agriculture is critical to Okanogan County's future. Scarcity in the face of competing demands among new development, agriculture and fish have long been issues in the County, prompting closure of a number of sub-basins and severely restricting water withdrawals in those areas. MVCC and others have submitted testimony and documents to the County describing the location and characteristics of the County's groundwater resources, the serious limitations of those resources, existing examples of depletion, the acute vulnerability of the County's groundwater to surface sources of contamination, including contamination from septic systems at the one home per five acre densities under consideration in the 2010 Revised Plan, and the related threats posed to surface water resources and

fish.⁵ To date, the County has shown no evidence of responding to any of the water-related issues that have been raised or to the volumes of information it has been given.

3. To protect groundwater, the County should use information available through the local watershed planning efforts of the Methow Watershed Council and the Okanogan Conservation District to determine lot sizes and densities—especially in critical sub-basins.

The Methow Watershed Council (MWC) sent an important letter, dated June 14, 2011, to the County Commission regarding the 2010 Revised Plan (See Attachment E). In the letter, the Council informed the Commission that, based on scientific studies and estimates of water use and resource capacity, there is not enough water in much of the Methow Valley to supply existing lots—let alone the number of new lots that could be created through future subdivision.

Rather than repeat the comments and volumes of information on groundwater already provided by us and others, which remain relevant to the proposed Plan and which are included in our attachments, we want to highlight some of the salient points in this letter. The following are excerpts:

“The MWC suggests that you develop the Okanogan County Comprehensive Plan (Comp Plan) only after due consideration of our information on current use and anticipated future permit-exempt domestic and stock use based on existing lot sizes so that it supports zoning and development review processes responsive to this information. It would be counterproductive to propose, now or in the future, a Comp Plan which results in an over-allocation of permit-exempt use under WAC 173-548, the rule that currently restricts total permit-exempt groundwater withdrawals post 1977 in any of 7 reaches⁶ to 2 c.f.s.”

“...the MWC now has the capability to estimate the effect of current parcel size regulations and possible Comp Plan parcel size revision on the Methow’s available water supply as defined by WAC 173-548.”

“Assuming future build-out with no new parcels and existing parcel size regulations, 6 reaches would have water remaining in their reserves. The Lower Methow⁷ would exceed its reserve, leaving 1,092 presently existing

⁵ See, for example, Attachments A, B, C, D, E, F, G, H, J, K, L.

⁶ The Methow watershed is divided into seven subbasin reserve reaches, shown on the map submitted with this letter in the attachments.

⁷ The Lower Methow reach is one of the largest and extends south from Twisp and the Beaver Creek drainage to Pateros.

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.”

This information points to the urgency of addressing the issue of densities and groundwater resources in the comprehensive plan, especially in the Lower Methow and other areas where critical groundwater resource shortages loom. For example, studies associated with the Okanogan Conservation District’s efforts in the Okanogan River watershed have documented similar problems or potential future problems in the Joseph, Osoyoos, Salmon, Sinlahekin, Tunk and Omak subbasins.

4. We support development of CPAs,⁸ but they are not a replacement for a sound comprehensive plan

We support the development and adoption of More Completely Planned Areas (CPAs) as provided for under RCW 36.70.3409. However, CPAs are no replacement for a sound comprehensive plan. Given the brevity and incompleteness of the proposed Plan, it would be wrong to rely on CPA plans to flesh out the kind of details that need to be addressed in the comprehensive plan. Permitting the development of CPAs should not be used in place of adopting a more adequate comprehensive plan. Moreover, the criteria listed for determining where and when a CPA will be prepared leave too much uncertainty about the County’s commitment to doing them.

Asking for a petition “from a majority of landowners within the newly proposed CPA” (on page 32) in order to be considered by the County Commissioners for CPA planning sharply contrasts with, for example, the 15% of landowner signatures required for initiating a process to form a parks and recreation district in the Methow Valley School District. This requirement unnecessarily limits consideration of citizen-initiated efforts, particularly in an area with many absentee landowners, such as the Lower Methow.

⁸ RCW 36.70.340 states the following: “The comprehensive plan may also be amplified and augmented in scope by progressively including more completely planned areas consisting of natural homogeneous communities, distinctive geographic areas, or other types of districts having unified interests within the total area of the county. In no case shall the comprehensive plan, whether in its entirety or area by area or subject by subject be considered to be other than in such form as to serve as a guide to the later development and adoption of official controls.”

In addition, the requirement (on page 33) that CPA plans shall “not exceed the requirements of the Planning Enabling Act or those portions of the Growth Management Act applicable to Non-GMA Counties” is not necessary and open to wide variation in interpretation. It is within the County’s purview to determine, when presented with a proposed CPA plan, whether or not to adopt recommendations.

Finally, in the face of the critical water resource issues facing many areas within the County, including the lower Methow Valley and other subbasins facing severe water limitations in documents produced by the Methow Watershed Council and Okanogan Conservation District,¹⁰ it makes sense to prioritize doing CPA plans in these areas. Such critical water resource areas should be identified in the comprehensive plan together with a schedule and an explicit commitment to doing CPA plans in these areas.

5. The policies of the Methow CPA should be extended to incorporate the Lower Methow

The serious water resource deficits in the Lower Methow subbasin, described in the MWC letter referred to in the preceding, require urgent action. We recommend that the policies and guidelines outlined in the Methow CPA be extended to incorporate the Lower Methow as part of the proposed Plan. This will help to slow the subdivision of land and the creation of parcels in excess of water resource capacities. It will also help to preserve groundwater for existing parcels.

Ultimately, a CPA plan should be completed for the Lower Methow and should be identified as a high priority in the comprehensive plan.

An advisory group (the Lower Valley Advisory Group (LVAG)) meeting most of the requirements described (on page 33) for creating a CPA plan was formed for the Lower Methow in 2007. It served as a special advisory group to the County, with a County-funded facilitator. This was done as part of initial efforts to revise the comprehensive plan and resulted in a Lower Valley Plan. The planning process involved a diverse committee, adequate public notice and advertising, invitations to join the committee and produced vision statements, goals, policies and density recommendations with a record of votes by the committee on the issues. (See Attachment A, file named “Lower Valley Advisory Group Docs”) that could be included in the proposed Plan as a foundation for completing a CPA in the Lower Methow.

6. The Methow Valley More Completely Planned Area (CPA) needs to be made more consistent

¹⁰ Including but not limited to the Joseph, Osoyoos, Salmon, Sinlahekin, Tunk and Omak subbasins.

The section on the Methow Valley More Completely Planned Area has not been consistently updated to apply to the Methow Valley School District (the Methow Review District)¹¹. Many parts of it instead refer only to the Upper Methow Valley (Mazama area or Sub Unit A). This does not accomplish the county's goal, as stated in the plan, that "it is the intent of the County to continue to utilize CPA Plans for the Methow Valley.

This section needs to include definitions of the Methow Valley, the Upper Valley, and any sub-areas within it. The following terms should be defined, eliminated, or consolidated: Methow Valley, Upper Methow Valley, Upper Valley, Methow Comprehensive Plan, Upper Methow Comprehensive Plan, Methow Review District, Methow Valley Plan, MVMCPA, MCPA, CPA, Subunit A, Mazama Plan, Lower Valley, Lower Methow Valley. There needs to be a clear description of the boundaries—both in narrative form and on a map—so that people can understand what geographic area is covered by the Methow Valley CPA.

7. Other Comments

The following includes comments as well as additional discussion on topics described above.

Table of Contents. Page 1

The Table of Contents should include the Methow Valley More Completely Planned Area on pages 42 through 96.

Vision Statement. Page 5

The Vision Statement on page 5 should recognize the important role of agriculture in the county economy. The Washington State Employment Security Department has documented that the "agriculture and government sectors were, and will be for the foreseeable future, the main driving force of the Okanogan County economy."¹²

Planning Objectives. Pages 9-10

Planning objectives have been consolidated in the 2013 Comprehensive Plan, whereas they were incorporated under different sections in the 2010 Revised Plan. The rearrangement is confusing and, without numbers, the objectives are hard to compare with the previous document. It would be good to number the objectives.

Chapter 2: Existing Conditions. Pages 14-15

¹¹ Note on wording: For consistency and clarity, we are using the terms Methow Review District or School District 350, since these are the descriptions and boundaries covered by the existing comprehensive plan.

¹² T. Baba Moussa, Okanogan County Profile p. 4 of 6 (Washington State Employment Security Department: January 2009), accessed on Feb. 8, 2010 at: <http://www.workforceexplorer.com/article.asp?PAGEID=94&SUBID=&ARTICLEID=9420&SEGMENTID=3>

Table 1 of existing comprehensive plan designations and zones on page 14 is confusing and bears no relationship to the same table on page 12 of the previous 2010 Revised Plan. Furthermore, the table should be updated to show the 2013 Comprehensive Plan and Map revision for comparison—so that the public understands the implications of the 2013 Plan.

The Figure 1: Historical Population Data 1960-2000 and Table 1: Historical Population For Growth Management And Other Purposes on pages 14 and 15 should be updated to include 2010 population data.

Figure 2: Total Projected Population for Okanogan County 2000-2030 is blank. There is no projected population graph.

Chapter 3. Resource Lands. Pages 16-18

Improvements addressing our concerns have been made in designating Resource Lands, compared to the 2010 Revised Plan, in that designations now include extensive lands under private ownership. However, designation criteria are somewhat vague and require stronger definition. We also have concerns that language inserted regarding “exclusion criteria” and “de-designation criteria” are vague and potentially weaken designations. Finally, there are no recommendations or provisions for protecting resource lands. Any references to permitted lot sizes and densities in Resource Lands have been omitted. The 2010 Revised Plan referred to 20-acre minimum lot sizes in Forestry Lands. Limiting lot sizes and densities in Resource Lands is essential to prevent their loss as a vital source of employment within the County and will reduce pressure to convert these lands to strictly residential uses. Large minimum lot sizes should be established to sustain the viability of both Forestry Lands and Agricultural Lands of Long-term Significance.

Agricultural Lands of Long Term Significance. Pages 17-18

The Washington State Supreme Court has held the following:

“...agricultural land is land: (a) not already characterized by urban growth (b) that is primarily devoted to the commercial production of agricultural products enumerated in RCW 36.70A.030(2), including land in areas used or capable of being used for production based on land characteristics, and (c) that has long-term commercial significance for agricultural production, as indicated by soil, growing capacity, productivity, and whether it is near population areas or vulnerable to more intense uses.”

Designation criteria on page 17 somewhat follow the minimum guidelines for designating agricultural lands under WAC 365-190-050(3)(c)¹³ but should more

¹³ “(i) The classification of prime and unique farmland soils as mapped by the Natural Resources Conservation Service[.]” WAC 365-190-050(3)(c)(i).

“(ii) The availability of public facilities, including roads used in transporting agricultural products[.]” WAC 365-190-050(3)(c)(ii).

closely conform to the WAC. As written on page 17, the criteria in the 2013 Plan are awkward and incomplete. For example, designation on page 17 lists "tax status" but does not include the full statement written in the WAC which reads "Tax status, including whether lands are enrolled under the current use tax assessment under chapter 84.34 RCW and whether the optional public benefit rating system is used locally, and whether there is the ability to purchase or transfer land development rights."

In addition, designation criteria should include the definition under RCW 36.70a.030(2), which defines agricultural land as land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock, and that has long-term commercial significance for agricultural production."

Finally, the criteria should identify specific maps, documents, aerial photos and other sources used in identifying agricultural land, and how those sources are evaluated or interpreted in making the agricultural designations on the Plan Map.

Compatible Uses, Page 18

Page 18 lists the following compatible uses in Agricultural Lands of Long Term Significance: "Residential uses including all single family, extended family, and farm worker housing. The Farming Operations Disclosure will be required on plats creating new lots and site evaluations for existing lots." Please clarify and define what the Farming Operations Disclosure is and what it is intended to accomplish.

While low-density single-family residential development in agriculture areas is a compatible use, higher densities are not. Newcomers to the countryside often have little understanding of the business of farming or forestry. The conflicts between farmers and non-farm neighbors are well known. Lawsuits and the threat of suits can threaten viable commercial farming. The plan should include policies addressing these issues and show how it will deal with them. It should speak to the need for low-density zoning, defining a range of minimum lot sizes and other

"(iii) Tax status, including whether lands are enrolled under the current use tax assessment under chapter 84.34 RCW and whether the optional public benefit rating system is used locally, and whether there is the ability to purchase or transfer land development rights[.]" WAC 365-190-050(3)(c)(iii).

"(iv) The availability of public services[.]" WAC 365-190-050(3)(c)(iv).

"(v) Relationship or proximity to urban growth areas[.]" WAC 365-190-050(3)(c)(v).

"(vi) Predominant parcel size[.]" WAC 365-190-050(3)(c)(vi).

"(vii) Land use settlement patterns and their compatibility with agricultural practices[.]" WAC 365-190-050(3)(c)(vii).

"(viii) Intensity of nearby land uses[.]" WAC 365-190-050(3)(c)(viii).

"(ix) History of land development permits issued nearby[.]" WAC 365-190-050(3)(c)(ix).

"(xi) Proximity to markets[.]" WAC 365-190-050(3)(c)(xi).

measures to prevent the conversion of the County's agricultural resources to residential use and to preserve agriculture-related jobs.

Methow Valley More Completely Planned Area. Pages 42-96

We appreciate the County's efforts and provision of the mechanism provided by Chapter 7, More Completely Planned Areas, to accommodate the values, priorities, and goals of residents of the Methow Valley and of other areas within Okanogan County who may choose to do more localized planning.

We also appreciate that the section devoted to the Methow Valley CPA has been included in the body of the 2013 Plan, codifying the efforts of Methow residents over the past four decades to create a plan that reflects local values. The inclusion of this section is a reassuring confirmation of the commissioners' statements over the course of the comp plan revisions that they intend to preserve the protections and designations that have governed the Methow Review District since 1976, as codified in the two plans adopted by the commissioners as addendums to the county's comprehensive plan (the Methow Valley Plan of 1976 and the Upper Methow Valley Plan of 1989, revised in 2000).

Yet after reading the section on the Methow Valley CPA, we are concerned that the updating process for this part of the plan is incomplete. From the statement on page 32 ("It is the intent of the County to continue to utilize CPA Plans for the Methow Valley") and the introduction and other language in the CPA section ("The Methow Valley CPA covers an area previously described [as] the Methow Valley Plan including Sub Unit A of the Methow Valley Addendum to Okanogan County's Comprehensive Plan"), it appears that it was the intent of the commissioners to have this CPA section apply to the Methow Review District (Methow Valley School District 350), as in the current comprehensive plan.

However, after the introduction, much of the wording appears to describe only the Upper Methow Valley (also referred to as Sub Unit A or Mazama). Many of the references throughout the section are exclusively to Mazama, and other details, such as acreage, also do not encompass all of Methow Valley School District 350.

On page 49 in the current draft (May 16, 2013), under "Purpose and Scope," the plan reads, "In 1976, Okanogan County officials adopted the Methow Valley Addendum to the County's Comprehensive Plan. The Addendum addresses land use in all of School District 350 and included the area formally known as MVMCPA as one of four planning areas." The majority of the text throughout this section needs to be revised to encompass the entire Methow Review District and not only Mazama.

Other references, such as the 22,100 acres cited on page 43, are also inaccurate for the Methow Valley School District, which is about 200 square miles, or 128,000 acres, from Gold Creek to Mazama, the area covered by the Methow Valley CPA.

As one reads through the section on the Methow Valley CPA, the text becomes more confusing, because it alternates between references to the goals and conditions in the Upper Methow Valley and those in the Methow Review District.

Population data in the Methow Valley CPA chapter also need to be updated to use the most current numbers from the 2010 census. The statement that the Methow River is classified as class AA throughout the area of the Methow Review District is in error.

Rather than provide a line-by-line review of the Methow Valley CPA chapter, we propose convening a representative group of residents from the Methow Valley, including the Mazama Advisory Committee and Lower Valley Advisory Group, to work together to update the Methow Valley CPA chapter, in accordance with the provisions for more completely planned areas envisioned by the description on page 32, "to provide for land use planning at a sub-area scale, including the Methow Valley." This would ensure that the Methow Valley CPA section reflects current concerns and conditions and applies to Methow Valley School District 350, and the Lower Methow when added.

While the county has incorporated the two separate plans for the Methow Valley and Upper Methow as addendums to the previous comp plan, we agree that it is a clearer and a more effective planning tool to merge these documents into a single section to cover the Methow Valley CPA. This unified plan can address individual geographic areas where different conditions—in climate, vegetation, elevation or land use, for example—make more area-specific goals and protections appropriate.

We also reiterate MVCC's position, included in comments on previous drafts of the plan, that the area covered by the provisions and protections in the Methow Valley CPA section should be extended south to include the Lower Methow Valley. See, for example, the letter dated June 14, 2011, from the Methow Watershed Council (Attachment E). This letter describes the seven reaches in the Methow watershed and describes the boundaries of the Lower Methow reach as extending south from Twisp and the Beaver Creek drainage to Pateros. This is consistent with the guidelines for creating the boundaries of a more completely planned area, as described in chapter 7, as follows: "Logical natural and physical boundaries (highways, other CPA planning area boundaries, watersheds, etc.)."

Conclusion: We continue to find the comprehensive plan and map submitted in 2009 superior to recent plan revisions

The comprehensive plan and map submitted in 2009 was better, in most respects, than the 2010 Revised Plan or the 2013 proposed Plan. We provided testimony and submitted lengthy written comments documenting our concerns about the changes that were made to the 2009 plan during hearings on the 2010 Revised Plan. Most of

our earlier comments remain relevant to the issues presented by this 2013 proposed Plan, particularly in terms of protecting the quality and quantity of the County's groundwater.

We therefore incorporate by reference our comments on the previous drafts together with the comments of others who discussed similar or related concerns and raised issues we think are important. We also incorporate by reference, and include in our attachments, comments we made on the last version of the draft Critical Areas Ordinance (CAO) because the CAO is cited in the Final EIS on the 2013 Comprehensive Plan as a means of mitigating the impacts of development and of protecting potable water supplies. We believe the current draft of the CAO would not provide this protection, and our CAO comments explain this further.

We thank you once again for this opportunity to respond to the proposed 2013 Plan. If you have any questions about our comments or the attachments we have provided, please contact me. Our organization is more than willing to help the County improve the Comprehensive Plan in any way we can.

Sincerely,

Maggie Coon
Chair, Methow Valley Citizens Council

List of Attachments:

- ATTACH A. MVCC comments on the 2010 Revised Plan and EIS (3-12-11)
- ATTACH B. MVCC comments on the Critical Areas Ordinance, dated (4-23-12)
- ATTACH C. USGS Aquifer Map showing unconsolidated aquifers in Okanogan County
- ATTACH D. DOE Water Availability, Methow Watershed WRIA 48; and Okanogan Watershed WRIA 49) (August 2012)
- ATTACH E. Methow Watershed Council Letter to the Okanogan County Commission (6-14-11)
- ATTACH F. DOE comments on the 2010 Revised Plan and EIS (04-07-11)
- ATTACH G. Futurewise comments 2010 Revised Plan and EIS (4-27-11)
- ATTACH H. CELP comments on 2010 Comp Plan and EIS (4-8-11)
- ATTACH I. Bricklin comments on 2010 Comp Plan and EIS (4-8-11)
- ATTACH J. Salmon, Steelhead and Bull Trout Habitat Limiting Factors, WRIA 48 (7-18-00)
- ATTACH K. Okanogan Watershed Plan, Chapter 3, Recommendations

**ATTACH L. Dight comments on groundwater impacts of 2010 Revised Plan and EIS
2011-12**

ATTACH M. SEPA Handbook

ATTACH N. WAC173.200.030/Groundwater Anti-degradation policy.

Septic Permits by Type and Year

System Type	2010	2011	2012	2013	2014	2015
Community Sewage Systems	11	12	15	14	11	5
New Systems	173	176	142	166	196	160
Other/Holding/Chemical/Portable	5	2	2	6	12	6
Privy	6	9	11	21	4	12
System Repairs	62	71	55	67	90	53
Tank Only			2	3	3	5
Total	257	270	227	277	316	241

Source:

Environmental Impact Statement (Draft) Code Amendment 2015-1 OCC 17A Zone Code Appendix 10: Populat

	2016 Total	Average 2010 through 2015
1	69	13.6
2	1015	202.6
	33	6.6
3	66	12.6
	398	79.6
	13	2.6
6	1594	317.6

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Year	Average 2010 through 2012	2013 Total
2010	50	1
2011	50	2
2012	50	3
2013	50	4
2014	50	5
2015	50	6
2016	50	7
2017	50	8

2013 Total