

FEIS V: Response to Comments and Attachments

OKANOGAN COUNTY ZONING EIS

V. RESPONSE TO COMMENTS

1. OVERVIEW AND SUMMARY

Upon issuing the Environmental Impact Statement (EIS) March 2, 2016, the County received 190 Comments and thousands of pages of attachments.

Recurring themes had to do with the purpose of the document, the alternatives considered, and the ability of the County to protect environmental amenities (particularly ground and surface water quality and quantity and public safety from wildfires).

A misconception in a number of the comments was that the County had to account for every possible impact based on full utilization of all zoning. (See WAC 197-11-440 and the *Ullock* case cited in the materials). Such inquiry is appropriate for a site specific rezone in a limited area where possible impacts are readily identifiable but not required in the context of an area wide comprehensive plan and resulting zoning ordinance.

In the latter case, applicable to the County's current situation, the County followed the guidance of WAC 197-11-442:

(1)The lead agency shall have more flexibility in preparing EIS's on non-project proposals, because there is normally less detailed information available on their environmental impacts and on any subsequent project proposals. The EIS may be combined with other planning documents.

(4)**** The EIS's discussion of alternatives for a comprehensive plan, community plan, or other area wide zoning or for shoreline or land use plans shall be limited to a general discussion of the impacts of alternate proposals for policies contained in such plans, for land use or shoreline designations, and for implementation measures. The lead agency is not required under SEPA to examine all conceivable policies, designations, or implementation measures but should cover a range of such topics. The EIS content may be limited to a discussion of alternatives which have been formally proposed or which are, while not formally proposed, reasonably related to the proposed action.

Okanogan County embarked on a review of its land use plans in light of material changes in the employment population and other factors since the 1960s (when the original Comprehensive Plan had been written) and the 1990s (since the Methow Valley Review District plans and codes were developed in response to the demise of the major resort proposed for the upper valley).

It is important to understand that there was no assumption that the existing plans were inappropriate or not working, but rather in light of the many changes over the past 50 years that a closer look was required. Attachment 4 to the EIS provided a statistical summary of the population growth and patterns of new development evidenced by building permit activity. In response to a number of questions raised about how that review would be reflected in future choices, examples of typical patterns of development for a variety of different uses is enclosed as Attachment 1.¹

A number of factors would go into the County's considerations, including population, existing patterns of development and evidence or lack thereof that historic zoning patterns resulted in environmental distress, particularly on water quality and quantity and agriculture; changes in regulatory requirements, and the tools available to the County to manage that growth in the future including environmental considerations.

It was not the purpose of an area wide EIS to assess all theoretically possible consequences of development to the fullest extent possible under any zoning scenario as suggested by some commentators, but look at the reasonable ranges of growth alternatives, and determine whether the current zoning patterns and choices required or warranted changes.

The goals of the County plan are set forth in the new Comprehensive Plan adopted in December 2014 which needs to meet the requirements of Chapter 36.70.330 which look to:

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.

RCW 36.70.330(1)

Protection of water quality and quantity are also required elements of the section.

The purpose of the proposed zoning ordinance under review is to implement the plans and goals set out in the Comprehensive Plan consistent with the requirements of RCW 36.70.330 above and, where necessary, to identify changes or other mitigating

¹ Historic Development Patterns Under Prior Code 1-30

measures where a potential exists for a "significant" impact in the environment as a consequence of the zoning decision considered in developing the update¹

In the context of an area wide rezone such as that undertaken by Okanogan County, the potential alternatives for zoning patterns are unlimited. For this reason, the process was to look at the existing zones in place, the historic patterns of development, and population dispersal to determine (1) are there areas where the current zoning was providing significant environmental impact and (2) are there areas where changes were warranted given both past experience and projected population changes

A number of comments addressed the need to consider other alternatives. In undertaking the historical review, the major choices by the County included those listed below:

- o The need for change, if any would be tied to two factors, the population growth expected to be accommodated in the rural areas of the county for the pertinent planning period and the historic consequences of growth under the current patterns of development to see if any of the existing programs gave rise to any systemic issues of environmental protection not addressed by official controls at the project level.
- o The first inquiry is retaining the present zones (for which the base density was the Minimum Requirement District) and the specialty zones (in the Methow Review District). This is the "no action alternative", and was adopted for the Methow Review District and for the lands under tribal jurisdiction.
- o For areas in close proximity to major transportation routes and where historic patterns of development under the Minimum Requirements District, commentators suggested much lower density (larger minimum lot sizes) would be necessary to protect the environment.
- o In reviewing historic patterns of development in the Minimum Requirements District, (illustrated by Attachment 1 numbers 4-12, 17-22) it can be seen that the historic patterns allowed a diverse combination of uses with no evidence in the record of material adverse environmental consequences as a result of

¹(1) "Significant" as used in SEPA means a reasonable likelihood of more than a moderate adverse impact on environmental quality.

(2) Significance involves context and intensity (WAC 197-11-330) and does not lend itself to a formula or quantifiable test. The context may vary with the physical setting. Intensity depends on the magnitude and duration of an impact.

The severity of an impact should be weighed along with the likelihood of its occurrence. An impact may be significant if its chance of occurrence is not great, but the resulting environmental impact would be severe if it occurred. WAC 197-11-794

- the variety of densities and uses allowed in the Minimum Requirements District and the Methow review district.
- The County had a number of examples of development on larger lots (five acre tracts) close to centers of commerce and facilities and note that the large lot pattern consumed significant acreages to serve a relative small number of people with the attendant increase in roads traveled and open space occupied to serve the larger area. (See Attachment 1 Item 1 Studhorse Mountain near Winthrop, Illustrations a, b and c.)
 - When comparing the flexibility and multiple uses available in the smaller lot Minimum Requirements District versus the conflicts created if homes in that area were forced to develop on five acre tracts the record show a benefit in the use of smaller lots to accommodate a wide variety of uses using only the lands necessary to meet health and safety requirements and not the excessive lands required if the uses were forced on five acre tracts. (Compare Attachment 1, Item 1, a, and b, with Attachment 1, items 4-11).
 - In areas away from major transportation facilities, where one acre lots were allowed, the County's review of historic practices showed that five acre tracts and larger were the preferred mode of development and sale. (See Attachment 1, illustration 23 and 24). For this reason expanding the minimum lot size to five acres and larger was considered a reasonable choice.
 - In areas away from transportation corridors, where the patterns of development were on larger lots, the development did consume more lands, and did require greater road networks to service the homes, but the developments typically did not compete with either forest or agriculture activities and provided an option to the vacation, retirement and resort communities which filled a need in the community. Further there was no evidence of a material impact to water quality and water quantity from the historic development on five acre tracts and larger.

As a consequence of the review of historical practices, the County concluded that the historic patterns of land use distribution and allocation had permitted a variety of necessary uses to be located without material adverse environmental impact and served to provide both flexibility and affordability to serve the needs of the widely dispersed populations. This allowed the Planning Commission and Board of County Commissioners to view the merits of retaining the old zone in areas (the no action alternative) or making changes to reflect current development patterns where changes were desired without the concern that the land use patterns allowed would cause material environmental impacts by the fact of the allowed uses. In coming to this conclusion the Responsible Official makes the following conclusions:

- Throughout the County review there was no evidence that the array of uses and densities allowed in the prior codes created a significant strain on the environment by reason of the allowed array of uses and the allowed lot sizes.

Environmental impacts were to site specific issues such as tight soils or limited water availability.

- The distribution of a growing population throughout the rural areas in a county the size of Okanogan is primarily a personal choice based on the county features which attract new development. For some it is proximity to family, others proximity to work and/ or proximity to recreation and relaxation. The Land Use Plan has little control over personal choices, but can accommodate the wide variety of needs through a use of rural zones based on lot size.
- For a base density, a pattern of smaller lots (typically one –two acre in size to meet minimum on-site septic requirements), medium density lots (five acre lot size) and a very low density (twenty acre lot size) provides a wide array of opportunities to the public.
- The ability to achieve specific results within the base zone can be provided by a host of lesser zones, or opportunities within the base zone to seek a special or conditional use permit.
- The problem with attempting to be more specific than the current codes through the creation of a series of more detailed requirements and limits in individual uses is that the County must guess which sites are suitable for what uses without the knowledge or background to make that determination in advance. A simpler form of regulation and one recommended is a program of a few well identified base zones and to allow supplemental uses within the base zones subject to controls through the County official control mechanisms to address site specific issues.
- Water consumption per new household is not a function of lot size, but rather the population and use of the home, though larger lots tend to have larger gardens and other water consuming activities
- On-site septic systems are the primary source of waste water discharge which does have some recharge benefits to the aquifer after treatment through the system which is highly regulated and controlled by both State and Health Department regulations. Here again it is the quality of the soils and proximity to ground and surface water which determine suitability eligibility and type of on-site systems to be used not lot size.
- In its review of existing systems, the County identified no pattern of development on small, medium or larger lots which created groundwater quality problems.
- Cost is a function of lot size and as the County is addressing affordable housing issues there is an advantage for smaller lots to address affordable housing issues.
- Large lots in the more rural areas may intrude on undeveloped lands and wildlife, but a majority of county lands are already under public control and the Department of Wildlife has an aggressive program of land acquisition in areas where they have identified a specific need. (See Attachment 2). The limited large lot developments historically occurring in the county tend to occur in

areas already occupied by some form of development or incrementally adjacent to such uses and has not been shown to have a material adverse impact on the use of the lands by wildlife. Alternate forms of housing, including accessory units (promoting more affordable housing) and vacation rentals (promoting more accessibility for tourists) were also concerns reviewed in developing the new plan

- o Medium density and large lot density do have the disadvantage of requiring more roads and consuming much more land for the population to be served and are best limited to areas away from population centers and transportation where smaller lot development allows more population to be accommodated in closer proximity to transportation and services.
- o Transportation impacts of a given home will be comparable without regard to lot size, but smaller lots will allow new development to be clustered more closely while larger lots typically require more roads and more distance to serve the same population.
- o The current minor or specialty zones were reviewed to see if a change was warranted and if not, the status quo was the preferred approach. No evidence was that these smaller or specialty zones had generated any threat of actual or potential significant environmental impacts and as such no material changes were required to address environmental issues.
- o Increasing opportunities within the neighborhood commercial centers encourages clustering new development , at higher densities where services are already available, and site specific issues are addressed through official controls
- o Enabling legislation for resource use was evaluated to assure that the program would maintain resource industries and programs in place and make sure conservation of resources were adequate or whether additional regulations would be required.
- o A wide variety of suggestions were made during the comment period on the zoning ordinance. Suggestions were considered to see if they provided a benefit not present in the current code or necessary as a legal requirement. They were also evaluated to see if they addressed problems which in fact exist or simply added to a regulatory complexity and burden in a county where populations are widely dispersed.
- o There is always a tension in any land use regulation between protecting the status quo and enabling new and additional uses into an area. Recognizing the need to use official controls to protect required environmental values, the recommended program is designed to support opportunity, affordability and flexibility in a simple and understandable program.

The conclusion reached by the County review was that the pre-2014 ordinance served the needs of the County in terms of general array and opportunities and the record did not show the historic program placed significant environmental impacts on the community. This conclusion was drawn from looking at the patterns of development

and dispersal throughout County as reflected in Appendix 4 to the EIS among others. The patterns identified showed there was a demand for development in all areas of the County, some close to urban areas, others more remote, and for the most part the pace and patterns of development envisioned in the pre-2014 zoning code served the County well. Additionally, the review showed a lack of significant environmental impact as a result of that historic pattern of development evidenced in the pre-2014 code. (Prior codes or lack of regulation had allowed some development at densities and intensities which would not be allowed in current conditions, but the rights therein are vested and environmental issues from new development on those lots had to be addressed through building and development codes which is the current practice).

The review also showed that while agriculture was a mainstay of the current economy many practices were changing, and the County was developing a growing tourist based economy which portended a different pattern of growth focusing on recreational and retirement related activities different from when the County was reliant on a manufacturing and forest product/mill type economy and orientation.

From this review a number of preliminary conclusions were apparent:

1. The historic zoning patterns, Methow Valley Review District for the upper Methow Valley and the Minimum Requirements District for the remainder of the county as they existed in 2014, had significant public support in the areas where they were applied.
2. The review showed no inherent elements of significant environmental impacts as a result of the patterns of development authorized under the prior code as it existed in 2014.
3. Alternative patterns of land development had been explored in detail in the more than a decade that review proceedings were under way (see e.g. Okanogan County Comprehensive Plan update (Current draft as of June 15, 2005) "A balance of: accepting responsibility for our future by honoring the past, respecting our rights and managing our resources." (Copy on file).
4. The document provides a detailed discussion of land characteristics and a wide variety of proposed goals and policies which are all part of the County's records and profile and considered for long term development.
5. Over the course of several elections and numerous public proceedings, the questions as to how the visions of such a plan were to be achieved and whether such a detailed enumeration was essential, was discussed in detail.
6. In the end, a political consensus was reached. While the technical material and descriptions were generally accurate and useful for background information and considered in the adoption of the final plans, a simpler approach to the ultimate planning documents and official controls would better serve the County's ultimate goals and objectives. These goals and objectives were finally expressed in the plan adopted by the Board of County Commissioners in December 2014.

7. The proposed draft, with its reliance on historic patterns of development would allow continuity and simplicity in regulation which is also considered a benefit of retaining the old patterns over having to educate the public about a new and more complicated program to achieve the same goals.
8. The conclusion reached after the years of review was that the environmental issues in the County, where they did arise, arose not from the land allocations of the prior zoning code, but from changing regulations and the need to assure proper enforcement.
9. The EIS that was prepared provided a detailed review of population assumptions, the dispersal of that population throughout the County, and the projected growth of both permanent and transient populations throughout the County, and provided the Planning Commission and Board of County Commissioners with information with which to evaluate the proposed land uses, and make a final decision on the ultimate plan.
10. The conclusions reached from this review was that the pattern of historic uses and land allocation throughout the County did not have a significant adverse impact on the county's environment, and that in most places, particularly the Methow Valley Review District (which had overwhelming popular support), the plan adopted in December 2014 was working well.
11. In many other places, governed by the Minimum Requirements District, there was very little call for change, and most that occurred arose out of concerns for fire safety, water quality and quantity, which will be addressed in more detail below
12. Many of the technical elements of the code in terms of specific requirements should be updated to reflect current practices. Certain conflicts and areas where the plan was unwieldy were recommended for change. Copies of the old ordinance and the proposed new ordinance were included in the DEIS for readers to comment on any changes, and some technical comments were received.
13. On the technical side it was the issue of regulation of nightly rentals and Marijuana/Cannabis growing that attracted the greatest attention. Through the course of the Planning Commission review, additional changes from the text included in the DEIS were made to deal with those issues. The Planning Commission also made changes to update definitions with respect to exempt wells to help clarify the changing regulations in that area which was a topic of significant concern.
14. Copies of the Planning Commission changes to the ordinance since the publication of the DEIS are included in the FEIS. The Responsible Official has determined that the recommended changes do not increase the probability of significant environmental impact and has determined that no supplements to the EIS are required to address probable impacts of the changes.

15. A key element of the environmental review was an examination of the County review processes to see if they were adequate and appropriate to the issues which may arise in response to specific development proposals. The major changes here were to add definitions to alert the public to the limitations of exempt wells, which was a source of concern to both public agencies and the public as a whole. While these practices are embedded in State law and State Court cases and are being implemented in current project reviews, it was considered helpful to address the definitions specifically to alert the public to this rapidly changing field.
16. The Planning Commission has concluded their review, and the changed recommendations to the BOCC are enclosed in the FEIS. The responsible official has reviewed the proposed changes and has concluded that none created a potential for significant impact from an alternative point of view and that no additional supplement is required. No substantive action will be taken by the BOCC with respect to the ordinance under review until 7 days after the official release of the FEIS

Specific concerns

The purpose of this response is to outline and address the specific concerns raised in the comments received from an environmental perspective and to recommend changes, if required, to more properly address the issues raised as provided in WAC 197-11-560.

The Comments received addressed a number of common concerns which can be addressed as follows:

1. Densities are too high.
2. The County cannot protect water quality and quantity as a result.
3. The County has failed to properly protect agriculture resource lands.
4. The County has failed to adequately regulate Marijuana/Cannabis growing facilities/the County is at risk of overregulating Marijuana/Cannabis growing facilities.
5. The County has failed to consider consequences of expanding nightly rentals/the County needs to address the need for more nightly rentals.
6. The County has failed to respond to wildfire concerns.
7. The County has failed to address required items under WAC 197-11 EIS content.
8. Agency and Tribal concerns

9. Concerns raised by Futurewise

The County has elected to address most of these concerns by topic. Issues raised, but not covered, were considered comments concerning technical details in the ordinance, however these technical matters did not rise to the level of "reasonable probability of more than a moderate impact to the environment" and therefore need not be addressed in the FEIS comment response.

In addressing this concern, the County considered a variety of factors including:

- The population and anticipated population increase to be served by the new zones.
- The current dispersal of the 26,000 people who live in Okanogan County (about 60% of the total population).
- The level of development activity in the County in the past few years, and
- The expected dispersal of the new population. All of this was captured in the appendices to the EIS particularly Attachments 4 and 10.

In concert with WDOE, the County reviewed updated water regulations for exempt wells to make sure its practices were in conformance with the language in the Code and reflected the update.

In concert with WDOE, the County reviewed the onsite sewer regulations and requirements to assure that those were adequate for the location and operation of onsite sewer systems which are the primary means of waste water disposal.

Finally the County considered the historic zoning patterns under the prior code and made adjustments based on historic trends which indicated that the more rural areas set two miles or more from major transportation routes did indeed develop at lower densities than historically allowed and as a result downzoned more than 430,236 acres from residential one unit per acre to one unit per five acres.

In developing a recommended zoning portfolio for a community, the County has an unlimited number of options and alternatives. Okanogan County is a rural county that is sparsely populated and its economy is tied to both agriculture and tourism. The concern was to achieve a balance which supported both industries and provided the greatest degree of flexibility to respond to a shift in tastes and needs while assuring environmental values would be met. As a consequence, there were often competing demands by those in a given community based on personal preferences. The environmental review was designed to assure that the choices made to serve other interests were also environmentally responsible. With regard to density, lot size, water quantity, and water quality, the following responses address the concerns raised during the EIS review process.

A. CONCERN: THE COUNTY HAS NOT ACCOUNTED FOR FULL BUILDOUT AND VASTLY UNDERESTIMATES POPULATION GROWTH.

RESPONSE: The County based its population assumptions on OFM projections which are consistent with historic trends and is the proper bases for measuring "reasonable" probable impacts.

1. The first point considered in evaluating density alternatives is not the density allowed by zoning but rather the population growth and resulting development increase which will determine both the potential demand for water consumption and disposal and provide a framework for evaluating the reasonable probable impact of consumption and discharge anticipated by that population increase under the new code. With that information the County could then address the regulatory system, under whatever combination of densities allowed and address the ability of the regulatory controls to deal with water quality and water quantity and other environmental issues raised by that projected growth.

2. For this reason, the County's first inquiry was the potential for population growth as a marker for the new residential demand for water and for potential land consumption due to new development occurring under the zone code. A number of sources for population increase were considered, but the most reliable from the County's point of view was the population estimates for the state and each county put out by the Office of Financial Management (OFM) for purposes of GMA growth management.

3. For Okanogan County the "Intermediate Growth Scenario" from the 2012 report was selected by the Board of County Commissioners based on the statewide study and analysis showing a projected population gain over the 30 year period from 2010 to 2040 of approximately 4,500 persons. This report also shows a summary of anticipated births, deaths and migration. (See tables and charts in attachment 4). The intermediate scenario corresponded with County tabulations and was deemed the most reliable for measuring potential impact.

See: http://www.ofm.wa.gov/pop/gma/projections12/GMA_2012_county_pop_projections.pdf.

OFM projection updates to be published in June 2016 appear validate the County's growth assumptions. See attachment 4

4. The Department of Labor and Industries County statistical tables showed a sixty/fourty percent split between county and city residents respectively.

See: <http://fortress.wa.gov/esd/employmentdata/reports-publications/regional-reports/county-profiles/Okanogan-county-profile>.

While year to year the numbers may change, no material difference is expected in the overall ratio for the next five years. The County also assumed that historic

trends would continue with a certain percentage of the population continuing to live in cities and the same would be true for the rural areas.

The county's population allocations in Appendix 10 were questioned so additional approaches to estimate the realistic rate of growth in the county over the next five-year period were revisited:

- Percent of population living outside of incorporated cities--60% (Attachment 4)
- Population per household--2.5 From the US Census (for 2009 – 2013), Okanogan County has 2.48 persons per household. The state average is 2.54 persons per household.
- Population split between existing households and new households 50%
- Projected growth from 2015-2020--579 people (See OFM population summary Attachment 4)
- Assume 62% to rural areas (352 people) outside of cities for review purposes
- Assume 2.5 persons on average per household and 50% will build new homes in the county ($352/2.5 \times .5 = 70$) new homes county wide over a five-year period, or less than 15 new homes per year county wide to accommodate the anticipated population.
- DEIS Appendix 10 concluded that 10-20 new permanent homes would be constructed county wide annually. With vacation homes included, that number could be as much as 33-62 new homes per year. (Column G was miscalculated but if you follow the formula in the caption the number of anticipated permanent homes is 45 with rounding and the total with vacation homes is 95-150 in a five year period or very similar to the average shown on the alternate calculation attached (32-62 on average).
- The County provided an alternate calculation to confirm the base assumptions about growth and new demand for housing and development based on population growth and those numbers coincide with the assumptions in the EIS. (See attachment 5)
- The EIS was consistent in its assumptions about the possible pace of growth based on population figures from OFM and using historic trends to determine where growth might occur.

Population trends can change, and a material change in the rate of population growth or the pattern of development and dispersion could change over time, though no material forces are presently evident to assume that historic trends are not a proper basis for measuring impact.

5. Once the county total population growth was identified, the County looked at eight different districts to determine the nature and pace of growth in smaller units tied to the eight primary school districts in the County. That information was tabulated in DEIS Appendix 4. In addition, the County looked at building permit activity and population growth in each of the districts for historical comparisons, and then projected total population growth and "new residential development" anticipated in each district, including vacation rentals. (See DEIS Appendix 10).

6. For environmental purposes the County deemed the population projections for the next five years to be a reasonable assessment of the residential related growth impacts including new development, births, deaths and migration (existing houses sold vs. new construction) for the next five years.

7. For mitigation purposes, the County has undertaken to review the population assumptions every five years; the first review after the 2020 decennial census is issued and then mid census projections from OFM, to assure that the assumptions behind the zoning patterns remain reasonable. This periodic review is a measure of control which provides opportunity for corrections or the adoption of other official controls if other factors, such as climate change, population growth, rate change or regulatory change, warrant revisiting the assumptions behind the current code and making changes as circumstances warrant.

B. CONCERN: THE COUNTY LAND ALLOCATION IS TOO DENSE AND WILL CAUSE ENVIRONMENTAL DEGRADATION

RESPONSE: The historic patterns of development showed no evidence of systematic material environmental impacts as a result of the land use allocation and array of uses historically allowed.

1. Once the population pressures that need to be addressed have been identified, the next issue in a zoning review is how that population would be accommodated throughout the landscape. Okanogan County only has 10% of the land in private ownership (see comp plan page 4). With slightly more than 26,000 people in the County outside of incorporated areas in 2015 residing on over 850,000 privately owned acres, the density of the County is one of the lowest in the state.

2. Looking at historical trends, the areas seeing the most development pressures were continued at the Rural High Density zone of one unit per acre, the same density allowed for the prior 37 years under the minimum requirements designation of the old code. This is the R-1 zone shown on the proposed county zoning maps.

3. The Rural 5 designation was identified for those areas which had previously been designated as one unit per acre, but where the historic lot size

development pattern had been one unit per five acres or greater. So for those lands so designated there was a material down zone but one which was anticipated to have little difference in practice.

4. The projections in DEIS Appendix 10 represent the County's best estimate of how new development is likely to occur, following historic trends and as such the analysis of the impact of the zoning ordinance should initially look at the impacts of those trends over the next five years. As noted above a "fresh look" identified a similar result using a different approach and correcting for a mathematical error in column G which has now been corrected.

5. The annual growth rate for new homes would average about 30-50 new homes per year throughout the County assuming the historic rate of 2.5 persons per home. While more rural growth is expected in some districts (Methow and Oroville) rather than others, the historic building permit data including new homes, major remodels, barns etc., show a wide dispersion which is expected to continue.

6. Where the maximum new growth is anticipated at less than 10-15 units per year in each of the districts and even double that in some districts in active years, the question faced from a zoning impact point of view is whether the densities allowed make a material difference in water consumption and water disposal. The answer is none or very little.

a. A single family home with a given family size is expected to use the same amount of water on a one, two or five-acre tract. If anything, consumption on a five-acre tract may be larger because of the tendency to have livestock or large gardens which may consume additional water on larger parcels which is not practical on smaller one and two acre lots.

b. This historic trend identified to decision makers in DEIS Appendix 4 and 10 shows that historic population growth and related development in rural areas tends to be dispersed. Looking at building permit activity which includes new accessory structures such as barns, major remodels and rebuilding of structures destroyed by fire, the array shows that the pattern is for wide dispersion of new growth depending on personal preferences.

c. The review of the adequacy of the County program to address environmental concerns about over-appropriation of water or the ability of the system to accommodate growth related effluent and other impacts was tied to this evidence of development patterns without concentrated growth in any given area.

C. CONCERN: THE ZONING PATTERNS UNDER REVIEW WILL CAUSE MATERIAL WATER SHORTAGES AND CANNOT BE SUPPORTED BY LAWFUL WATER.

RESPONSE—The County is following state requirements for the review and approval of development using state waters, exempt or otherwise, and the record does not support the contention made.

1. The concern in any program allocating new development is whether there is adequate water to serve the proposed development and whether the water treatment systems would be adequate to address the issue.

2. As requested by the initial correspondence from WDOE, Okanogan County did contact WDOE about the adequacy of the current HOH/County Health Department regulations to address water quality as a result of septic tank development. The County was assured by WDOE that the current regulations are considered adequate and appropriate for the regulation of on-site septic tanks serving new development through the wide range of conditions found throughout the county. (Currently two acre sites required for onsite well and septic.) (See generally State and County regulations governing the siting and approval of septic tanks found at Board of Health Resolution 2001-07, Attachment 6.

3. A specific limitation on any new development is the availability of water for domestic use. The State maintains regulations on the use and availability of water in specific watersheds including the Methow and Okanogan Rivers (WRIA 48 and WRIA 49 respectively) (See WAC 173-548 and WAC 173- 549). The limitations contained in these regulations include the identification of closed basins to withdrawals from aquifers hydraulically connected to the local tributaries (See list at WAC 173-548-050 attached for example).

4. The Methow Valley Watershed, the Methow River has been divided into seven reaches, in which WDOE has identified 2 cubic feet per second, as surface water available for withdrawal to serve domestic and agriculture use. This provision has often been misunderstood as prohibiting new ground water withdrawals. Such understanding is incorrect however, in that a further provision of WAC 173-548 specifically provides:

“Ground water”: If it is determined that a future development of groundwater measurably affects surface waters subject to the provisions of chapter 173-548 WAC, then rights to said groundwater shall be subject to the same conditions as affected surface waters.”

WAC 173-548-060 (Attachment 7)

5. As Futurewise has pointed out, WDOE keeps extensive records on exempt wells, including wells in Okanogan County, yet with all of that data, to date the County has not been advised that any type of moratorium is warranted. The WDOE comments (number 23) were more directed to assure that the County is enforcing the requirements of RCW 90.44.050 which provide:

Permit to withdraw.

After June 6, 1945, no withdrawal of public ground waters of the state shall be begun, nor shall any well or other works for such withdrawal be constructed, unless an application to appropriate such waters has been made to the department and a permit has been granted by it as herein provided: EXCEPT, HOWEVER, That any withdrawal of public ground waters for stock-watering purposes, or for the watering of a lawn or of a noncommercial garden not exceeding one-half acre in area, or for single or group domestic uses in an amount not exceeding five thousand gallons a day, or as provided in RCW 90.44.052, or for an industrial purpose in an amount not exceeding five thousand gallons a day, is and shall be exempt from the provisions of this section, but, to the extent that it is regularly used beneficially, shall be entitled to a right equal to that established by a permit issued under the provisions of this chapter: PROVIDED, HOWEVER, That the department from time to time may require the person or agency making any such small withdrawal to furnish information as to the means for and the quantity of that withdrawal: PROVIDED, FURTHER, That at the option of the party making withdrawals of ground waters of the state not exceeding five thousand gallons per day, applications under this section or declarations under RCW 90.44.090 may be filed and permits and certificates obtained in the same manner and under the same requirements as is in this chapter provided in the case of withdrawals in excess of five thousand gallons a day.

RCW 90.44.050

6. While Futurewise points to a 2010 program involving a development known as "Silver Spur", as an indication that the County does not follow the rules, that case resulted in an agreement with WDOE and a clarification of the exempt well rules in similar cases which has since been followed by the County. (That development was allocated 11 residences on its exempt well and was required to secure a water right/water system to serve any additional development) (see development agreement attachment 8).

7. The statutory and case law rules limiting the use of exempt wells on development related projects are rules which Okanogan County has since been enforcing.

a. At the plat level: "A proposed subdivision and dedication shall not be approved unless the city, town, or county legislative body makes written findings that: (a) Appropriate provisions are made for ..., potable water supplies, sanitary wastes ... RCW 58.17.110(2), Clarified in *Knight v. City of Yelm*, 173 Wn.2d 325, 267 P.3d 973 (2011) to require the determination

to be made at the time of plat approval. (For examples of the County's program see the approval requirements in the 2011 approval of the plat Nordic Village (Attachment 9) approved after hearing on the merits by the Okanogan County Superior Court, Judge Burchard, (See copy attached) upheld in the Courts by the Court of Appeals. See, *Gresh v. Okanogan Cty.*, 178 Wn. App. 1012 (2013); review denied 183 Wash.2d 1018, Wash., Sept. 02, 2015.

b. On existing lots an applicant for a building permit involving use of a new or existing well must demonstrate a lawful source of water which has been the regular practice of the County Health Department which is charged with enforcing the provision at the building code level.

RCW 19.27.097(1).

c. Okanogan County has adopted new language to alert the public to those requirements and has included the following language to comply with the *Campbell and Gwinn* decision and subsequent clarifications.

17A.020.353 Exempt well

"Exempt well" An exempt well is a well serving residential, landscaping, commercial /industrial and stock watering uses and is limited as authorized pursuant to RCW 90.44.050 within a "project" as outlined in the Court decision in *Campbell and Gwinn v. WDOE*.

17A.020.713 Project

"Project" for exempt well purposes is any division of land by short plat, subdivision or segregation of lands for the purposes of development after the adoption of RCW 90.44.050 consistent with the Court decision in *Campbell and Gwinn* which occurs at one time or as part of a common scheme or plan. In such cases the limitations of RCW 90.44.050 are applicable to all properties within the "project".

d. The Court of Appeals has clarified the provisions and responsibilities of the County noting the Supreme Court has made it clear that it is a county responsibility to assure an adequate and lawful source of water. As noted, discussing a Kittitas County decision in which the Supreme Court dealt with the issue of water availability directly the Court of Appeals recently stated as follows:

The Supreme Court held that the Board properly interpreted the GMA's mandate to protect water "to at least require that the County's subdivision regulations conform to statutory requirements

by not permitting subdivision applications that effectively evade compliance with water permitting requirements.”⁴¹

Whatcom Cty. v. W. Washington Growth Mgmt. Hearing Bd., 186 Wn. App. 32, 47, 344 P.3d 1256, 1263 (2015), review granted sub nom. *Hirst v. W. Washington Growth Mgmt. Hearing Bd.*, 183 Wn.2d 1008, 352 P.3d 188 (2015).

That Court further pointed out that it was conformance with and not contradiction with the WDOE regulations which marked a lawful county program and that a county need not conduct an independent review of availability.

“It further [the Supreme Court in the Kittitas Decision] explained: While Ecology is responsible for appropriation of groundwater by permit under RCW 90.44.050, the County is responsible for land use decisions that affect groundwater resources, including subdivision, at least to the extent required by law. In ⁵¹ recognizing the role of counties to plan for land use in a manner that is consistent with the laws regarding protection of water resources and establishing a permitting process, we do not intend to minimize the role of Ecology. Ecology maintains its role, as provided by statute, and ought to assist counties in their land use planning to adequately protect water resources. [54]¶ 39 Thus, the Supreme Court in Kittitas anticipated consistent local regulation by counties in land use planning to protect water resources. This necessarily contemplates proper cooperation between Ecology and counties regarding the protection of such resources.¶ 40 Here, under the County’s regulations, it will only approve a subdivision or building permit application that relies on an exempt well when the well site “does not fall within the boundaries of an area where [Ecology] has determined by rule that water for development does not exist.”⁵⁵ For example, relevant to this case, the County’s regulations do not permit development based on a private well that is inconsistent with Ecology’s rule for the Nooksack Water Resource Inventory Area (WRIA 1), the “Nooksack Rule.”¶ 41 By incorporating Ecology’s regulations to determine availability of water for development, the County’s regulations provide for cooperation between the County’s exercise of its land use authority and Ecology’s management of water resources. This method is consistent with the cooperative relationship contemplated by Kittitas and is consistent with the laws regarding protection of water resources under the GMA. IBID at 50-51

8. The County program is designed to assure consistency with the WDOE regulations concerning water availability in the County. In WAC 173-548. WDOE regulations provide:

(1)The department determines that there are surface waters available for appropriation from the stream management units specified in the amount specified in cubic feet per second (cfs) during the time specified as follows...

WAC 173-548-030 (2 CFS allocated to each of three reaches upper middle and lower)

As noted above however, the reservation in WAC 173-548-030 is for Surface Waters. A second limitation is reserved for certain tributaries which are considered closed basins.

"Streams and lakes closed to further consumptive appropriations. The department, having determined based on existing information that there are no waters available for further appropriation through the establishment of rights to use water consumptively, closes the streams and lakes listed in (a) and (b), and groundwater hydraulically connected with these surface waters to further consumptive appropriation[.] This includes rights to use water consumptively established through permit procedures and groundwater withdrawals otherwise exempted from permit under RCW 90.44.050."

WAC 173-548-050

Limited appropriations are available if the requirements of WAC 173-548-050(1-4) are met.

But as yet, WDOE has not closed the entirety of the Methow or the Okanogan basins to ground water appropriations.

If it is determined that a future development of groundwater measurably affects surface waters subject to the provisions of Chapter 173-548 WAC, then rights to said groundwater shall be subject to the same conditions as affected surface waters. Emphasis supplied

WAC 173-548-060

To date no such determination has been recorded in the regulation.

As set forth in the Whatcom County decision, the Kittitas County decision was concerned about local practices which tended to subvert the exempt well rules (The key is to look at all properties in single ownership and subdivided or segregated as part of a single or common plan such projects are entitled to a single exempt well regardless of the number of lots created. In allocating the right to secure permits based on exempt wells). The new language approved by WDOE (See comment letter 23) is designed to achieve that result.

9. The EIS notes that due to the change in historical understanding wrought by the *Campbell and Gwinn* decision, hardship may result to existing lot owners in large parcel segregation projects with a common grantor. In such projects, new building permits will be allowed only where there is evidence that the present uses will pull no more than 5000 gpd from the well or wells serving the area in common development for domestic use, and limitation of sufficient water to irrigate one half acre for the development as a whole. Where the number of lots in the project could result in exceeding the exempt well limits (typically more than 10 lots in the project), a building permit would be issued only upon proof that enforceable covenants are in place enforcing lawful allocation of existing wells use. But that hardship is a consequence of the Supreme Court decision in resulting from *Campbell and Gwinn* and not the actions of Okanogan County.

10. Where there is specific evidence that water is not available, counties can deny permits based on lack of water. (See *Fox v. Skagit Cty.*, 73315-0-1, 2016 WL 1438377 (Wash. Ct. App. Apr. 11, 2016), where the Court of Appeals upheld a denial of a permit where the minimum stream flows were "routinely violated") But as the Whatcom County case noted, the County has no independent duty to evaluate water availability in conflict with the conclusions of WDOE in its adopted regulations. As such Okanogan County looks to WDOE to determine availability or specific limitations on groundwater as they have done in Section 173-548-050, but not in other basins. In the Methow and Okanogan River systems the pertinent question to WDOE is whether section 173-548- 060 and 173-549-060 warrant a change based on new information such as the Aspect study and others mentioned by the commentators. But that duty is on WDOE. To do otherwise would put Okanogan County in a position inconsistent with the regulations posted by WDOE. Unless and until WDOE changes the regulations, Okanogan County understands it is legally required to follow the adopted published regulations and not institute a moratorium on exempt well development based on other studies, such as the Aspect study of which WDOE is aware, or hypothetical considerations about climate change. By adopting and enforcing the specific limitations expressed in the new definitions the County has precluded the "daisy chain" problem inherent in the Kittitas decision and has enforced such rules since the resolution of the 2010 *Silver Spur* settlement with WDOE and the clarifying language from the *Knight v. Yelm* Supreme Court decision in also in 2011.

D. CONCERN: THE COUNTY FAILED TO CONSIDER ALTERNATIVES

RESPONSE: The County reviewed a wide array of alternatives from retaining the present categories to areas where changes were required. Where current patterns of development showed no systemic risk of environmental degradation, no alternatives were necessary to achieve the County's plan at a less environmentally significant method and none were suggested.

Alternatives

1. The purpose of the alternatives section of an environmental impact statement is to see if the county objective, accommodating the anticipated population growth, could be achieved with a lower environmental consequence. A number of commentators complained that the County did not consider sufficient alternatives. The criteria for alternative consideration is identified in WAC 197-11-440(5) (c) (v), (vi). But that provision does not require exhaustion of all possibilities as suggested by some commentators but rather as stated by the Court of Appeals Division II in a local case:

"The EIS discussion of alternatives need not be exhaustive, but must present sufficient information for a reasoned choice."

Gebbers v. Okanogan Cty. Pub. Util. Dist. No. 1, 144 Wn. App. 371, 387-88, 183 P.3d 324, 332 (2008)

2. In developing and evaluating the appropriate densities to be considered for the zoning code several considerations were present:

- a. The population of Okanogan County was growing slowly.
- b. The historic patterns of development showed a dispersal of new growth throughout the County and without any indication that the historic pattern of development under the pre 2014 Comprehensive Plan adoption was causing an unacceptable demand on either water quantity or water quality as a result of residential development.
- c. In many of the areas the proposed zones in the new code were not substantially changed from the zones in place under the former code (including the Methow Valley Review District and Sub Unit 1, the R-1 zone, the Minimum Requirements District in tribal areas, the Agriculture District and the small specialty districts).
- d. The County did agree that any new zoning ordinance needed to consider the consequences of both permanent and vacation housing and nightly rentals, as the latter are elements of tourism and economic growth which are some of the main elements of the economy in the County.
- e. At one extreme, which seems to be invited by the commentator, the County could order a moratorium on new development based on lack of water or the failure of regulations to adequately protect ground water from onsite septic systems. But the record contains no evidence that the historic pace and pattern of development has led to "significant" environmental impacts in the past nor projected into the future on the basis of populations trends identified in the EIS.

Neither WAC 173-548 nor WAC 173-549 provided a legal basis for prohibiting new development based on lack of water except in the closed basins already recognized. New studies, suggested by others could put the County in conflict with WDOE should the County adopt local calls for moratorium of major restrictions on development when the WDOE regulations do not support such requests.

f. Absent a determination by WDOE, as referenced in applicable regulations WAC 173-548 and 549, it is the determination of the County that population is best allocated throughout the county with moratoria based on water imposed only on those areas in which WDOE with their expertise has determined that a stream or basin should be closed for water availability purpose.

See e.g. WAC 173-548-050

g. While the commentators assume material impact from population growth per se, counties may not merely close the door to growth that is coming. Under Washington law, counties in Washington have a duty to "accommodate growth" within reasonable environmental limits. This duty was expressed recently in a Washington State Growth Board case dealing with planning requirements in the state.

"Nonetheless, Normandy Park has an ongoing duty to accommodate growth."

*JOHN R. KALEAS, BRUCE W. HORST AND FUTUREWISE,
PETITIONERS v. CITY OF NORMANDY PARK, RESPONDENT, 2005
WL 2227917, at *8;*

Incremental impacts to the community from traffic and air quality, to consumption and discharge of water and public services will all result from the addition of new populations. The question posed in the present case is whether the zoning allocation of land for development, at the pace and dispersion evident in historic patterns of development has any bearing on a potential significant environmental impact as a result of that allocation of the population that is to be accommodated. Given the very low pace of new development, and the wide dispersion of that development over the full extent of the private land in the county the answer in this case is no—the zoning allocation of new development in the patterns used historically and as changed in the new zoning ordinance will not materially contribute to the environmental impacts of the growth that is to come.

A water quantity/quality based moratorium on development in the County or in any of the basins in the County other than as specific in the WRIA

regulations is not a viable alternative nor appropriate under the laws and conditions in place.

h. A second alternative would be to require much larger lots for all new development. Such a policy would have little beneficial effect, as many existing lots exist which are available for development subject to proof of lawful water and available on-site septic requirements. (See the existing lot patterns reflected in each of the eight districts in the illustrative maps in DEIS Appendix 4).

Further, much larger lots have the adverse consequence of consuming more land for a single family home than smaller lots. Ten homes on well and septic located on one acre each (common well class B system) or two acre lots would occupy 10-20 acres where that same development on 5 and 20 acre lots would consume 100 to 200 acres with the attendant increase in roads and other infrastructure. (See for example the long road networks required to serve large tracts, 10-20 acres and more shown in the air photos 1, 2, 6, 7, and 9, 23 and 24 of large lot property owners identified in attachment 1 to this response).

Calls for larger lots, based solely on the assumption that greater dispersion of the new population will have a lower environmental impact is not borne out by the facts with respect to water quality and water quantity for the requirements for new development is the same without regard to lot size once minimum thresholds are met and has corresponding adverse impacts in consuming land which would otherwise be left open and undeveloped and by requiring the land to be subject to greater distances for roads, public services and a host of other development related issues.

The County did find a pattern of smaller (1, 5) and larger (10 and 20) acre minimum lot sizes common under the prior zone and used without measurable adverse environmental consequence as a result of allowed density. Where to draw the line in how much of each is enough is based on historic patterns and the decision to lower certain areas to reflect past practices. Given the historic ability of the County to accommodate growth, these patterns without adverse consequences on water quality or quantity, and subject to emerging new rules on requirements for lawful water, the County has the ability to adjust the areas so designated for policy reasons but the EIDs materials did not identify a compelling environmental reason to make material changes based on water quality/quantity or other environmental concerns.

3. In the final analysis, the County considered a variety of choices concerning the zoning patterns with respect to lot size and residential use to be adopted in the County but where change was not required for environmental or other reasons,

there is a public benefit in retaining the element of the old system which was working.

a. In the Methow Review District congruent to the Methow School District, the recommendation of the preferred alternative was that densities and lot size requirements remain unchanged. The sub-area zone for this area has resulted in a wide variety of uses and densities which have served the Valley well in accommodating its agriculture and tourist based industry, and is supported by a significant segment of the population. No significant adverse consequences were identified in the review resulting from allowed uses and densities which have successfully served the upper Methow Valley for more than 15 years.

b. In the area covered by the Colville Reservation, the County elected to retain the Minimum Requirements zone as it has an intergovernmental agreement with the Colville Tribe to retain a common zoning pattern as development within the reservation needs to comply with both Tribal and County regulations. There was no evidence brought to the County's attention that the pace or pattern of development within the tribal areas was causing a potential for material impact and the benefits of retaining a common pattern with the Colville Tribe is an important consideration. There was no objection raised by the Colville Tribe to retaining that choice.

c. With respect to the remainder of the county, the area near main transportation corridors were retained as one unit per acre. In practice this is the area where most county residential development is occurring. While there is no prohibition to the creation of larger lots, mandating an increase in lot sizes above those which can be accommodated by individual well and septic simply has the adverse impact of more widely dispersing the population from access to public services and consuming more land to accommodate each new home with the attendant increase in roads, driveways, fences and other elements of new residential development and the attendant loss of open lands.

d. In areas away from the main transportation corridors, the County reduced the zoning from the one unit per acre in the Minimum Requirements District to the rural resource one unit per five acres' minimum lot size five acres. While such a zoning does tend to disperse the population, it reflects the pattern of development most commonly found in the more remote lands. The history of building permits reflected in Attachment 4 shows a very low incidence of building in the large lot areas and much of that tied to existing infrastructure to the new impact is expected to be very low.

e. In some areas of the County, for local reasons, a one unit per 20 acre zoning had been established in the old zone and local preference indicated a desire to retain the larger lots (typically in heavy agriculture areas) so the County elected to leave them in place.

f. At its final review, considering the concerns raised by WDOE about the closed basins, the Planning Commission did reduce the allowable density in Eighteen areas. (See Planning Commission Resolution 2016-1 attachment 10). The County Planning Commission determined that development pressure in these basins was very light and that the larger lots reflected the most probable result and as such considered the changes to have little if any impact on the overall development in the County and preferable due to water concerns.

E. CONCERN: The County has failed to properly protect agriculture resource lands.

RESPONSE: Okanogan County is not required to develop a full suite of land use plans called for under RCW 36.70A.040. Those counties are referred to as "GMA Counties". But as a non GMA county, Okanogan County is still required to address both critical areas and natural resource areas. The complaint that Okanogan County has failed to properly protect agriculture lands arises under the GMA mandate that all counties are to:

(8) Natural resource industries. Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses.

RCW 37.70A.020

In statutes and regulations identifying the responsibility, the minimum guidelines provide:

5(a)... For planning purposes, designation establishes:

(ii) The distribution, location, and extent of the uses of land, where appropriate, for agriculture, forestry, and mineral extraction;

(c) Designation means, **at a minimum**, formal adoption of a policy statement, and **may include** further legislative action. Designating inventoried lands for comprehensive planning and policy definition may be less precise than subsequent regulation of specific parcels for conservation and protection.

Agriculture in Okanogan County is detailed on pp 22-23 of the DEIS and more specifically detailed in the Census of Agriculture Attachment 11.

(d) Successful achievement of the natural resource industries goal set forth in RCW 36.70A.020 requires the conservation of land base sufficient in size and quality to maintain and enhance those industries, and the development and use of land use techniques that discourage uses incompatible to the management of designated lands.

More detailed requirements are set forth for GMA counties, but those sections specifically refer to counties required to plan under RCW 36.70A.040 which does not include Okanogan County (See e.g. RCW 36.70A.060(1) Natural resource lands and critical areas; —Development regulations WAC 365-196-815- Conservation of natural resource lands).

As indicated in the county statistics, the County has less than 130,000 acres in total crop land, 78,000 acres in harvested crop land, 51,000 in irrigated land, and 35,000 cattle, which are dependent on pasture for grazing on both public and private lands, as well as hay for winter feed. Horses, for commercial use, pack animals and trail rides, and private horses, number less than one thousand county wide by best estimates, on parcels from five acres and up, (there is no census) but they too are dependent on pasture and hay for winter feed. (Other livestock, including chickens, hogs, and lambs are typically on very small parcels 20 acres or less). The County summaries show that this is a very small portion of the acreage zoned in Rural 1, Rural 5 and Rural Resource, all of which is available for agriculture activities.

Okanogan County has more than one million acres in private lands available for farming activities, which is a preferred use in all of the major base zones in the county;

Draft Zone Designation	Acres
R1	146,574
R5	436,817
R20*	1,020,392

*R20 includes public lands

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This land provides ample room for the current agriculture industry to maintain its current standards and to grow.

Steps to encourage, maintain and enhance agriculture resource industries include priority zoning in all of the major zones in the County (more than 10-1 land zoned for agricultural use in excess actual use or identified need); and favorable tax treatment with properties in all of the districts reviewed taking advantage of favorable property tax treatment as agriculture open space creating a disincentive (back taxes plus a penalty if lands are removed from the designated or devoted to non-agriculture uses).

In addition, organizations the County have within an active Conservation Easement Program where lands are purchased and restricted from non-agriculture uses except for a few limited exceptions. This approach has proven very successful in the Methow Valley where landowners who want to use this option have sold easements on more than 80% of the arable, harvestable crop lands in the valley now protected by conservation easements. While easements may limit future utility they are certainly preferable to an arbitrary zone. Attachment 21.

Finally, steps to protect agriculture from incompatible uses is a Right to Farm Program which protects existing and new farming operations so long as they are managed in accordance with standard practices. These rules prevent adjoining property owners from complaining about noise, dust, odors, hours of operation, transportation, and other possible impacts of an agriculture operation operated in accordance with standard norms.

The County polled the County Farm Bureau representing the major segments of the agriculture industry (livestock, fruit, harvestable grains, and grasses), to see if the current zoning draft was adequate to their purposes and whether additional agriculture only zoning was necessary or appropriate. For each of the eight county areas reviewed, the answer was that the current rules were adequate provided sufficient encouragement and protection; and that no additional agriculture only zoning was required. (See Farm Bureau comment letter no 130)

Requests for Agriculture Only zoning in the comments suggests that the County must take steps to make sure lands farmed or capable of being farmed must be saved from other uses inconsistent to the use for agriculture purposes. Court cases make it clear, however, that the requirements of RCW 36.70A.020 apply to the "needs of the industry" and not to a wholesale required to find and set aside lands for agriculture. (See *Lewis Cty. v. W. Washington Growth Mgmt. Hearings Bd.*, 157 Wn.2d 488, 139 P.3d 1096 (2006).

In that case the Court reversed an argument that lands must be zoned for agriculture only use based on capability of being farmed or possible land needed for some future needs. As stated by Justice Alexander writing for the majority:

"If the State wants to conserve all land that is capable of being farmed without regard to its commercial viability, it may buy the land."

Lewis Cty. v. W. Washington Growth Mgmt. Hearings Bd., 157 Wn.2d 488, 509, 139 P.3d 1096, 1106 (2006).

Agriculture land use among some of the county industries is shrinking, not because the production is declining, but because of more efficient methods of production and use of water. The fruit industry is a classic example where the historic wide spacing and use of mature trees has shifted to multiple stems on managed wires

leading to significant increase in per acre productivity and more efficient use of labor and water.

The use of agriculture only zoning has the down side of reducing flexibility - note the prohibition in the Lewis County decision against on farm non-farm activities on lands designated for agriculture only use. Many of the properties in Okanogan County used for farming purposes are used for other purposes as well, including logging, mineral resource recovery, and innumerable small businesses which provide incidental but essential income to the farmer.

Further, the limitation of uses of a property to agriculture only makes the assessed value for the property for crop loan purposes tied to the vagaries of the specific market. Given the need to carry farms through down cycles, banks often look to the development potential of the farm for purposes of a loan even though development is not contemplated. The development of all or a portion of the farm can be used to support the ongoing farm activities when markets collapse and see the farmer through until markets recover.

In these instances the agriculture only zoning is an economic disincentive to farming and poses a risk to the maintenance and enhancement of the industry.

The agriculture only zoning was devised to solve problems in the rapidly growing counties in western Washington (see *King County v. CWGMHB*, soccer fields case where competing demands for other uses frequently were met at the expense of the County's prime agriculture soils and industry). Those rules also apply to counties in eastern Washington which opted into GMA, even when the development pressure is not present (See *Ferry County v. EWGMHB*). But the more formal GMA rules are not applicable to non-GMA counties such as Okanogan. (See e.g. RCW 37.70A.060(1) and WAC 365-195-050 and WAC 365-196-815 limiting the more detailed requirements to Counties planning under RCW 36.70A.040 which does not include Okanogan County).

Concerning the goal of conservation of natural resource lands the County did inquire as to both the soil based potential in the county and the lands involved in agriculture activity or identified as farm lands for tax purposes. As a result of the review, there was no evidence of a shortage of resource lands for agriculture.

Having surveyed the industry (comment 130), the industry is content with the rules and protections in place, and opposes additional restrictions due to the perceived lack of flexibility and negative assessment/loan consequences.

The industry comments suggest, for the present, that the current strong policy statement in the Comprehensive Plan and the enabling and protective language in the county codes is sufficient to meet the requirements of RCW 36.70A.020(8). Given the wide availability of lands for farming, both private lands zoned for rural uses public lands. Lands with the capability of being farmed substantially exceed lands already being used. The current program is meeting the needs of the agriculture industry and

sufficient to provide sufficient land to maintain and enhance that industry for the foreseeable future without the need for agriculture only zoning.

F. CONCERN: The County has failed to adequately regulate Marijuana/Cannabis growing facilities/The County is at risk of overregulating Marijuana/Cannabis growing facilities.

RESPONSE: The Planning Commission considered a variety of alternatives to address issues with respect to the growing use of county lands for the growing of Marijuana/Cannabis. The physical impacts of such operations are similar to other agriculture activities and the legal constraints did require a local regulatory program in support of the State program and recognition of Federal constraints, particularly lawful water.

The recent legalization of Marijuana/Cannabis thru Initiative I-502 has created a challenge for the County and elicited the most comments of any specific activity.

Under the former code, a Marijuana/Cannabis growing operation was considered to be in the same category of other agriculture activities and was unregulated except for the need to secure building permits for permanent facilities.

In response to growing concerns about the spread of potential negative impacts of Marijuana/Cannabis activities, the Board of County Commissioners adopted a moratorium on all new facilities and proposed that all existing facilities come under detailed scrutiny and examination. (See Resolution 017-2016)). After a series of public hearings before the Planning Commission, and considering that the public comments are roughly evenly divided both for and against regulation, the Planning Commission has recommended a new set of controls included in the proposed ordinance.

The essence of a grow operation for Marijuana/Cannabis is in many ways similar to other agriculture operations. Seeds are grown to mature plants and harvested as a crop. Employment demands fluctuate depending on the time of year, but are no different in overall impact than chicken farms, cattle feeding operations (seasonal labor, odor, traffic etc. tied to planting and harvesting) which are part of the other agriculture operations freely permitted throughout the County—this is an agriculture dependent economy and agriculture uses are permitted and to be encouraged in the County Comprehensive plan.

Marijuana/Cannabis is a regulated commodity (See attachment 12). Therefore, the Board adopted a set of regulations tied to both State and Federal regulations, which can be enforced locally. (Note the County has proposed a new enforcement section in which violation of the County Code is a public nuisance, enforceable by the County and by private citizens who are directly and immediately affected in a manner different from the public at large). (See RCW 7.48.210). (Attachment 13 County Civil Enforcement Ordinance).

Comments from the Industry (See e.g. Brown (several), and Grimes 64, 160) and from opposing neighbors (See Dennison (several) and Johansen (several) lay out the tension that exists, with comments running the gamut from prohibition to very limited controls). The County chose a middle ground designed to support the growing industry but provide some protections against violators. Important concerns deal with the use of water, particularly dependence on exempt wells (5000 gpd for all related commercial industrial activities) and a prohibition on using federal water resources.

The State Air Quality Board had stated that a Notice of Construction is required for new operations. While Okanogan County does have a Right to Farm ordinance OCC section 5.28, case law recognizes that the protections granted by right to farm ordinances are only for those activities within accepted industry norms. In individual cases, where the impact is too great or outside standard norms, a private land owner may well have a claim to abate the offensive activity.

The County has chosen to increase regulation of existing and new cannabis grow operations, but not to prohibit or micro manage the activities. (See OCC Chapter 17A.290). The policy compromise is found in the revised regulations referenced with a recognition that a given activity in a given location may have odor, noise, transportation, and other impacts on adjacent property owners similar to those from other agriculture activities which are commonly encountered throughout the County. But the activity is deemed lawful by the state, the level of activity is about 40 acres county wide, and the regulations and rights identified above provide a compromise, serving the best interests of the county and all who live and work here.

G. CONCERN: The County has failed to consider consequences of expanding nightly rentals/the County needs to address the need for more nightly rentals.

RESPONSE: Nightly rentals serve an important role in serving the expanding tourist industry in Okanogan County. While the Planning Commission considered a number of alternatives, its final recommendation was to retain the current program in the Methow Review District (consistent with the overall recommendation to leave those controls in place, and to simplify the program in the remainder of the county where demand is appreciably less).

Under the former Code a nightly rental could be approved only in an area which had received planned development approval. (See former OCC 17.21. The result was that it was a long, complex process which limited the ability of single property owners to secure approvals and as such, many operated without permits and licenses.

The initial draft provided for a simplified conditional use process to address a growing concern about a lack of supply and continued expansion of nightly rentals to non-approved structures.

After due deliberation, the Planning Commission responded to significant public concern in the tourist oriented portions of the Methow Valley to maintain the same PD requirements that exist in the old code changing the initial recommendations in the initial draft. The unlawful rentals concerns will be addressed by increased enforcement of Health Department permit requirements and termination of unlawful nonconforming uses.

In the remainder of the County, the demand for nightly rentals exists, but is not so great or concentrated as it is in the upper Methow. The County recognizes the need to facilitate the use throughout the remainder of the valley to support goals of increased tourism, but given the wide spread areas over which such uses may be approved and the lack of concentration found in the upper Methow, a conditional use process or specific permit, OCC 17A230 is considered an appropriate vehicle to address site specific environmental concerns. Such a program is preferable to alternatives such as outright prohibition or the much more complex system for PD approval used in the Methow.

The consequences of the change depend on the location of the units and the time of year. There is more demand in the upper Methow Valley and the consequence is to potentially make more units available for vacation rentals.

1. More use of second homes that often stand empty much of the year. More tourists mean more traffic, consumption of electricity and other utilities, water and other public services, but typically less than a full time residence since all such units typically stay empty for a portion of the year.
2. More use of recreational amenities and services dependent on the tourist business supporting the economic activity and tax base of the County.
3. There may be some homes constructed for purposes of nightly rental, but the economics work against that because there are periods of the year, early spring and late fall, when demand and hence revenues are way down. The Commissioners anticipate a marginally lower demand for new second homes to the extent existing homes are more readily available.

Concerns were raised that such units will compete with existing facilities which may well be true, but the tradeoff is that the existing facilities cannot meet the demand during peak periods and this new provision has the ability to increase the tourist potential in the Methow Valley which is an economic benefit and supports Comprehensive Plan goals.

Another concern is that nightly rentals will take away from rental housing for workers. Here, the County has attempted to alleviate the lack of affordable rentals by allowing "accessory" units in existing facilities.

Accessory units increase the housing supply available for nightly or permanent rentals without the need of developing additional homes. This is a cost effective way of providing for lower cost housing. Properties seeking to secure approval for a building permit to add accessory units must satisfy lawful water and septic requirements. Historically, in the Methow Valley, the demand for and utilization of nightly rentals diminishes south of Winthrop and as such accessory units south of Winthrop are more likely to support the monthly plus rental market rather than the nightly rental market. As this is a new approach, the County will monitor the activity but considers this tool one important step in aiding the affordable housing needs in the County.

H. CONCERN: the County failed to respond to wildfire concerns.

RESPONSE: There is no safe place in Okanogan County and zoning limitations on density are no protection as evident from recent fires. Education is the preferred approach.

Fire was an issue raised by many commentators and with good reason. In the past two years the County has had several major fires, including the Carlton Complex fire.

See <http://blogs.seattletimes.com/today/2014/07/okanogan-county-fire-now-largest-in-state-history/>

The Okanogan Complex, (2015 largest fire in county history)

See <http://wildfiretoday.com/tag/okanogan-fire>

The Rising Eagle fire,

See <http://methowvalleynews.com/2015/03/11/dnr-investigation-improperly-maintained-trailer-caused-rising-eagle-road-fire/and> and the tragic Twisp fire

See <http://wildfiretoday.com/tag/twisp-river-fire>

Which provide a reminder that fire is a constant threat in the semi-arid to arid conditions which exist in eastern Washington generally and Okanogan County specifically. What the fires show is that they may be caused by natural conditions; primarily lightning (Carlton Complex and Okanogan Complex) physical interaction with the natural environment (power line and trees in the case of the Twisp fire), and human mistake (Rising Eagle fire caused by a defective brake).

Lessons from the fires:

1. No one area of the County is safer than others. (See maps at Attachment 14).
 - a. Carlton Complex fire burned in treed areas, but also into the town of Pateros, the dense development around Alta Lake, the local golf course, and the grasslands of Balke Hills, Beaver Creek and Pipestone Canyon.

b. The Okanogan Complex fire was lightning caused and was the result of a series of fires which burned through thousands of acres of timber land but also thousands of acres of grassland threatening both remote structures and those in close proximity to cities and more heavily developed areas.

c. The Twisp fire started in heavily treed areas but almost burned into the urban areas of Twisp.

d. The Rising Eagle fire started adjacent to Highway 20, burning through grassland and trees very nearly crossing Twin Lakes Road jeopardizing the Twin Lakes development and even the high school.

2. The geography of the County and pattern of land ownership limits transportation alternatives.

a. Many areas of the county, from Lost River to the Chewuch, to the Twisp River, Alta, Campbell, Chapaka, and many other lakes; around Conconully and the more remote areas east and west of Highway 97 from Pateros to the Canadian Border and Highway 20 from Highway 97 to Ferry County are served by only one or two means of ingress and egress.

b. Even areas served by more than one road can be cut off by a rapidly moving fire (e.g. the Twisp fire and the homes south of Twisp along the Twisp River Road.)

c. It is not practical to impose a moratorium on development which can only be accessed by a single road.

3. The County does have an active "fire safe" program designed to educate current and potential new homebuilders of steps which can be taken to make a home site more defensible in the event of a fire. (See copy of fire safety materials attachment 15). But local vigilance and responsibility will always be part of the equation.

4. The County is working with State and Federal agencies and the local first responders to develop a better system of fire response and suppression to protect the people of Okanogan County. None of the suggestions raised by the experts in the field have suggested that material changes in the zoning ordinance would alter the risks encountered.

5. The County does look to dual access provisions for places where the public is invited to given activities and has denied requests where access is a concern. But the geography in the county, the abundance of public lands and public access on single access roads make a blanket prohibition impossible and education and concerted efforts at improving local safety is important. (See attachment 16 Skaltitude PD modification findings 8-9 pp 5 of 6.)

I. CONCERN: The County has failed to address required items under WAC 197-11 EIS

RESPONSE: The County followed the guidance of WAC 197-11-442(4) quoted above

A: Yakama Nation #136:

1. The EIS lacks sufficient information to make an informed decision.

a. The County appendices were designed to identify the population increases expected, the dispersal of population growth, and the regulatory controls on development, to determine if the increased growth the County has anticipated, and duty to accommodate, would have a probability of more than a moderate impact on the environment. The County's conclusion was that the systems and controls in place were adequate and the information leading to the choices made were included in the appendices and summarized in the EIS.

b. The Yakama Nation did not point to any defect in the data presented nor in the conclusions reached as a result of the data. The data presented allowed the County to assess the impact of the more than 20 year history with the prior zoning code and resulting population growth and development. There was no indication that the historic pace and pattern of development was indicative of material environmental impacts in the Methow Special Review District, the areas of joint jurisdiction with the Colville Tribes, the one acre Minimum Requirements District and the Agriculture District. Thus the County elected to retain the existing base densities and uses in those districts. In the remaining areas, the County's action was to increase minimum lot size where development could occur. Due to the small number of developments expected to occur and the wide pattern of dispersion expected to continue, no additional information was required on the issue of densities.

c. The County did add language about the availability of water and steps to accrue congruence between the County water enforcement and requirements of WDOE and the Courts.

d. In the County's view, the EIS and the attached appendices provided a sufficient outline of probable impacts (and lack thereof) for the Planning Commission and Board of County Commissioners to make an informed decision about the pattern of land use development appropriate under the proposed new code.

2. The DEIS did not include a clear objectives standard.

The purpose of the EIS was to ascertain the environmental impacts of the projected very slow rate of growth in the County and how that growth may be

accommodated in a land use code while avoiding material environmental impacts as a result of the zoning decisions under review. That was the purpose of the entire document and was clearly illustrated in the facts disclosed and recommendations drawn from those facts.

3. The EIS fails to identify and analyze significant aspects of probable environmental consequence of the Agency's decision.

a. The Agency decision was to update the zoning code in harmony with the new Comprehensive Plan adopted in 2014.

b. The Comprehensive Plan called for few material changes in the areas in which development would occur and the density and intensity of the uses allowed. From an environmental standpoint, there were very few changes made from the previous code and the changes made were designed to reduce density. Due to the slow pace of new development attributable to population growth and vacation homes in the county and wide dispersion of that growth over a large area, certain impacts as a result of an increase in water consumption, waste water disposal, new traffic and other impacts of a growing community are tied to the per capita increased use resulting from a growing population and not the choice of the zoning densities discussed in the code. Regulatory tools are in place to address potential impacts from new development including requirements at building plat and site plan review proceedings. The densities allowed in a zoning code are designed to provide options and opportunities for a growing population throughout the County which the new code does in fact do.

The environmental inquiry in connection with the proposed new zoning code is whether that new development created a risk of development pressure or impacts that met the test of "significant" under the WAC guidelines:

(1) "Significant" as used in SEPA means a reasonable likelihood of more than a moderate adverse impact on environmental quality.

(2) Significance involves context and intensity (WAC 197-11-330) and does not lend itself to a formula or quantifiable test. The context may vary with the physical setting. Intensity depends on the magnitude and duration of an impact.

The severity of an impact should be weighed along with the likelihood of its occurrence. An impact may be significant if its chance of occurrence is not great, but the resulting environmental impact would be severe if it occurred.

WAC 197-11-794

c. The threshold determination of potential significance in the present case did not demonstrate a conclusion that the proposal under review had a significant adverse impact, only that the possibility existed warranting a careful look. In the case of the zoning ordinance proposed to implement the new Comprehensive Plan, a close examination and review of potential impacts was warranted because the County was measuring the proposed implementation of the Comprehensive Plan (a policy document) to see if its implementation raised issues not present in the policy plan.

d. Contrary to the letters' assertion, the EIS did a detailed examination and review of issues such as population growth and allocation/dispersion throughout the County both historically and for projection purposes. Official controls were examined to determine if development in accordance with the recommended plan could adequately assess and control impacts to water consumption, water availability, and other development constraints imposed by shoreline critical area plat and other regulations, assure lawful and environmentally sensitive development. Availability of water was a principle concern of WDOE and as a result a careful look was given to practices and procedures governing requirement for a lawful water supply particularly in the context of exempt wells, and new language was added to assure compliance with the changing state of exempt well requirement.

e. Placing 60% of the projected population growth evaluated in each of 8 county districts used for review purposes failed to show any potential, let alone any "reasonable probability" that at the macro level development regulations posed a material risk to the environment in any of the eight districts reviewed.

f. None of the comments in response to the EIS indicated any defect in the County's conclusions, only that some commentators would prefer to see septic systems on much larger lots or that any growth on smaller lots, was inherently environmentally suspect, conclusions not borne out by the facts.

g. The EIS materials in the text and the appendices provided a specific look at those issues and enabled the decision makers, including the Planning Commission and, thereafter, the Board of County Commissioners with information necessary to make final decisions.

B. Futurewise comments April 16, 2016 (#123) (including prior comments from Futurewise and its Client MVCC).

1. DEIS fails to comply with SEPA --The Futurewise argument here is the same as that by the Yakama comment that the duty on the County is to review "maximum potential development" citing the *Ullock* decision. As noted above,

that rational applies to a site specific rezone in a limited area and not the area wide rezone with unlimited possibilities that is presently under review.

See WAC 197-11-442(4) supra.

The author seeks to rely on the *Ullock v. Bremerton* decision (1977 Court of Appeals decision) suggesting that the County needs to examine the worst case scenario under the new zone where no specific project is proposed. That case however, involved a five-acre site specific rezone from residential to commercial in a specific neighborhood where such analysis is feasible.

2. In a county wide rezone, the alternatives are innumerable, and more intense scrutiny is required only where the initial investigation shows that an adverse environmental consequence is a reasonable probability. In the case of a rezone, the development of any specific parcel of property is hypothetical and speculative. In such cases the more detailed environmental review is done when the impacts of a specific project are proposed and specific impacts can be mitigated. The County's official controls are sufficient to achieve that latter objective warranting the approval of the one code, with no evident material impacts and dealing with specific circumstances as they arise.

3. The comments for additional specificity at this stage ignore the SEPA guidelines for non-project proposal such as area wide zoning programs which provides as follows:

(4) The EIS's discussion of alternatives for a comprehensive plan, community plan, or other area wide zoning or for shoreline or land use plans shall be limited to a general discussion of the impacts of alternate proposals for policies contained in such plans, for land use or shoreline designations, and for implementation measures. The lead agency is not required under SEPA to examine all conceivable policies, designations, or implementation measures but should cover a range of such topics. The EIS content may be limited to a discussion of alternatives which have been formally proposed or which are, while not formally proposed, reasonably related to the proposed action.

WAC 197-11-442(4)

4. The EIS lacks specificity about impacts to water quality and quantity.

As a result of correspondence from WDOE, as well as Futurewise et al, the County took a close look at historic trends as well as regulatory procedures to assure an adequate and lawful supply of water as required for all developments including projects requiring building permits, plats and site plan review.

The governing documents on water allocation on the Methow and Okanogan Rivers (WRIA 48 and 49) are reflected in WAC 173-548 (Methow) and WAC 173-

549 (Okanogan). Both show that while constraints are present in both districts, the WDOE has not seen fit to place a cap or limitation on new exempt wells except in certain closed basins (see e.g. the closed basins in WAC 173-548-050). The agency regulations have not been amended in spite of suggestion from studies that additional protections may be needed. As such the official controls reflected in the WRIA regulations demonstrate that water is still available for new development and consumptive use subject to the limitations of the water code and specifically RCW 90.44.050 discussed in detail above. In the absence of a regulatory change by WDOE there is no legal basis for concluding that an area wide limitation on new development be declared, except where WDOE has specifically limited hydraulically connected development in the enumerated closed basins. The suggestion that Okanogan County needs to make an independent evaluation of water availability when WDOE official regulations WAC 173-548 and 549 specifically indicate that both the Methow and Okanogan River systems are available for additional appropriation puts the County in a position of conflict with the primary regulatory agency (WDOE), which the County will not do.

5. Counsel's citation of the *Hubbard* decision does not change the result. In that case the question was the ability to approve a ground water application when the Okanogan River failed to meet minimum stream flows. The Court upheld the approval with a limitation on irrigating in times of minimum stream flows. A related case, *Postema v. Pollution Control Hearings Bd.*, 142 Wn.2d 68, 11 P.3d 726 (2000), addressed WRIA minimum stream flow requirements including the language of WAC 173-548 in its discussion of limitations on exempt wells. The most recent ruling on this topic is found in a 2015 decision by the Court of Appeals holding, *inter alia*, "county was not required to make its own determination regarding water availability." *Whatcom Cty. v. W. Washington Growth Mgmt. Hearing Bd.*, 186 Wn. App. 32, 344 P.3d 1256 (2015), review granted sub nom. *Hirst v. W. Washington Growth Mgmt. Hearing Bd.*, 183 Wn.2d 1008, 352 P.3d 188 (2015). While that decision is on appeal to the Washington State Supreme Court and is being closely followed by the County, these court rulings support the decision of the County to rely on the WRIA determination of availability, and not to attempt an independent and possible inconsistent ruling on availability which differs from WAC 173-548-060.

6. One factor which indicates WDOE still views water availability as a current issue was the action of WDOE in closing the Methow Valley Irrigation District (MVID) irrigation ditches which tended to leak, and put the distribution into a pipe. The action, now complete, killed miles of riparian habitat visible along the highway south of Twisp. A more significant change is the reduction in ground water leaking from the ditches which historically serve as an aquifer recharge, flowing into the rivers in times of low flows providing both cooling and additional quantity to offset late season low flows. That action has just recently been

completed and the impact on low flows as a direct result of the WDOE action has yet to be measured, but could materially affect ground water available to property owners below the change.

7. A review of County on-site septic practices and regulations are also identified as consistent with state requirements and is considered to be both adequate and appropriate for addressing waste water discharge issues. Other water quality protections include critical area and shoreline related setbacks, addressing surface water issues. The County has subscribed to the Voluntary Stewardship Program, RCW 36.70A.700-760 to address agriculture runoff programs. The County has not encountered additional sources of water quality pollution under the existing code, or under the current regulations, and as a result has identified any new regulations on that point that would be necessary, considering that the present requirements are adequate to the purpose of preventing water quality pollution.

8. Analysis in an EIS targets potentially significant impacts and alternatives to mitigate such impacts. Population growth raises the question of whether there are places in the county where the density or intensity of development allowed under the proposed code creates a "reasonable probability of more than a moderate impact warranting alternatives and mitigation". Upon close examination of historical trends and the lack of material impacts from historic patterns, which are expected to continue under the new code, the conclusion is that the current regulatory regime was sufficient to avoid site specific significant impacts tied to zoning density related issues.

As part of the response to comments, the County undertook a specific review of different development patterns to see if there was any indication that zoning density was having a detrimental effect on water quality or quantity at the anticipated pace of development for the foreseeable future. 9. No Discussion of alternatives. In addressing areas wide zoning ordinances, local governments are given a great deal of leeway. As stated by Professor Settle:

"For comprehensive ...land use plans and area wide zoning, EIS discussion is limited to alternative policies or use designations which might have been included in the proposed plan or ordinance. In addition, alternatives may be limited to those 'formally proposed or ... reasonably related to the proposed action and need not cover all conceivable policies, designations or implementation measures but should cover a reasonable range.'"

Settle, Washington State Environmental policy 2013 ed. §§ 14.01[3]; pp14-74.

10. The purpose of alternatives is to identify choices which could achieve the objectives of the plan, in this case implement the Comprehensive Plan in a

manner with a less significant environmental impact. In the present case the County has more than a 20-year history with the prior code and under the density intensity and uses of that code, the County had not encountered reasonably probability of significant environmental impacts which warranted consideration of material alternatives for several reasons:

- a. The impact of growth on water, air, traffic and public services for development occurring in the county was a function of population growth, a factor over which the County had no control.
- b. Okanogan County is a very slow growing county and in the rural areas the rate of growth is less than one percent per year spread across more than a million acres.
- c. The historical dispersion of development under the prior code, as indicated by both population and permit related activity illustrated in the Appendix to the EIS, showed very low increments of growth in any of the district areas reviewed and showed no trend to material environmental impact under the designations in place and as such need for material change to accomplish the objectives of the Comprehensive Plan. Where changes were made, the down zone of the one unit per acre zone in the Minimum Requirements District to one unit per five acres, the change reflected historic development trends, but the development pressure in the R-5 area was very low and fully addressed by existing official controls from the point of view of environmental impact.
- d. The potential for environmental impact from the anticipated growth was the starting point for determining the need for further environmental analysis. After a detailed review of the density, intensity and pattern of building activity in the eight different districts, and the adequacy of official controls to assure protection of environmental concerns arising from development under the proposed code, the lack of identifiable impacts from the current patterns of growth limited the need to consider alternatives at the programmatic area wide study level.
- e. The County is considering a civil enforcement addition to the Zoning enforcement ordinance which will be considered by the Board of County Commissioners. Such provisions facilitate enforcement without the formalities of a criminal prosecution which would still be available under the remainder of that section See draft OCC 17A360. Attached to these comments.
- f. Existing environment to be affected—the principle concerns raised were adequate water quantity and quality which have been addressed in detail. By objecting to one and five-acre zoning in rural areas as “intense” Futurewise is suggesting that the County should have a base rural density

much higher (unstated one unit per 20 acres?) but as indicated above the large lot zones carry their own adverse consequences in terms of open space consumed to accommodate a given population growth and additional roads, travel times and distance from services and facilities, fences and other accoutrements of widely dispersed growth on larger lots. The comment takes no exception to the facts disclosed in the appendices to the EIS analyzing the density intensity of historic or future growth and as such provides no basis for asserting that some other model should have been considered.

g. A good example of the issues raised by larger lot zoning may be found in the Stud Horse development just north of the town of Winthrop (Attachment 1 photo 1). That area is in the Methow Valley Review District and is zoned one unit per five acres for a portion and one unit for 20 acres for the remainder. The consequence of such large lot developments, particularly near small towns can be seen in the air photo attached, where nearly 2 square miles (over 1000 acres of land) is devoted to serving approximately 50 dwelling units. The extensive road network to serve such few units and disruption of large areas of open space is plainly evident in the photograph. While larger lot developments are considered appropriate for the more rural areas of the County, where property is served by good roads and has access to public services, a general program of such large lot development only serves to spread development beyond that reasonably necessary to serve the new population with increased development activity in terms of roads, fences and other disruptions and makes the cost of housing much more expensive if new homeowners are forced to purchase acreage beyond their immediate needs. As such, the use of large lot zoning as a base zone in the R 1 or R-5 areas does not meet the objectives of the Comprehensive Plan and does impose significant impacts if used widely in areas designed to accommodate most of the new population.

h. In its comments, Futurewise asserts that the County did not consider the best available science for population growth or the increase in vacation homes. This statement is not correct. Okanogan County chose to follow official state forecasts, not a paper on possible regional growth in the west. suggested by Futurewise. .

In fact, the official state figures show that Okanogan County is growing much more slowly than the state as a whole and even projects a loss of population in the outer years. (See 2016 population update published June 30, 2016 attachment 4) Futurewise assertion of a population "Armageddon" in the County due to zoning is without any support in the materials presented. The County has revisited the growth assumptions in

the Attachment 10 chart in response to the concern raised in pp 5 about the accuracy of the numbers (See June 2016 e.g. DEIS Appendix 10 attached Column g corrected for a calculation error in the table though the totals are correct.) The County prepared an alternate calculation just to check the accuracy of its growth assumptions and both versions provide the same order of magnitude of potential growth for each district evaluated. (attachment 5)

i. As for the conclusion that the County “ignores the likely increase in vacation homes” (pp 4), the County did consider vacation homes in DEIS Appendix 10 and Attachment 5 to their comments as part of its growth assumptions in concluding that no changes were required in the Methow district or other affected districts as a consequences of possible vacation home demand.

j. Concerning the relationship between building permits, septic tanks and new wells, the figures apply not only to new structures, but upgrades from vacation cabins to permanent homes where facilities needed to be upgraded, additional facilities serving barns and other structures on existing home sites and the rebuilding of the many homes destroyed by fire, where the old well and septic services had been destroyed or were not up to current codes.

k. The best indication of the population growth in the districts is the population trends in Appendices 4 a-h, and the dispersal by level of building permit activity. The County has concluded that those trends will continue, and has made allowances for vacation homes.

11. Periodic Review—The County has undertaken to review the population growth and intensity assumptions every five years tied to new information from the Decennial census (available in 2021 and the midterm update from OFM in 2026 for the next decade and likewise on that five year cycle. The review allows the County to determine if there has been a material change in facts, regulations or community needs or impacts, and that such review limits the time that the current rules will be in place without reevaluation of the underlying assumptions and potential impacts).

12. Densities for special uses. The Minimum Requirements District allowed RV parks, certain multifamily structures and mobile home parks at a density of 5 units per acre As demonstrated in the response to MVCC comments below, there is a very small but real demand for those uses in the R-1, R-5, and even R-20, ones when looking at resort and recreation facilities throughout the county. The projects are processed through plat or site plan review programs attuned particularly to the carrying capacity of the land (water onsite septic and fire access) with an overall limit of five units per acre. This requirement has not

changed from the Minimum Requirements District and allows a variety of essential uses including resort condominiums (Freestone Inn) resorts, RV parks and mobile home parks, all of which support both tourism and affordable housing in various degrees depending on location which support the goals of the Comprehensive Plan. See Attachment 1 Photo's 14-22 .

13. A lawful source of water is required for building permits by the Health Department and as such is not addressed in the zoning code. However, the EIS recommends additional language on the application to make it clear to all that this requirement is present. The zoning code has also adopted language in the definitions for exempt well and project to provide notice to the County's present practices.

14. The comment concludes that all of the County zones are in the wildland, urban interface. That is true as evidenced by the more detailed comment on wildfire above, that there is no "safe place" in the county from raging fires that threaten both cities and rural areas with equal intensity. Nor does the County have the ability to declare the entirety of the rural area served by single roads or areas subject to danger "off limits" to development as suggested by the comment. (As noted below, a significant number of the Board of the MVCC represented by Futurewise, live in areas where the risk of being "cut off" by a significant fire in the area is high). The County has chosen to address this issue through education and public awareness is certainly higher as a result of the events of the past two years.

15. Subdivision requirements spell out the need to ascertain adequate water supplies as a matter of state law (RCW 90.58.110) and more recently reinforced by the Supreme Court decision in *Knight v. Yelm*. As such additional regulation at the county level is superfluous. The County has added definitions of "exempt wells" and "project" in the zoning code to help property owners understand the limits now expected for wells under the allowance in RCW 90.44.050.

16. Conditional uses are subject for review of all of the environmental constrains including a lawful source of water for a building permit or other regulated activity relying on a new source of water, adequate access for ingress and egress and public safety. As noted in *State ex rel Standard Mining v. Auburn*, the nature of conditional uses is uniquely tied to specific circumstances and as such the ordinance need not spell out all requirements so long as conditions are reasonably related to impacts and the proponent has the ability to appeal. A recent example of a conditional use permit denied for lack of two access points is Skalityte PD Amendment Attachment 16 17. The conditional uses of concern listed on pp 10 and including acid, explosives and petroleum bulk facilities; junk and wrecking yards, aircraft sales, repair and service. Each of the enumerated uses and others listed are both appropriate and necessary particularly in a large agriculture dependent county such as Okanogan County. Each of the

enumerated uses carries its own potential risks and hazards. But both the hazard, the area at risk and the mitigation is site and use dependent. Development and storage of explosives by a logger/road builder in an appropriate bunker, or providing for fuel storage and distribution on a 500-acre farm raises significantly less issues than someone attempting to construct such a facility closer to developed areas. The County has approved a helicopter facility near Monse Attachment 1 photo 2. Such facilities are essential to the protection of cherries in the event of rain near harvest time and proximity to the orchard can often produce substantial savings of a crop threatened by rain. As such, the conditions "reasonably necessary" to protect the public health and safety will differ depending on use and location. The *Standard Mining* case approves the use of the standard to protect the public interest without having to develop a myriad of regulations which may or may not fit in an actual case. The number of such facilities is very low and the conditional use proceedings under the "public interest" guidelines are adequate for Okanogan County purposes.

18. Public services The expected impacts from rural population growth, 60% of annual total on average, where the number of new homes is projected to be less than 50 homes per year across more than one million acres, many of which may be vacation or part time residences, is a very small increment of growth and well within the planning capabilities of public facilities and services including electric, school district, PUD, water systems and the County. While budgets are often tight, the community as a whole has a duty to accommodate the public, traveling and indigenous, including those choosing to stay and build in Okanogan County. Given the dispersion, the incremental costs of serving the growth is not considered material.

19. The County addresses traffic growth through its six year road program and is coordinated with the state program due to state highways providing the principle corridors in the County. No corridor is below a C level of service and the small increment of traffic resulting from the anticipated growth in the County is not likely to trigger any degradation of traffic capacity or level of service. See Attachment 1720. Neighborhood commercial zone increases. The County has a number of neighborhood commercial areas which are unincorporated but which have some level of service, from a post office and general store including Carlton, Malott, and Wauconda.

Futurewise comments focused on expanded zones for several areas. Neighborhood Commercial (NC) zones, which allow high-density apartments and commercial use beyond the existing commercial areas. The Methow Valley Citizens' Council estimates these expansions as follows:

Loomis—4 square miles

Chesaw—more than 2 square miles

Molson—1 square mile

Monse and Malott— ½ mile by 1 mile

Methow—almost 80 acres on each side of highway

By expanding the areas in which the more intense uses can locate in areas of existing development, the County is encouraging development to cluster in these areas and as such reduce travel times and demands for other areas of more intense growth. Expanding the area in which the development can occur is still limited by shoreline and other environmental regulations and subject to site specific review for adequate water and septic facilities where sewer are not available. See Attachment 1 photos 25-30, showing the larger neighborhood commercial areas, zoning and development. Here again the expanded areas provide opportunity but any specific development has to satisfy specific on site requirements.

21. The comment that water and sewer services are not available to serve these areas is not correct. The zoning provides the opportunity to locate a facility in those areas under the neighborhood commercial designation. Any facility must demonstrate both an adequate water supply and adequate septic or sewer facilities. Where a given area is fast growing, the transfer of water rights or the upgrade to a small sewer system is always available. The ultimate test is the public interest protected by requiring an adequate and lawful source of water and adequate disposal facilities to protect water quality water quantity and other site specific environmental concerns.

22. The request to repeal landscape and buffer amendments in the Methow planning area was considered but not considered a material impact.

23. Air quality. The Commentator is correct that the major fires, and even controlled burns and other minor fires can affect air quality in the area. The principle contribution to air quality in the County is from wood smoke from fireplaces and wood stoves which are common, and often essential in times of extended power outages in the winter. The County has a program of air quality alerts from WDOE which limits and even prohibits use of such facilities unless it is the sole source of heat in times of air inversion and air quality impacts. Historically such warnings can be in place 30 days per year in normal years, much higher in large fire years.

24. New developments seeking to install wood stoves are required to be built with certified stoves which reduce the potential for pollution for any given new facility. WDOE, which regulates air quality, has not seen fit to impose a moratorium on the use of wood stoves and fireplaces in Okanogan County and the incremental addition from the slow growth and wide dispersion of new

development in the county is not considered significant or material to warrant a change in those rules.

25. Noise. (See Attachment 18 WAC 173-060-040 attached). The County is aware that WDOE does not enforce noise regulations and does not see a public need in adopting an additional noise ordinance as a result of the limited new development anticipated. Nor is there any indication that the mere increase in population will create a noise problem. The notation is included in the EIS to inform the public that the State guidelines are available and that a violation of those limits may be enforced by any property owner through a civil action as violation of Environmental Designation for Noise Abatement (EDNA) noise limits as detailed and limited in the regulations cited is considered a nuisance

§ 3:14. Nuisance per se and statutory compliance

If the defendant's activity violates applicable statutory or requirements, it may be deemed a nuisance per se. "A nuisance per se is an act, thing, omission, or use of property which of itself is a nuisance, and hence is not permissible or excusable under any circumstance."¹ Thus, if the plaintiff suffers harm as a result of violation of clean air or clean water standards, or other laws or regulations restricting the use of property, it will be considered a nuisance per se.²

16 Wash. Prac, Tort Law and Practice § 3:14 (4th ed.)

26. Septic tanks are a major hazard to the environment. Futurewise commentary here is at odds with the statements of the Washington State Department of Health noted above and the confirmation by WDOE that the current on-site septic regulations are both adequate and appropriate to the long term treatment of waste water from development in non sewerred areas. The County is aware of documents such as those cited by Futurewise but chooses to follow the present state regulatory program as both adequate and appropriate.

27. Surface Water. Futurewise points to limitation identifies for temperature bacteria and ammonia N without equating that finding to the limited pace or pattern of development expected nor does it reflect the 2015 assessment for the Methow at Pateros and Twisp that

Overall water quality at this station met or exceeded expectations and is of lowest concern. (Based on water-year 2015 summary)

WDOE River and Stream water quality monitoring at
<https://fortress.wa.gov/ecy/eap/riverwq/station.asp?theyear=&tab=wqi&scrollly=0&sta=48A140>

Okanogan had the same comment.

28. The Okanogan River does have a temperature problem due to the large lakes in Canada and the US and its slow flow in summer months. The issue is not attributable to development, however, and the limited development that does occur (other than on Lake Osoyoos) is typically up out of the flood plains and riparian areas. The new development planned by the current zoning for is not anticipated to have any impact on the current trends of the Okanogan River.

29. At pp 15 of the Futurewise letter, the author states that the proposed zoning regulation will have a significant impact on water resources and states the EIS made no assessment of water quantity and assumes a "lack of available water." That statement is in error.

The EIS looked as the issue of water availability to support the goals of the Comprehensive Plan because that was an area of concern to WDOE and to the Court in the Comprehensive Plan lawsuit directed by Futurewise.

In that analysis as detailed above, the County considered the WRIA assessments of water availability including groundwater availability (WAC 173.548.060 and WAC 173.549.060), the presence of open and closed basins indicated in those documents, as well as the Well report and Aspect report, mentioned by Futurewise.

The County concluded that the slow population growth, the wide dispersion of development, and the clarification of "lawful" water requirements under RCW 90.44.050, that the County program was in concert with the WDOE regulations and that in such circumstances, the potential for harm by zoning, if any, had been adequately addressed, and the zoning program was appropriate and did not constitute a significant adverse environmental impact.

30. Because Futurewise had indicated that the proposed new zoning posed a threat to the public and more specifically required "injury in fact" to its clients Methow Valley Citizens Council (MVCC), the County specifically examined the circumstances for that group, through its listed Board of Directors to identify the nature of the impact to them arising from the concerns expressed. (See Response to Futurewise comments attached).

It is interesting to note that since 2001, the identified past and present Board members of the MVCC have constructed homes on wells and septic tanks with no evidence in the record of any threats to water quality and quantity. See Attachment 18, MVCC Board members and residences(summary of Board member sites and conditions) [former Exhibit 2]

The smallest lot was Roland at 3.4 acres constructed in 2011 (they own an adjacent 2+ acre lot also on well and septic with an older home).

Other recent additions included Peter Morgan in 2008, Coon and Kern in 2009, and John Olson as recently as 2012. Other members with septic systems and wells include Crandall in 1979, Naney in 1996, and John Olson in 1999.

It is also significant to note that although the Chairman, Ms. Coon, has several smaller lots abutting at or near her property, with wells and septic systems, (See attachments 19 & 20) she could not identify any harm to water quality or water quantity on her property as a result of the smaller lot developments, all of which predated her 2009 home construction.

As noted above in the discussion of water, the BOCC is aware of the materials identified by Futurewise, as is WDOE concerning the exempt wells, the watershed reports and other material dealing with water quality/ quantity in the valley. Water quality and water quantity are a continuing concern in serving the residents of Okanogan County. But with all of the information available, WDOE has continued with the WRIA water availability guidelines in WAC 173-548-030/040, the listed closed basins and exceptions in WA 173-548-050, and the continued note that it may do something in the future should it deem necessary to take additional steps concerning groundwater. To date, the State has taken no such action.

31. The key to environmental analysis is to consider those impacts which are a "reasonable probability" not hypothetical claims with no basis in fact or realistic potential to occur. The Futurewise objection to the zoning, particularly in the Methow Valley, is the assumption that the County is required to assume that every acre in the county is developed to its maximum zoning potential. Under the proposed zoning the claimed harm is based on the assumption that the County would be approving 24,440 new lots in the Methow Valley (Letter at pp 15) to serve a population growth of more than 50,000 people.

The problem with that rational is several fold and far beyond any "reasonable" expectation for the following reasons:

- The population assumptions have no support in the record and far exceed the current population of the entire County.
- Further it ignores that every building permit and every lot created by plat or short plat is required to prove a lawful source of water.

SEPA guidelines look to "reasonable probabilities" in measuring potential significant impacts and the assumptions in the Futurewise objection fail to meet that test.

32. Air Quality. Air quality in the County is affected by major fires, temperature inversions, pollen and dust. The State Department of Labor and Industries requires the use of certified wood stoves and prohibitions are in place during air stagnation alerts. The dispersion and limited use of the stoves for new

development is not considered a material alteration of overall quality sufficient to warrant additional requirements.

33. Noise. –addressed above

34. Ground water quality/ ground water. The arguments are based on unrealistic assessments of population growth and density and are belied by the use of septic tanks by all members of the Futurewise client, particularly the MVCC Board members (See attachment 19 and 20) including Ms. Rowland with two lots served by septic on a total of five acres, and Coon who has a number of smaller lots abutting her property with septic tanks and who is unable to identify any problem with those units. Naney's lot near Winthrop, which is eligible for development on one or two acres with septic, and without any evidence in the record that the many smaller lots facing the property have been the source of material failure. For the general response, see Water quality above.

35. Water quality/surface water. Futurewise points to Total Maximum Daily Load (TMDL) limits for the Methow and Okanogan Rivers which are of public record. Very little of the development in the County as demonstrated in Attachment 4 occurs in direct proximity to the rivers in question (most of the shoreline is in agriculture, the subject of the Voluntary Stewardship Program, which is presently ongoing and will address the rules for those properties).

Shoreline and critical area regulations provide protections to surface waters and sensitive areas through buffers and permit requirements, plats and short plats through statutory requirements. While all three programs are in an update mode, they are still fully in place and in force. Futurewise has failed to identify any defect in the current system leading to the concerns addressed and certainly none which would affect their clients, MVCC current Board Members.

36. Wildlife habitat. Okanogan County has more than 50% of the county in Public Lands, much of which is in park or other protected designations. The County has an abundance of wildlife and protection during the development phase is addressed by shoreline regulations (including salmon and other stream or lake dependent endangered species) and the critical areas ordinance.

The County is sensitive to the development in the more remote areas which is one reason to encourage development in areas where it is already occurring or otherwise close to public infrastructure, on smaller lots (one and two acres) which reduces the impact to the undeveloped portion of the county. While larger lots are used in more remote areas where new development is very limited, the negative impact of large lots is that a single home site consumes significant acreage which is taken out of the overall open space, and injects human population into the forest's open space edge. Evidence of the large area requiring an extended road network for access, and frequently, significant land clearing for roads and drive ways to serve large lot developments, may be seen

in the Futurewise Attachment 2 (See photo 1, Millam 20 acres; 2, Naney 20 acres and 9, Morgan 20 acres).

A number of other commenters expressed interest in text changes or other concerns which are either covered in the comments above or are considered technical without material potential to adversely affect the environment or create a potential for a "significant environmental impact" as written or as changed by the Planning Commission in its recommendations to the Board of County Commissioners.

Perry Huston, Okanogan County SEPA responsible Official

Issued this 30 day of June 2016 June.

Perry O Huston 6-30-16