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January 2, 2019

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

Dear Director Huston:

Subject: Comments on the scope of the environmental impact statement (EIS) for the revisions to the 2014 Okanogan County Comprehensive and the zoning regulations.

Sent via U.S. mail and email to: rrobbins@co.okanogan.wa.us;
phouston@co.okanogan.wa.us

Thank you for the opportunity to comment on the scope of the environmental impact statement (EIS) for the revisions to the 2014 Okanogan County Comprehensive Plan and the zoning regulations. We agree with Okanogan County that an EIS should be prepared on the comprehensive plan update. We generally concur with the areas identified for analysis and the preparation of mitigating measures in the scoping notice. We also have additional comments in the scope of the EIS.

Futurewise works throughout Washington State to support land-use policies that encourage healthy, equitable and opportunity-rich communities, and that protect our most valuable farmlands, forests, and water resources. Futurewise has supporters throughout Washington State including Okanogan County.

The EIS should analyze both the comprehensive plan and zoning updates.

The Washington State Environmental Policy Act (SEPA) Rules, in WAC 197-11-060(3)(b), provide that:

(b) Proposals or parts of proposals that are related to each other closely enough to be, in effect, a single course of action shall be evaluated in the same environmental document. (Phased review is allowed under subsection (5).) Proposals or parts of proposals are closely related, and they shall be discussed in the same environmental document, if they:

(i) Cannot or will not proceed unless the other proposals (or parts of proposals) are implemented simultaneously with them; or

- (ii) Are interdependent parts of a larger proposal and depend on the larger proposal as their justification or for their implementation.

The proposed comprehensive plan and zoning updates are a single course of action because they are interdependent parts of a larger proposal and depend on each other for their implementation. RCW 36.70.720 provides that “[z]oning maps as an official control may be adopted only for areas covered by a comprehensive plan containing not less than a land use element and a circulation element.” RCW 36.70.545 also requires that “the development regulations of each county that does not plan under RCW 36.70A.040 shall not be inconsistent with the county’s comprehensive plan.” Development regulations including zoning regulations.¹ So a comprehensive plan is a prerequisite for zoning regulations. And zoning regulations must be consistent with and implement the comprehensive plan. Therefore, the comprehensive plan and zoning regulations are a single course of action and they must be analyzed in the same EIS. This will also mean that further SEPA analysis will not be required for the zoning update, saving Okanogan County time and money.

The EIS must analyze the impacts of the comprehensive plan and zoning code updates and alternatives on fire services and fire hazards.

Fire services and police services are elements of the environment that must be evaluated in the Draft EIS because the proposed comprehensive plan and zoning revisions will have a probable significant adverse impact on fire and police responses.² In 2014, Okanogan County endured the largest fire in Washington history. In 2015, Okanogan County had to endure an even larger fire. There have been wildfires in Okanogan County every year since 2014.³

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

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

¹ RCW 36.70.545; RCW 36.70A.030(7).

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

³ See the Northwest Large Fire Interactive Map showing the fire history from 2000 to 2018 accessed on Dec. 14, 2018 at: <https://gacc.nifc.gov/nwcc/interactivemap/index.html?webmap=ed0a7dad32fe4848b20c6f91c74c79ea> and the Crescent Mountain & McLeod Fires BAER accessed on Dec. 14, 2018 at: <https://inciweb.nwcc.gov/incident/6224/> both enclosed with the paper original of this letter.

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own property. Furthermore, human activities increase the incidence of fire ignition and potential damage.⁴

The wildland-urban interface (WUI) is mapped in the *Okanogan County, Washington Multi-Hazard Mitigation Plan* on page 69.⁵ These serious impacts need to be evaluated in the Draft EIS and mitigation measures identified.

Wildfires that require evacuation orders occur regularly in Okanogan County. In an interview, Okanogan County Sheriff Frank Rogers said that Okanogan County has huge fires every year and every year the county must do evacuation notifications.⁶ This requires the Sheriff, his deputies, and any available state patrol officers to drive every road in the evacuation area and stop at every house.⁷ This is time consuming, resource intensive, and the Sheriff has very limited resources, 20 to 30 officers, to do this important work.⁸ The Carlton Complex Fire this year burned 400 square miles.⁹ If just eight square miles zoned R-1 were to burn, the zoning regulations would allow over 5,000 homes on that land. Sheriff Rogers said his office could not notify 5,000 homes.¹⁰

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

Alternative 1 and the current zoning applies the high-density R-1 zone to several areas that are served by dead-end roads. Some examples of dead-end roads serving R-1 zoning are Otto Road, Alta Lake Road/NF-2917, Keran Rd., Henney Ln. N., and Granite Ridge Rd.¹² The Firewise Principles recommend “‘two ways out’ of neighborhoods for safe evacuation during a wildfire emergency.”¹³ So does the U.S. Fire Administration.¹⁴ The value of a second way to access homes is

⁴ Okanogan County Community Wildfire Protection Plan committee, *Okanogan County, Washington Community Wildfire Protection Plan* p. 88 (2013 Update) accessed on Dec. 14, 2018 at: https://www.dnr.wa.gov/publications/rp_burn_okanogan_cwpp_2013update.pdf?ozm0ln and enclosed with the paper original of this letter.

⁵ Northwest Management, Inc., *Okanogan County, Washington Multi-Hazard Mitigation Plan* p. 69 (2014) accessed on Dec. 14, 2018 at: <https://okanogandem.org/> and enclosed with the paper original of this letter.

⁶ Transcript of KUOW “The Record” *One Wildfire Victim Never Got an Evacuation Notice, Here's Why* p. 3 (July 21, 2014) enclosed with the paper original of this letter.

⁷ *Id.* at p. 2.

⁸ *Id.* at pp. 2 – 3.

⁹ InciWeb – Incident Information System Carlton Complex enclosed with the paper original of this letter.

¹⁰ Transcript of KUOW “The Record” *One Wildfire Victim Never Got an Evacuation Notice, Here's Why* pp. 2 – 3 (July 21, 2014).

¹¹ Julie Ann Gustanski, Ph.D., LL.M. and David Scarsella, M.S., *Economic Analysis of Conservation Efforts in Okanogan County* p. 44 (2014) accessed on Dec. 14, 2018 at: <http://wdfw.wa.gov/publications/01605/> and enclosed with the paper original of this letter.

¹² Google Earth 2017 Aerial Images showing Alta Lake and Keran Rd. and Henney Ln. N. and a Google Earth 2016 Aerial Image showing Granite Ridge Rd. enclosed with the paper original of this letter.

¹³ *Firewise Toolkit A Guide to Firewise Principles* p. 4 accessed on Dec. 17, 2018 at: <https://www.nfpa.org/-/media/Files/Firewise/Toolkit/FirewiseToolkit.ashx?la=en> and enclosed with the paper original of this letter.

¹⁴ FEMA U.S. Fire Administration, *Wildfires: Protect Yourself and Your Community* p. *1 (Oct. 2017) accessed on Dec. 17, 2018 at: https://www.usfa.fema.gov/downloads/pdf/publications/wildfires_protect_yourself_and_your_community.pdf and enclosed with the paper original of this letter.

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shown by one of last year's fires where the Sheriff had to turn back from giving evacuation notices in a residential development when "flames closed over the hood of his patrol car, and he was forced to retreat ..."¹⁵

The high-density R-1 zoning is also applied to areas served by one lane roads. One example is the North Fork of Gold Creek, south of Carlton in the Methow Valley, which is a US Forest Service road accessing Foggy Dew Campground and several trailheads. Alternative 1 and the zoning map designates the lower North Fork road is as R-1, with a one-acre minimum lot size.¹⁶ The North Fork road is a poorly maintained one lane U.S. Forest Service road with no constructed turnouts, a steep cut bank on one side, and a steep drop-off into the North Fork of Gold Creek on the other side. During the previous two fires (Buckhorn Fire, 2012; Carlton Complex, 2014) fire crews or residents had to pull over onto the narrow shoulder in order to pass by each other.

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

Two ways out is important to protect the safety of property owners, residents, and firefighters. The three firefighters who died in Twisp River Fire in Okanogan County in the summer of 2015, died on a relatively short dead-end road serving six houses.¹⁷ A fourth firefighter was severely injured in the fire and a three-person bulldozer team was trapped on the same road.¹⁸ If the area had two ways out, it is possible the firefighters would not have had to drive down a road in zero visibility¹⁹ and would not have crashed. The Draft EIS needs to analyze the impacts of allowing development in areas with only one way out and one lane roads on public safety and firefighting and sheriff department resources. Potential mitigating measures also need to be identified in the Draft EIS.

The *Okanogan County Community Wildfire Protection Plan* states that it "will be incorporated" into the comprehensive plan "as a tool for decision makers to further their knowledge of specific high risk areas in order to make more informed decisions on how development should occur in those areas."²⁰ The Okanogan County Community Wildfire Protection Plan also includes as an action item "[i]ncorporate the Okanogan County Community Wildfire Protection Plan into the Okanogan County Comprehensive Plan, where applicable."²¹ The proposed comprehensive plan does not include the provisions called for by the *Community Wildfire Protection Plan*. For example, the *Community Wildfire Protection Plan* recommended the adoption of "stringent regulations to insure fire-safe development of rural subdivisions (see FIREWISE or similar programs for specific

¹⁵ Ann McCreary, *Methow Valley News Online* *No relief: Valley copes with impact of new fires, storms, outages and evacuations* p. 3 of 5 (Aug 7, 2014) and enclosed with the paper original of this letter.

¹⁶ Email from Isabelle Spohn (Sept. 5, 2014) enclosed with the paper original of this letter.

¹⁷ Washington State Department of Natural Resources, *Twisp River Fire Fatalities and Entrapments Interagency Learning Review Status Report* pp. 8 –9 & pp. 15 – 18 of 24 (18 November 2015) accessed on Dec. 20, 2018 at:

http://wildfiretoday.com/documents/Twisp_River_Fire_Status_Report.pdf and enclosed with the paper original of this letter.

¹⁸ *Id.*

¹⁹ *Id.* at p. 15 of 24.

²⁰ *Okanogan County, Washington Community Wildfire Protection Plan* p. 8 (2013).

²¹ *Id.* at p. 96.

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recommendations).”²² There is no comprehensive plan policy calling for implementation of this recommendation and no zoning regulations that would implement the recommendation.²³ The Draft EIS needs to analyze the *Community Wildfire Protection Plan* recommendations and how the proposal will address them. The Draft EIS must also identify measures to mitigate these impacts. The deadly Twisp River fire was caused by trees growing up into power lines.²⁴ One potential mitigating measure that should be identified in the Draft EIS is requiring that new power lines be constructed underground in new land divisions and residential and commercial developments in parts of the county where trees or other vegetation have the potential grow into power lines causing wildfires.

The Okanogan County *Community Wildfire Protection Plan* explains that in their natural condition the county’s existing agricultural lands had some of the highest risk for wildland fires.²⁵ Converting “much of the landscape historically prone to frequent fires” to agriculture has lowered the risk of wildland fires.²⁶ The *Community Wildfire Protection Plan* states “[t]he preservation of a viable agricultural economy in Okanogan County is integral to the continued management of wildfire risk in this region.”²⁷ The impacts of converting this farmland to rural residential development on community fire safety as provided for in the proposed comprehensive plan alternatives must be analyzed in the Draft EIS and mitigation measures identified.

The EIS must analyze the impacts of the comprehensive plan and zoning code update on senior water rights holders, ground water resources, stream flows including instream flow rules, and lake levels.

Water resources are elements of the environment that must be evaluated in the EIS because the proposed comprehensive plan and zoning regulations will have a probable significant adverse impact on water resources.²⁸ Water resources are very limited in Okanogan County. Within the Methow Watershed, Water Resource Inventory Area (WRIA) 48, and the Okanogan Watershed, WRIA 49,

²² *Id.* The *Firewise Toolkit A Guide to Firewise Principles* was accessed on Dec. 17, 2018 at: <https://www.nfpa.org/-/media/Files/Firewise/Toolkit/FirewiseToolkit.ashx?la=en> and enclosed with the paper original of this letter.

²³ *The [Draft] Okanogan County Comprehensive Plan* p. 48 (Revised 11/05/2018); Okanogan County Code (OCC) Title 17A Zoning.

²⁴ Pages from the State of Washington Department of Natural Resources, *Twisp River Fire Investigation Report Incident Number: 1351 (15-V-JIS)* pp. 35 – 36 of 38 accessed on Dec. 20, 2018 at: <https://assets.documentcloud.org/documents/2840831/Pages-From-Twisp-River-Fire-Investigation-Report.pdf> and enclosed with the paper original of this letter.

²⁵ *Okanogan County, Washington Community Wildfire Protection Plan* p. 97 (2013).

²⁶ *Id.*

²⁷ *Id.*

²⁸ WAC 197-11-444(1)(c); WAC 197-11-440(6).

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“most if not all of the available water has already been allocated.”²⁹ Parts of the water basins in the county are closed to new water appropriations.³⁰ Water is in such short supply that:

[The Washington State Department of] Ecology regularly sends out Administrative Orders under RCW 90.03 alerting water right holders they will be curtailed in favor of instream flows for the Methow and Okanogan Rivers. This has been a common occurrence in Okanogan County where users were curtailed or shut off four out of the last five years on the Methow and three out of the last five years on the Okanogan during times of low flow.³¹

Ecology also explained that:

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

[The] Department of Health does not consider interruptible water rights an adequate and reliable water source consistent with WAC 246-290-420. For these reasons, future water source plans will likely not be a reliable supply for year round residential use and may be subject to interruption due to conflict with instream flows. As such, it will be questionable whether [the proposed comprehensive] plan would provide an appropriate provision for potable water supply under RCW 58.17.³²

²⁹ State of Washington Department of Ecology Water Resources Program, *Focus on Water Availability for the Methow Watershed, WRLA 48* p. 2 (Publication Number: 11-11-052, Revised Aug. 2012) accessed on Dec. 17, 2018 at: <https://fortress.wa.gov/ecy/publications/summarypages/1111052.html> and enclosed with the paper original of this letter; State of Washington Department of Ecology Water Resources Program, *Focus on Water Availability for the Okanogan Watershed, WRLA 49* p. 2 (Publication Number: 11-11-053, Revised August 2012) accessed on Dec. 17, 2018 at: <https://fortress.wa.gov/ecy/publications/summarypages/1111053.html> and enclosed with the paper original of this letter.

³⁰ *Id.*

³¹ Letter from Washington State Department of Ecology to Perry Huston Okanogan County Planning p. 3 of 5 (April 7, 2011) enclosed with the paper original of this letter.

³² *Id.* While Ecology’s quote states that a determination that surface and ground water are in continuity must be made for ground water to be subject to the instream flow rules, the Methow Basin instream flow rule requires that the Washington State Department of Ecology must determine that the ground water is not hydraulically connected. WAC 173-548-050(4), part of the Methow Basin instream flow rule, provides that: “(4) If the groundwater being sought for withdrawal has been determined by the department not to be hydraulically connected with surface waters listed as closed, the department may approve a withdrawal. When insufficient evidence is available to the department to make a determination that ground and surface waters are not hydraulically connected, the department shall not approve the withdrawal of groundwater unless the person proposing to withdraw the groundwater provides additional information sufficient for the department to determine that hydraulic continuity does not exist and that water is available.” As is documented below, the US Geological Survey has determined that ground and surface waters are hydraulically connected in the Methow basin. See footnote 41 of this letter for the citation.

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The very limited water availability in Okanogan County is confirmed by the Methow Watershed Council. The instream flow rule for the Methow adopted water reservations for permit-exempt wells for “[s]ingle [d]omestic and [s]tock [u]se.”³³ The Methow Watershed Council states that to their knowledge, this is the only non-interruptible water available in the Methow sub basin.³⁴ The bedrock deposits that underlie the aquifers subject to the instream flow rule “yield little water and are not considered a significant source of domestic water.”³⁵ The Council has projected that:

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

Assuming full build-out of all possible parcels under present zoning, 5 reaches would have water remaining in their reserve. The Upper Methow and Lower Methow would exceed their reserves. The Upper Methow would have 127 parcels unable to be supplied by permit-exempt wells out of a total of 1,948 possible parcels. The Lower Methow would have 24,313 parcels out of a total of 26,133 possible parcels unable to be supplied by wells.³⁶

The proposed comprehensive plan and zoning do not appear to reduce the allowed densities. The Methow instream flow rule reserved water for permit-exempt wells for “[s]ingle [d]omestic and [s]tock [u]se.”³⁷ The Washington State Supreme Court’s *Campbell & Gwinn* decision determined that a single domestic use “is a single use, by a single home ...”³⁸ Unless the comprehensive plan and implementing development regulations limit the reserves to existing lots, the comprehensive plan and zoning will allow the creation of 24,440 parcels without a potable water supply.³⁹ Even if the comprehensive plan and zoning limit the reserves to existing lots which we believe the county must, in the Lower Methow 1,092 presently existing parcels would be unable to be supplied by a well.⁴⁰ These impacts must be disclosed in the Draft EIS.

The scientific evidence also shows that rivers, streams, and lakes and ground water in the valley are hydraulically connected.⁴¹ As the U.S. Geological Survey wrote:

³³ WAC 173-548-030(2).

³⁴ Methow Watershed Council Letter to the Okanogan County Commission Re: Okanogan Comprehensive Plan and watershed planning p. 1 (June 14, 2011) enclosed with the paper original of this letter.

³⁵ Expert Testimony of Laura Strauss, Hydrogeologist p. 4 (May 6, 2014) enclosed with the paper original of this letter.

³⁶ Methow Watershed Council Letter to the Okanogan County Commission Re: Okanogan Comprehensive Plan and watershed planning p. 2 (June 14, 2011) enclosed with the paper original of this letter.

³⁷ WAC 173-548-030(2).

³⁸ *State, Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 12, 43 P.3d 4, 10 (2002).

³⁹ Methow Watershed Council Letter to the Okanogan County Commission Re: Okanogan Comprehensive Plan and watershed planning p. 2 (June 14, 2011).

⁴⁰ *Id.*

⁴¹ Christopher P. Konrad, Brian W. Drost, and Richard J. Wagner, *Hydrogeology of the Unconsolidated Sediments, Water Quality, and Ground-Water/Surface-Water Exchanges in the Methow River Basin, Okanogan County, Washington* p. 31, p. 55 (U.S. Geological Survey Water-Resources Investigations Report 03-4244 Version 1.1, August 2005 prepared in cooperation with Okanogan County) accessed on Dec. 17, 2018 at: <https://pubs.usgs.gov/wri/wri034244/> and enclosed with the paper original of this letter.

Ground-water discharge from unconsolidated sedimentary deposits in the Methow River Basin is a primary source of baseflow in the Methow and Twisp Rivers. Unconsolidated aquifers, in turn, are recharged by infiltration of snowmelt and rainfall, ground-water flow from adjacent unconsolidated or bedrock aquifers, and seepage from rivers and irrigation canals.⁴²

“Maintaining minimum streamflow is necessary to sustain anadromous fish populations.”⁴³ The county will not be able to allow development of 24,440 parcels because they lack an adequate supply of potable water. If development is allowed, the anadromous fish will be impacted. But the revised comprehensive plan and zoning regulations do not include any requirement that new lots, new buildings, or new uses must be served by a water source that has a physically and legally available water supply. Allowing the creation of so many lots beyond what the available water supplies can support is a serious adverse impact on surface water, salmon, and ground water that must be analyzed in the draft EIS. Mitigation measures need to be included to address these impacts.

Failing to require new developments to have a physically and legally available water supply will adversely impact senior water rights holders because the county will apparently continue to allow permit-exempt wells to be used for new developments even though all of the water in the county is already allocated. This water will have to come from either instream flows or senior water rights holders or both. Senior water rights have already been impaired.⁴⁴ These impacts need to be disclosed and analyzed in the draft EIS and mitigating measures developed.

Okanogan County has applied a Rural 1 zone along many streams that are already over appropriated.⁴⁵ These streams include Bonaparte Creek in the Osoyoos basin, 41,188 percent over appropriated in the summer; Johnson Creek in the Salmon basin, 2,913 percent over appropriated in the summer; the lower part of Sinlahekin Creek in the Sinlahekin basin, 3,015 percent over appropriated in the summer; and the lower part of Tonasket Creek next to Oroville in the Osoyoos basin, 54,143 percent over appropriated in the summer.⁴⁶ In the Osoyoos and Salmon basins the 2006 ground water appropriations exceeded ground water recharge as it did for WRIA 49 as a whole.⁴⁷ “Groundwater and surface water interact throughout the [Okanogan River] watershed.”⁴⁸ Allowing high densities along the over allocated creeks with a hydrologic connection to ground water, as they all do, is a significant adverse impact that must be analyzed in the draft EIS and mitigation measures must be identified.

⁴² *Id.* at p. 31.

⁴³ Expert Testimony of Laura Strauss, Hydrogeologist p. 12 (May 6, 2014).

⁴⁴ Email from Nancy Soriano to Commissioners Chris Branch, Andy Hover, and Jim DeTro Subject: Water rights in Tunk Valley p. *1 (Nov. 26, 2018) enclosed with the paper original of this letter.

⁴⁵ Okanogan County web-based zoning map accessed on Dec. 18, 2018 at: <https://caltopo.com/m/ASRA>; ENTRIX, Inc., *Level 1 Watershed Technical Assessment Final Report Okanogan River Watershed Resource Inventory Area 49* p. ES-9 & p. 1-5 WRIA 49 map (Planning Unit Approved 6-11-2009) accessed on Dec. 17, 2018 at: <https://fortress.wa.gov/ecy/publications/documents/0911039.pdf>. A copy of the *Okanogan Watershed Plan* is enclosed with the paper original of this letter.

⁴⁶ ENTRIX, Inc., *Level 1 Watershed Technical Assessment Final Report Okanogan River Watershed Resource Inventory Area 49* p. ES-9 & p. 1-5 WRIA 49 map (Planning Unit Approved 6-11-2009).

⁴⁷ *Id.* at ES-4.

⁴⁸ *Id.* at 2-24.

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Okanogan County had more permit-exempt wells drilled, 1,238, than any other county in the state between January 1, 2008 and September 4, 2014.⁴⁹ “There are many reasons for the large increase in [permit-exempt wells in] Okanogan County, including that it is the largest county in the state and nearly all growth is occurring in rural areas outside of municipal supplies.”⁵⁰ The Draft EIS must analyze the impacts of these permit-exempt wells, the county’s practice of allowing these wells to be used for new development without a showing that the water is legally and physically available, and the county’s practice of encouraging growth in the rural area. The impacts of the growth of permit-exempt wells on senior water rights holders must also be analyzed. Mitigating measures should also be identified to address these adverse impacts.

The scoping notice states that:

The EIS will examine the historical building pattern and correlate well depth and production rates of groundwater wells throughout the county. Greater density will be compatible, at least in terms of potable water supply, in those areas where wells are likely to produce more water.⁵¹

We are concerned that this statement fails to recognize legal water availability. The Planning Enabling Act, in RCW 36.70.330(1), provides that “[t]he land use element shall also provide for protection of the quality and quantity of groundwater used for public water supplies” The Planning Enabling Act, in RCW 36.70.692, also requires that “[f]or the purposes of complying with the requirements of this chapter, county development regulations must ensure that proposed water uses are consistent with RCW 90.44.050 and with applicable rules adopted pursuant to chapters 90.22 and 90.54 RCW when making decisions under RCW 19.27.097 and 58.17.110.” This includes the instream flow rules for the Methow and Okanogan basins that were adopted pursuant to chapters 90.22 and 90.54 RCW.⁵² So the zoning regulations must be consistent with the instream flow rules when authorizing building permits, regulated by RCW 19.27.097, and subdivisions regulated by RCW 58.17.110.

Just because an area has productive wells does not mean that any of that water is legally available. And, as was documented above, all of the water in Okanogan County is already allocated or over allocated with the exception of the Methow reserves and they are limited to “[s]ingle [d]omestic and [s]tock [u]se.”⁵³ The Methow reserves cannot be used for new lots or multi-family dwellings.⁵⁴ The

⁴⁹ Tom Culhane and Dave Nazy, *Permit-Exempt Domestic Well Use in Washington State* p. 7 (Water Resources Program, Washington State Department of Ecology Olympia, Washington: Feb. 2015 Publication No. 15-11-006) accessed on Dec. 17, 2018 at: <https://fortress.wa.gov/ecy/publications/documents/1511006.pdf> and enclosed with the paper original of this letter.

⁵⁰ *Id.* at p. 22.

⁵¹ Memorandum Okanogan County Comprehensive Plan Revisions Determination of Significance Environmental Impact Statement Issues Scoping p. 1 (Nov. 9, 2018).

⁵² See the statutory authority squibs following WAC 173-548-050 – 100 and Chapter 173-549 WAC.

⁵³ State of Washington Department of Ecology Water Resources Program, *Focus on Water Availability for the Methow Watershed, WRLA 48* p. 2 (Publication Number: 11-11-052, Revised Aug. 2012); State of Washington Department of Ecology Water Resources Program, *Focus on Water Availability for the Okanogan Watershed, WRLA 49* p. 2 (Publication Number: 11-11-053, Revised August 2012); WAC 173-548-030(2).

⁵⁴ WAC 173-548-030(2);

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Washington State Supreme Court's *Campbell & Gwinn* decision determined that a single domestic use "is a single use, by a single home ..." So "greater densities" should be located where existing water purveyors have physically and legally available water, most likely existing cities and towns. The statement from the scoping memorandum quoted above is inconsistent with the Planning Enabling Act and Washington water law.

The EIS must analyze the impacts of the comprehensive plan alternatives and zoning code update on farmland.

Soils and agricultural crops are elements of the environment that must be evaluated in the Draft EIS because the proposed comprehensive plan and zoning regulations will have a probable significant adverse impact on these resources.⁵⁶ In 2012, Okanogan County had 1,205,285 acres of land in farms, a broad category that includes the land owned or rented by a farming operation but not federal or state grazing allotments.⁵⁷ The Washington State Department of Agriculture Crop Distribution Geodatabase identifies the fields that had crops growing in 2017 and the characteristics of those crops.⁵⁸ Unfortunately, Comprehensive Plan Alternative 1 and the zoning code update designates and zones most of the farmland for rural residential development. This is a significant adverse impact that must be analyzed in the Draft EIS and mitigating measures must be identified.

The EIS must analyze the impacts of the comprehensive plan and zoning code alternatives on plants and animals and their habitats.

We appreciate that the scoping Memorandum, on page 2, states that the "EIS will examine the impact additional development will have on habitat identified as critical to support the recovery of endangered and threatened species. Special focus will be given to the listed salmonids and the sharp tail grouse." We agree the EIS needs to analyze the impacts of the development authorized by the comprehensive plan and development regulations on plants and fish and wildlife habitats and migration corridors because the proposed comprehensive plan and zoning revisions will have probable significant adverse impacts on these resources. The SEPA Rules, in WAC 197-11-444(1)(d), identifies as elements of the environment that must be analyzed if the proposal will adversely impact them to include "[p]lants and animals" including "[h]abitat for and numbers or

⁵⁵ *State, Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 12, 43 P.3d 4, 10 (2002).

⁵⁶ WAC 197-11-444(1)(d); WAC 197-11-440(6).

⁵⁷ US Department of Agriculture National Agricultural Statistics Service, *2012 Census of Agriculture County Profile Okanogan County, Washington* p. *1 accessed on Dec. 19, 2018 at:

http://www.agcensus.usda.gov/Publications/2012/Online_Resources/County_Profiles/Washington/cp53047.pdf

enclosed with the paper original of this letter; United States Department of Agriculture, National Agricultural Statistics Service, *2012 Census of Agriculture Washington State and County Data Volume 1 • Geographic Area Series • Part 47 AC-12-A47 Appendix B p. B-13* (May 2014) accessed on Dec. 19, 2018 at:

http://www.agcensus.usda.gov/Publications/2012/Full_Report/Volume_1,_Chapter_2_County_Level/Washington/

cited page enclosed with the paper original of this letter.

⁵⁸ 2017 WSDA Crop Distribution Metadata accessed on Dec. 20, 2018 at:

<http://agr.wa.gov/PestFert/NatResources/AgLandUse.aspx> and enclosed with the paper original of this letter. This data can be downloaded as a GIS file from this webpage or the data can be viewed online from a link on this webpage.

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diversity of species of plants, fish, or other wildlife,” “[u]nique species,” and “[f]ish or wildlife migration routes ...”

WAC 365-190-130(2) defines the fish and wildlife habitat conservation areas that must be designated and conserved in the Okanogan County critical areas regulations to include:

- (a) Areas where endangered, threatened, and sensitive species have a primary association;
- (b) Habitats and species of local importance, as determined locally; ...
- (c) Naturally occurring ponds under twenty acres and their submerged aquatic beds that provide fish or wildlife habitat;
- (d) Waters of the state;
- (e) Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity; and
- (f) State natural area preserves, natural resource conservation areas, and state wildlife areas.

At the densities allowed in the comprehensive plan and zoning, many shrub-steppe species will be adversely affected.⁵⁹ The allowed densities will also adversely impact native bird, mammal, amphibian, and reptile species in other habitats types.⁶⁰ So, the Draft EIS must analyze impacts on fish and wildlife habitats beyond just the habitats of endangered and threatened species. The development authorized by the revised comprehensive plan and zoning regulations has the potential to adversely impact the habitats identified in WAC 197-11-444(1)(d) and WAC 365-190-130(2). We recommend that the potential adverse impacts be analyzed in the Draft EIS and measures to mitigate potential adverse impacts should be identified. One mitigating measure that should be identified is to update the Okanogan County critical areas regulations to comply with the Growth Management Act. Okanogan County was required to update its critical areas regulations by December 1, 2011 and failed to meet this deadline and the update is now seven years overdue.⁶¹

The Washington State Department of Fish and Wildlife’s “PHS on the Web” website can help the county identify these habitats. The department can also provide the county with GIS data layers of these habitats. The Washington State Department of Fish and Wildlife’s *Landscape Planning for Washington’s Wildlife: Managing for Biodiversity in Developing Areas, Management recommendations for*

⁵⁹ J. M. Azerrad, K. A. Divens, M. F. Livingston, M. S. Teske, H. L. Ferguson, and J. L. Davis, *Management recommendations for Washington’s priority habitats: managing shrub-steppe in developing landscapes* p. 16 (Washington Department of Fish and Wildlife, Olympia, WA: 2011) accessed on Dec. 19, 2018 at: <https://wdfw.wa.gov/publications/01333/> and enclosed with the paper original of this letter.

⁶⁰ Washington Department of Fish and Wildlife, *Landscape Planning for Washington’s Wildlife: Managing for Biodiversity in Developing Areas* p. 1-1 (Olympia, WA: 2009) accessed on Dec. 19, 2018 at: <https://wdfw.wa.gov/publications/00023/> and enclosed with the paper original of this letter. Appendixes B, C, and D and enclosed in a separate email.

⁶¹ RCW 36.70A.130.

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Washington's priority habitats: managing shrub-steppe in developing landscapes, and *Land Use Planning for Salmon, Steelhead and Trout: A land use planner's guide to salmonid habitat protection and recovery*⁶² contain information that can help the county analyze these impacts and develop mitigation measures to include in the Draft EIS. These reports are included with the paper original of this letter.

The EIS must analyze the impacts of comprehensive plan and zoning alternatives on critical areas such as landslide hazards, aquifer recharge areas, and flood plains.

In addition to fish and wildlife habitats, critical areas include areas with a critical recharging effect on aquifers used for potable water.⁶³ The SEPA Rules, in WAC 197-11-444(1)(c), identify water, “[g]roundwater movement/quantity/quality,” and “[p]ublic water supplies” as elements of the environment that must be considered in an EIS where the proposal may have a probable adverse impact on ground water resources. The densities allowed by the comprehensive plan and zoning alternatives will adversely impact ground water quality.⁶⁴ So will the many uses allowed by the comprehensive plan alternatives and zoning.⁶⁵ These impacts must be analyzed in the Draft EIS and mitigating measures proposed.

The recent Oso tragedy has drawn attention to the risk to lives and property of natural hazards such as landslides, which are a type of critical area.⁶⁶ The SEPA Rules, in WAC 197-11-444(1)(a)(i), identifies earth and geology as elements of the environment that must be considered in an EIS where the proposal may adversely impact them. Areas and buildings within Okanogan County are at significant risk for damage from natural hazards including landslides.⁶⁷ “Okanogan County is identified as one of the jurisdictions that have the greatest vulnerability for landslides in the State of Washington Hazard Mitigation Plan, specifically along the west side of the County in the Cascade Mountains.”⁶⁸ The *Okanogan County, Washington Multi-Hazard Mitigation Plan* states that:

Although small slumps on cut and fill slopes along roads and highways is relatively common, nearly all of the landslide risk in Okanogan County is associated with the steeper slopes along the major rivers in the central portion of the County and in the Cascade Mountains in the western third of the County. The majority of new development within the County is occurring along these slopes; thus, there are increasingly more structures and infrastructure at risk in this landslide prone area.⁶⁹

⁶² This last document was accessed on Dec. 19, 2019 at: <https://wdfw.wa.gov/publications/00033/>.

⁶³ RCW 36.70A.030(5)(b).

⁶⁴ OCC 17A.030.060 (Minimum Requirement [MR] Zone), OCC 17A.040.060 (Rural 1 [R1] Zone), OCC 17A.050.060 (Rural 5 [R5] Zone); OCC 17A.060.060 (Rural 20 [R20] Zone); OCC 17A.220.010.

⁶⁵ OCC 17A.220.010.

⁶⁶ Washington State Department of Natural Resources, *Significant Deep-Seated Landslides in Washington State – 1984 to 2014* p. 1 of 5 (2/10/2015) accessed on Dec. 19, 2018 at: http://www.dnr.wa.gov/publications/ger_list_large_landslides.pdf and enclosed with the paper original of this letter; RCW 36.70A.030(5) & (9).

⁶⁷ Northwest Management, Inc., *Okanogan County, Washington Multi-Hazard Mitigation Plan* pp. 85 – 92 (2014).

⁶⁸ *Id.* p. 85.

⁶⁹ *Id.* p. 53.

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The *Okanogan County, Washington Multi-Hazard Mitigation Plan* states that: “When technology cannot reduce the risk to acceptable levels, building in hazardous areas should be avoided.”⁷⁰ The Draft EIS should analyze the environmental impacts of allowing development in these landslide prone areas and potential mitigating measures, such as avoiding building construction in hazardous areas.

The *Okanogan County, Washington Multi-Hazard Mitigation Plan* states that “[m]uch of the populated areas in Okanogan County are at risk to flooding ...”⁷¹ Frequently flooded areas are a critical area.⁷² The SEPA Rules, in WAC 197-11-444(1)(c)(iii), identifies floods as an elements of the environment that must be considered in an EIS where the proposal may adversely impact them. Comprehensive plan Alternative 1 and the zoning designate and zone large areas of the flood plain for high density development. The Draft EIS should analyze this impact and propose mitigating measures.

The EIS must analyze the impacts of vacation and second homes in addition to homes occupied year-round.

In Okanogan County seasonal homes, recreational homes, and homes held for occasional use are a significant part of the housing stock, 4,048 housing units or 18.2 percent of the total housing stock in 2010.⁷³ In 2000, seasonal homes, recreational homes, and homes held for occasional use totaled 2,355 housing units, or 12.3 percent of the total housing stock.⁷⁴ While the population estimates prepared by the State of Washington Office of Financial Management are helpful, “[s]easonal populations, such as vacationers or migrant farmworkers, are counted at their usual place of residence.”⁷⁵ So many of the occupants of these housing units will not be included in population estimates. When estimating impacts, we recommend that the EIS also include in its analysis seasonal homes, recreational homes, and homes held for occasional use as they will impact the county and its built and natural environments.

⁷⁰ *Id.* at p. 53.

⁷¹ *Id.* at 85.

⁷² RCW 36.70A.030(5)(d).

⁷³ U.S. Census Bureau, 2010 Demographic Profile Data *DP-1 Profile of General Population and Housing Characteristics: 2010* p. 4 of 5 (01/02/2019) accessed on January 2, 2019 at https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml and enclosed with the paper original of this letter.

⁷⁴ U.S. Census Bureau, Census 2000 Summary File 1 (SF 1) 100-Percent Data *DP-1 Profile of General Demographic Characteristics: 2000* p. 2 of 3 (01/02/2019) accessed on January 2, 2019 at https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml and enclosed with the paper original of this letter.

⁷⁵ Forecasting & Research Division State of Washington Office of Financial Management, *2018 Population Trends* p. 46 (July 2018) accessed on January 2, 2019 at: https://ofm.wa.gov/sites/default/files/public/dataresearch/pop/april1/ofm_april1_poptrends.pdf and enclosed with the paper original of this letter.

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The EIS must analyze the impacts of the comprehensive plan and zoning code update on the transportation system and traffic hazards.

Transportation systems, vehicular traffic, and traffic hazards are elements of the environment that must be evaluated in the EIS because the proposed the proposed comprehensive plan and zoning regulations will have a probable significant adverse impact on transportation, traffic, and traffic hazards.⁷⁶ In addition, the Planning Enabling Act, in RCW 36.70.330(2), requires the comprehensive plan to include “[a] circulation element consisting of the general location, alignment and extent of major thoroughfares, major transportation routes, trunk utility lines, and major terminal facilities, all of which shall be correlated with the land use element of the comprehensive plan” The impacts of planned development on both the transportation system and the transportation element should be analyzed in the draft EIS.

Thank you for considering our comments. If you require additional information, please contact me at telephone 206-343-0681 Ext. 102 or email tim@futurewise.org

Very Truly Yours,



Tim Trohimovich, AICP
Director of Planning & Law

Enclosures

⁷⁶ WAC 197-11-444(2)(c); WAC 197-11-440(6).