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November 12, 2024

Okanogan County Board of County Commissioners  
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Attn: Clerk of the Board Ms. Johns

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RE: Proposed Zone Code

Board of County Commissioners,

As President of the Okanogan County Farm Bureau, on behalf of Board Members, as individual property owners, Agricultural Producers, and our membership attached please find our coordinated comments regarding the proposed zone code.

We have provided an extensive review of the proposed zone code and have some serious concerns identified in the attached pages. OFM reports Okanogan County continues to fall below the estimated projected population and density numbers, from the last twenty years, and currently, to the most recent 2023 numbers. SEPA document does not support the proposed zone code language. SEPA also, is in direct conflict with the BOCC Housing Crisis Proclamation signed April 2024! It is confusing to the Public, to declare a housing crisis, yet have a SEPA document with the statements, reduce development, limits the number of allowable units, reduce land for development. SEPA must be fixed and sent out for public comment prior to any consideration of adoption of the proposed zone code.

HB 1241, signed into law March of 2022. An Act Relating to Planning under the growth management act; and reenacting and amending RCW 36.70A.130 Meeting the requirements of Periodic Update review. **Okanogan County deadline is June 2027.**

Okanogan County Farm Bureau Membership feels this should be taking priority, with the new process it outlines. We have heard no mention of this, which in fact seems to be the perfect solution to all the above and the attached issues to the proposed zone code and issues with the comp. plan.

## Okanogan County Farm Bureau Zone Code and its Relationship to Comprehensive Plan

Requesting the BOCC to organize a working group to focus on the Periodic Update Checklist, consisting of the following members:

- a. Farm Bureau
- b. Cattlemen's Association
- c. Hort Association
- d. CCT Tribe
- e. Timber Industry
- f. NW Builders Association
- g. Realtors Association
- h. WA ST Department of Commerce, (providing the training on each section, checking on progress and/or being the lead for the group)

Request scheduling work sessions, January 2025, to meet the deadline requirement of June 30, 2027 as outlined in HB 1241.

Once the working group completes one of the required sections, it is then turned over to the Planning Commission Board for their full review process.

Therefore, we are requesting any decision of this zone code is continued until **May 2027 to meet compliance of HB1241.**

Respectfully,

*Sheilah Delfeld*

Sheilah Delfeld, Okanogan County Farm Bureau President  
[shekennedy@hotmail.com](mailto:shekennedy@hotmail.com)



COMMENTS REGARDING THE ZONE CODE AND THE RELATIONSHIP OF ITS  
ISSUES TO THE COMPREHENSIVE PLAN AND ITS ORIGINS

November 12, 2024

**I. Introduction**

The intent is to inform the Board of Commissioners of Okanogan County. The current zone code along with the comprehensive plan has wandered away from the intent of the people of Okanogan County to plan under the Planning Enabling Act. As you are aware the population of Okanogan County does not conform to the requirements of the Growth Management Act:

*Each county that has both, a population of fifty thousand or more and, until May 16, 1995, has had its population increase by more than ten percent in the previous ten years or, on or after May 16, 1995, has had its population increase by more than seventeen percent in the previous ten years, and the cities located within such county, and any other county regardless of its population that has had its population increase by more than twenty percent in the previous ten years, and the cities located within such county, shall conform with all of the requirements of this chapter<sup>1</sup>.*

The County's unincorporated area population growth is well below these requirements and this area is where the comprehensive plan and zone code are applicable. Yet there is a noticeable drift in the 2021 comprehensive plan and zoning code to include GMA concepts and concepts from the Hirst decision not included in the Hirst fix ESSB 6091<sup>2</sup>.

**II. The Result of the Lawsuit and why the County was not obligated to a Stipulation Agreement with the Yakama Tribal Nation and the problems with this decision**

The Hirst decision of 2016 provided the template for the Methow Valley Citizens Council (MVCC), Futurewise (FW), and the Tribes (T) approach in its litigation with Okanogan County regarding its newly completed Comprehensive Plan (2014) and Zoning Code (2015). The Hirst vs Whatcom County case started in 2013. The Plaintiffs in the case included Eric Hirst, Laura Leigh Brakke, Wendy Harris, David Stalheim, and Futurewise. Futurewise supported the legal effort

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<sup>1</sup> RCW 36.70A.040

<sup>2</sup> [085-1999 Removing Okanogan County and Incorporated Towns and Cities from Requirements of Adopting Comprehensive Land Use and Plans.pdf](#)

## Okanogan County Farm Bureau Zone Code and its Relationship to Comprehensive Plan

because of its mission to promote smart growth and environmental protections.<sup>3</sup> The initial decision of the Growth Management Hearings Board is noted:

*This Board has previously held that it will declare invalid only the most egregious noncompliant provisions that threaten the local government's future ability to achieve compliance with the Act. Although the Board finds areas of noncompliance with the GMA, petitioners have not met the standard for a declaration of invalidity.*

*THE ORDER: Based on the foregoing the Board determines, that Whatcom County's adoption of Ordinance No. 2012-032 fails to comply with RCW 36.70A.070(5).*

*Petitioners failed to meet their burden of demonstrating the County's Rural Element amendments, adopted in Ordinance No. 2012-032, are inconsistent with the Transportation Element in violation of RCW 36.70A.030(17), RCW 36.70A.040(3), RCW 36.70A.130(1)(d), RCW 36.70A.070, RCW 36.70A.070(5), or RCW 36.70A.020(1), (2), (3) and (12).*

*The Ordinance is remanded to the County to take the necessary action to achieve compliance as outlined in this Order within 180 days<sup>4</sup>.*

The final fate of the case was not decided until October 6, 2016, which repealed the Western Washington Growth Management Hearings Board decision. The final decision written by Justice Wiggins of the Washington State Supreme Court is:

*We reverse the Court of Appeals and hold that the County's comprehensive plan does not satisfy the GMA requirements to protect water availability or water quality. However, we affirm the Court of Appeals' holding that the Board did not abuse its discretion in declining to make a finding of invalidity. We therefore reverse the Court of Appeals in part and remand to the Board for further proceedings consistent with this opinion<sup>5</sup>.*

The decision is noted as a failure to satisfy the GMA requirements. The question is whether or not a decision under the GMA translates to the Planning Enabling Act RCW 36.70 which Okanogan County is planning under. This problem is noted in a footnote in Wiggins' argument:

*The dissent notes that this interpretation of RCW 19.27.097 may result in differences between GMA and non-GMA counties in the level of protection for water rights holders. However, the legislature has created a distinction between GMA counties and non-GMA counties, and the resulting differences in resource management between those counties are a natural consequence of this legislation.<sup>6</sup>*

MVCC and FW have maintained a long-term interest in the Methow Valley and Okanogan County in general regarding land use and water availability. Shortly after the standing Commissioners adopted their resolution for the 2014 Comprehensive Plan on December 22<sup>nd</sup>, 2014, MVCC/FW filed their complaint regarding the Comprehensive Plan and associated supporting documents on

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<sup>3</sup> Hirst vs Whatcom County, Final Decision Order Case No. 12-2-0013, June 7, 2013

<sup>4</sup> Ibid., p. 50.

<sup>5</sup> Ibid., p. 43

<sup>6</sup> Ibid., p 21

## Okanogan County Farm Bureau Zone Code and its Relationship to Comprehensive Plan

January 9, 2015 case #: 15-2-0005-7. Once the Zone Code and SEPA documents were completed and adopted on July 26, 2016, MVCC/FW filed a complaint on these documents on August 15, 2016 case #: 16-2-00313-5. The Confederated Tribes and Bands of the Yakama Nation filed an identical complaint to MVCC/FW on August 15, 2016 case #: 16-2-00312-7. By a motion from the Tribes, the cases were combined into one case on February 14, 2017. The following case numbers were consolidated: 16-2-00313-5; 16-2-00312-7 and 15-2-00005-7. The result of the case contributing to the present course was the Stipulations with the Tribes guiding current actions noted in 16-2-00312-7 dated March 21, 2017.

Before the Hirst case was decided in 2016 MVCC/FW sought to introduce the same issues raised by Hirst vs Whatcom County in their 2015 complaint. The goal was to bring in the known arguments promulgated by Futurewise in the Hirst case to Okanogan County planning under the Planning Enabling Act. This, if effective, would carry the impact of the eventual Hirst decision into the Planning Enabling Act. The secondary goal was to introduce concepts and regulations into the Comprehensive Plan and Zoning Code not mandated by the Planning Enabling Act which the Commissioners did not adopt from the scoping hearings leading to the final comprehensive plan and zoning code.

The main issues raised by the Hirst case included in MVCC/FW complaints:

### COMPARISON OF HIRST CASE WITH OKANOGAN COUNTY CASE

Hirst Complaint case No. 12-2-0013 FINAL DECISION AND ORDER	Okanogan County Complaint and Petition Case # 15-2-00005-7
Portions of the rural element in the Whatcom County Comprehensive Plan are not in compliance with GMA.	Okanogan County Comprehensive Plan is invalid and violates the requirements of the Planning Enabling Act.
Whatcom County has not included measures governing development that protect surface and groundwater resources.	Okanogan County does not include a land use element that provides for the protection of the quality and quantity of groundwater used for public water supplies.
Whatcom County Planning has a GMA rural element where open space includes the conservation of fish, and wildlife habitat to increase access to natural resource lands, water, and rural character. In particular, the rural element does not contain measures governing rural development that protect surface and groundwater resources. The county lacks measures to ensure that land uses are consistent with available water resources.	MVCC/Futurewise argues that land density is not stated and subdivision does not consider that water in WRIA 48 and 49 is already over-allocated requiring land use to be limited by available water supplies.
Whatcom County has allowed development in the area supported by the Nooksack aquifer which shows overdevelopment due to Nitrate levels which evidence faulty septic systems. Whatcom County has also failed to consider impacts on minimum instream flows for fish and the impact on senior water rights.	Okanogan County comp plan and zoning ordinance fails to consider the limited water supply in WRIA 48 2 cfs reservation and allows more subdivision than the 2 cfs per reach can support. In WRIA 49 water is already over-allocated and continued use of permit-exempt wells will affect minimum instream flows and impair senior water rights.

The additional portions of the agenda of MVCC/FW and the Tribes are reflected in the revised 2021 Comprehensive plan.

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MVCC/FW 2021 Comprehensive Plan	Okanogan County 2014 Comp Plan
Confinement of Resource lands limited to soil type	Resource lands considered in terms of soils, functional support activities, and best lands to preserve both privately and publicly owned lands
Water Resources Inventory Areas Regulation	Depends on appropriate WAC's
Wildfire	Not a PEA requirement, is in the GMA.
Details what is already in the Critical Areas Ordinance	Refers to CAO regulations and commitment to implement
Develop a regulatory use in a Land Use element based on the rural element, Neighborhood commercial center, agriculture, forestry, or mineral resource lands.	Has a land use guide and element which documents how land is used in Okanogan County and describes associated and compatible uses and designates land use accordingly in relationship to resources of long-term commercial significance
Has a Rural lands element is a specific GMA requirement	This distinction is not made in the PEA as such counties planning under PEA are more rural. Chapter 3 presents the Resource Lands of long-term commercial significance including public lands. Chapter 4 discusses the Rural lands designation and principles for change.
Introduces Environmental and Natural Resources Element. The unique elements are the Water Resource Inventory Area Goals and Wildfire section.	This is neither part of the required nor optional elements of the PEA. However, Planning under the PEA does require recognition and completion of The Shoreline Management Act and Critical Areas Ordinance.
A key distinction is the Comprehensive Plan is regulatory in nature and expands upon these regulations beyond their intent.	The Comprehensive Plan is more descriptive and visionary and depends upon the established regulations in the RCWs rather than bringing them into the Comprehensive Plan.

MVCC has other goals which are reflected in the zoning code or are desired to be implemented. MVCC believes it is speaking on behalf of the existing rural uses and community values. This assumption motivating their actions has led them to ignore the other comments that state otherwise and the intent of the commissioners adopting the 2014 Comprehensive Plan and 2015 zoning code. These goals and desires of MVCC include:

1. Requiring a clearing and grading review and permit before developing land
2. Dark sky regulations
3. Limiting ridge top development
4. Removing incompatible densities
5. Site analysis for all structures
6. Not permitting multi-family units on R-1, R-5 or R-20 lot sizes
7. Confinement of density to known legal and factual water availability
8. Limiting uses not compatible with community values and preferred future such as aircraft salvage, and petroleum service stations especially outside of cities or commercial areas.
9. Eliminating R-1 one-acre zoning
10. Subjecting permit-exempt well-use to instream flows and protection of senior water rights
11. No subdivisions

The Introduction of the lawsuit and the resulting stipulation agreement with the Tribes show that MVCC/FW and the Tribes intended to rescind the 2014 Comprehensive Plan and 2015 zone code and replace these documents with a new Comprehensive Plan and zone code. This allowed

## Okanogan County Farm Bureau Zone Code and its Relationship to Comprehensive Plan

MVCC/FW and the Tribes to introduce concepts into the Comprehensive Planning and zone code development while avoiding the public process, provided the means of circumventing unresponsive comments from previous scoping sessions provided by the county and avoiding involvement of the public in the development of the new Comprehensive Plan and Zone Code. Nor is there an interest in keeping with the intent of the Planning Enabling Act in moving the Comprehensive Plan and Zoning Code towards GMA requirements.

*Regarding the decision on the joint case, the conclusions are as follows<sup>7</sup>:*

The Yakima case was dismissed in March according to a formal stipulation agreement between the Tribe and Okanogan County.

Judicial review under the Land Use Protection Act is not allowed. The Court should refrain from looking behind the reasons why a decision was made one way or another in the context of LUPA.

The court strikes the Writ of Review. According to the terms of the Stipulation and Pre-Hearing Order entered on September 1, 2016, Okanogan County reserved the right to object to any review of the legislative decision-making process involved in the adoption of the comprehensive plan and zoning ordinance in question. Since Petitioners' materials do not persuasively argue otherwise the Court assumes they have abandoned any claim to relief under the writ statute. From here the Court declines to address summary judgment and dismissal.

The next issue in the case is the discussion regarding the declaratory judgment. For the Court to declare declaratory judgment relief, the court must have a justiciable controversy to gain jurisdiction under the declaratory judgment statute. The controversy must be an actual present dispute differing from a moot disagreement with a judicial determination that is final and conclusive.

Likewise, the Court has determined that there is no justiciable controversy making a declaratory judgment impossible. There is recognition that a dispute exists between the County and MVCC members. The question is how to resolve this dispute. As a legal proceeding, a declaratory judgment is desirable but for the above reasons not possible.

The Stipulation agreement with the Yakama Nation also precludes a declaratory judgment. The Court was sympathetic in making a ruling to resolve the difference to stay the matter. The answer appealing to the Court was an agreed review of the comprehensive plan and zoning ordinance or staying proceedings based on MVCC's requests. This course was complicated by the County:

1. The County declined the stay to protect the need for certainty with lenders and builders to avoid giving Plaintiffs priority in terms of their complaints over the interests of others.
2. The Court found the county's claims and concerns contrary to the terms of the Stipulations in Exhibit 1 and contrary to the Court's indications about the ruling on May 1. The following are the contradictions created by the County:

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<sup>7</sup> Memorandum opinion and order striking writ of review, Denying Summary Judgment and or dismissal Remanding for further Proceeding and staying Matter Case No. 15-00005-7 and 16-2-00313-5, June 21, 2017.

## Okanogan County Farm Bureau Zone Code and its Relationship to Comprehensive Plan

- a. The County shall take all necessary actions to review the comprehensive plan and zoning ordinance of 2014 and 2015 respectively. The conclusion drawn in prior environmental review documents shall be open to new review in any subsequent proceeding.
  - b. The County agrees to give serious consideration to all issues raised by the Yakama Nation.
  - c. The County agrees to set up an online tracking system for all land use applications and related decisions.
  - d. The County agrees to repeal in their entirety the comprehensive plan and zoning ordinance and adopt a new comprehensive plan and zoning ordinance to be completed by December 31, 2018.
3. The purpose of adopting a new comprehensive plan and zoning ordinance is to avoid any, and all potential prejudices or limitations to the parties' future claims and defenses.

The Court noted these stipulations contradict the reasons the County stated for opposing a stay. By entering the Stipulation agreement, the protection for the builders and lenders the County wants is compromised. There is no difference than if the Court had initiated the stay. For the reasons that there is no justiciable issue, and the agreed to stipulation, no declaratory judgment is possible. For logical process reason when no declaratory judgment is possible to terminate the controversy, the Court may refrain from ruling. Therefore, it says the matter.

The following violations and wrongdoing exist regarding citizens of Okanogan County:

1. The current Board of County Commissioners (BOCC) members have failed to observe the fact that the update to planning in Okanogan County was to be done under the Planning Enabling Act.
2. The goal of the County entering into the Stipulated Agreement with the Yakama Tribes is the same as doing so with MVCC and Futurewise as the complaints between the Tribes, MVCC, and Futurewise are identical and the cases were merged.
3. In giving deference to the Yakama Nation by seeking, as the County's purpose, to avoid all potential prejudices or limitations to the parties' future claims and defenses, the County gave prejudice to both the Yakama Nation and MVCC/FW and did not defend the 2014 Comprehensive Plan, 2015 zoning ordinance nor did the County confine planning or review to the Planning Enabling Act according to the citizens of Okanogan County request.
4. The lawsuit was used by MVCC/FW and the Yakama Nation to avoid public process due to the citizens of Okanogan County and to insert their agenda.
5. The Court clearly states that there is no Justiciable resolution to the dispute which means the controversy is moot, and the differences can't be resolved by legal principles. Therefore, there is no binding reason for the County to encumber the citizens by entering into the Stipulation Agreement resulting in the 2021 Comprehensive Plan and the new Zoning Ordinance.

**III. How MVCC backdoored the County into the Hirst case and coopted the Planning Enabling Act into the GMA issues of the Hirst case even before the ruling by the State Supreme Court.**



## Okanogan County Farm Bureau Zone Code and its Relationship to Comprehensive Plan

MVCC/FW understands that Okanogan County is Planning under the Planning Enabling Act (PEA). To associate planning in Okanogan County with the principles of the Hirst case MVCC sought to create a nexus with the arguments of the case within the GMA requirements. This was pro-actively done in 2015 before the state Supreme Court decision on October 6, 2016. The transition is based on this sequence of arguments<sup>8</sup>:

- 1) The Comprehensive Plan of 2014 needs to include a land use element that shall also provide for protection of the quality and quantity of groundwater used for public water supplies,
- 2) GMA uses the same language, this language is to be interpreted by additional GMA language in RCW 36.70A.070(5)(c)(iv) which includes requirements for the rural element of GMA in the comprehensive plan, a quote from a supreme court case “states that the GMA directs that the rural and land use elements of a county’s plan include measures that protect groundwater resources”,
- 3) Since RCW 19.27.097 and 58.17.110 were adopted by GMA, they also apply to Okanogan County. The claim supporting this point is “when the legislature uses the same phrase in closely related statutes it has the same meaning”; the operative phrase in the land use element is the quality and quantity of groundwater used for public water supplies. This means that the same operative requirement in the GMA should also be followed in interpreting the same operative requirement in the PEA.
- 4) Then an assertion is made: Okanogan County’s groundwater is used extensively for public water supplies. The 2014 Comprehensive Plan does not provide for the protection of the quality and quantity of groundwater used for public water supplies in the land use element.
- 5) In the question of adequate regulations, it is noted that none of the regulations require that water must be legally available and do not limit permit-exempt wells to the uses and quantity limits required by RCW 90.44.050. After using the Silver Spur Ranch as an example, the issue of permit-exempt wells is introduced where development regulations are required to protect groundwater quality and quantity in the PEA land use element. The 2014 Comprehensive Plan has no land use element and no protection for the quality and quantity of groundwater used for public water supplies.
- 6) Development densities in the Comprehensive Plan do not protect the quality and quantity of groundwater used for public water supplies, instead, they damage these critical drinking water resources.

Points 1 through 3 begin the argument. The Planning Enabling Act includes within its land element the requirement to protect the quality and quantity of groundwater used in public water supplies. Since the Growth Management Act has the same language the intent of the language is to be interpreted by the additional GMA language in RCW 36.70A.070(5)(c)(iv) which includes requirements where the land and rural use component of the comprehensive plan must address protection of groundwater resources. This is in addition to the protection of critical areas. Since RCWs 19.27.097 and 58.17.110 were adopted by GMA these requirements also apply in the PEA.

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<sup>8</sup> Case 15-2-00005-7 Methow Valley citizens’ Council’s and Futurewise’s Petitioners’/Plaintiffs’ Opening Brief, June 1, 2015 VI Argument § D pp. 49-55

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The conclusion is since the same operative of the PEA exists in the GMA further development of GMA regulation should elucidate the intentions of the PEA.

**Analysis:** This is an example of misuse of the principle in *para Materia* which means in the practice of law all laws relating to the same topic must be considered. The Planning Enabling Act went into effect in 1959 to give cities and counties the authority to create planning commissions. The BOCC could choose to create a planning commission indicating appropriation of the PEA is not mandatory<sup>9</sup>. In contrast, the GMA went into effect in 1990 and mandated fast-growing counties and cities to manage development in a way that protects natural resources.<sup>10</sup> It is clear that the legislative intent of each Act is for different purposes and should not be melded together where the GMA intentions and requirements are transferred to the PEA<sup>11</sup>.

The definition of public water supplies is changed to include protection of groundwater resources. This is justified by referring to the Rural Element in GMA which does not exist in the PEA<sup>12</sup>. In the PEA and GMA, the public water supplies are defined as follows:

*(1) Public water system shall mean any system providing water for human consumption through pipes or other constructed conveyances, excluding a system serving only one single-family residence and a system with four or fewer connections all of which serve residences on the same farm<sup>13</sup>.*

*4) "Group A public water system" means a public water system with fifteen or more service connections, regardless of the number of people; or a system serving an average of twenty-five or more people per day for sixty or more days within a calendar year, regardless of the number of service connections; or a system serving one thousand or more people for two or more consecutive days<sup>14</sup>.*

A public water system does not include all County groundwater sources supporting permit-exempt wells. The groundwater areas serving such public systems were identified and protected in the 2014 Comprehensive Plan and located on the required maps.

Point 4 asserts that Okanogon County's groundwater is used extensively for public water supplies which extends the idea that the protection of public water supplies includes protection of all groundwater sources including those accessed through permit-exempt wells. This is a creative way by MVCC/Futurewise to imply the protections for public water supplies must be considered for all groundwater sources in the PEA. This melds the definition of public water supplies with public water. Public water refers to water resources that are publicly owned or held in trust for the

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<sup>9</sup> RCW 36.70.010 & 36.70.030

<sup>10</sup> RCW 36.70A.040 clearly states population and evidence of growth rate that mandate cities and counties plan under GMA

<sup>11</sup> However, the legislature has created a distinction between GMA counties and non-GMA counties, and the resulting differences in resource management between those counties is a natural consequence of this legislation. Supreme Court Decision No. 91475-3 Hirst Case Oct. 6 2016 p. 21

<sup>12</sup> RCW 36.70A.070(5)(c) (iv) Protecting critical areas, as provided in RCW [36.70A.060](#), and surface water and groundwater resources; and

<sup>13</sup> WAC 246-290.020

<sup>14</sup> RCW 70A.125.010

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public such as lakes, rivers, streams and groundwater. Public water is different than a public water supply that has been developed to service 15 or more people for consumption. This type of connotative reasoning is not justified.

Point 5 notes that the County does not require that water for appropriation is legally available nor regulate its uses to RCW 90.44.050. The concept of legal availability of water was not made part of the requirements for RCW 19.27.097 and 58.17.110 until after the Hirst decision, due to the term “legal” taking a new meaning under Hirst. The regulations of RCW 90.44.050 for appropriating groundwater under permit-exempt uses are already stated and access and use are regulated by the owner of the well and well construction must be reported to Ecology. MVCC/Futurewise at this moment in time is promulgating a Hirst case concept before the Supreme Court made its decision on the case.

Point 6 introduces the concept that development densities affect the protection of the quality and quantity of groundwater. It has to be noted at this point that county planning involves the unincorporated lands of the county. Also, MVCC/Futurewise is looking at the impact of permit-exempt wells that appropriate public water owned for this purpose by Washington State, not public water supplies serving a municipality or community system of over 15 connections for their water consumption needs. This is how the connotative reasoning pulls Okanogan County into the Hirst case issue where land use planning must be confined to water availability.

The introduction of the notion that development densities affect the quality and quantity of groundwater is a novel perspective in the way that it is being used to restrict development. In the context of development, it is recognized that homes do affect the quality of groundwater unless there is adequate treatment of household waste through septic systems. The determiner of density rests with the county health department in determining the type of system for the soils that receive the waste and the capacity of these soils to handle multiple septic systems<sup>15</sup>. Many WACs and RCWs address the maintenance of groundwater quality.<sup>16</sup> Protection of groundwater recharge areas, similar to the idea of protection of groundwater used for public water systems exists in RCW 90.44.400.

The major issue of the Hirst case which is being applied to the density issue is stated this way:

*This present case, then, addresses whether the County's Rural Element contains measures limiting rural development to protect rural character by protecting surface water and groundwater resources, as required by RCW 36.70A.070(5)(c)(iv).<sup>17</sup>*

What is meant by this in the Hirst case:

*Petitioners argue the County lacks "measures" to ensure that land uses are consistent with available water resources and they claim the County is required under Kittitas to plan for*

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<sup>15</sup> WAC 246-272A.320

<sup>16</sup> RCW 90.44.400, RCW 90.40, RCW 18.104; WAC

<sup>17</sup> Hirst Case 12-2-0013 Final Decision and Order, June 7, 2013 p. 12

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*protection of water resources in its land use planning by adopting specific measures to ensure protection.*

*Specifically, regarding water availability, Petitioners contend the County "does not assure that land use is consistent with available water resources." They cite our State Supreme Court's Kittitas decision which emphasizes that the "County must regulate to some extent to assure that land use is not inconsistent with available water resources"<sup>18</sup>.*

These are issues germane to the GMA, not the Planning Enabling Act. The land use element in the PEA does not include a rural element nor does it include the phrase “protecting the surface water and groundwater resources” associated with the protection of Critical Areas. Moreover, the resulting carryover of these concepts, especially that land development densities must correspond to the available water resources, are evident in the 2021 Comprehensive plan and contribute to the fact the Comprehensive plan does not adequately balance the human needs with those of the environment<sup>19</sup>.

MVCC/FW and the Yakama Nation have sought to maneuver through fraudulent legal arguments, even before the Hirst case was decided and certainly, before the Hirst fix of 2018, led the BOCC to believe that land use planning must be consistent with available water resources.

ESSB 6091 ignores the Hirst case concept that land use planning must be consistent with available water resources and focuses on providing legal and actual water availability for development:

*It is AN ACT Relating to ensuring that water is available to support development<sup>20</sup>;*

In the Methow and Okanogan water resource inventory areas (WRIA 48 & 49) RCW 19.27.097 states that each applicant for a building permit for a building requiring potable water shall provide evidence of an adequate water supply for the intended use of the building. Notice that the applicant at the time of need initiates the proof of water adequacy for his project. Water adequacy is not determined by pre-planning confinement of land use planning to the actual and legal availability of water ahead of time.

In Section 1 (b) 6091, the Hirst fix, states that evidence of an adequate water supply must be consistent with WAC 173-548 which has set aside 2 cfs reservation per reach of the Methow, 14 cfs total for permit-exempt withdrawal for single domestic use. WAC 173-548 clearly defines where the water is legally and factually available for the Methow WRIA.

Section 1 (c) addresses WRIA’s with instream flow rules but lacks regulations governing permit-exempt withdrawals, evidence of an adequate water supply must be consistent with section 6 of this act. Section 6 establishes 15 watersheds of which Okanogan is included to establish watershed restoration and enhancement committees. This process is the RCW 90.94 Streamflow Restoration Act.<sup>21</sup> The goal of the watershed committees is to create a restoration plan that at a minimum includes action determined to be necessary to offset potential impact to instream flows associated

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<sup>18</sup> Ibid. p. 15

<sup>19</sup> Okanogan County Draft Comprehensive Plan November 4, 2021 p.17 Goal WR-1

<sup>20</sup> Substitute Senate Bill 6091, p.1 line 1

<sup>21</sup> [Progress on Implementation of Streamflow Restoration under 90.94](#)

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with permit-exempt domestic water use.<sup>22</sup> The types of projects that can contribute to the plan are defined including acquiring senior water rights (these rights are usually agriculture water rights and this option understands that as agricultural land is needed for development there will be additional water available to support permit-exempt uses.)

The projects are developed under 20-year planning periods with the requirement that the highest priority recommendation must include replacing the quantity of consumptive water use during the same times as the impact and in the same basin or tributary. The 20-year planning period includes the recognition that the offset projects will be developed over a programmatic period coinciding with the projected permit-exempt use.

Okanogan County formed a watershed restoration and enhancement committee and completed the Plan Addendum to the Okanogan Watershed Plan under RCW 90.82 by the June 30, 2021 deadline with Ecology's letter of acceptance.<sup>23</sup> The purpose of the plan was achieved which defines for the Okanogan WRIA 49 the legal and factual water availability as the mitigation projects which enhance the ecological function of the watershed for endangered fish while providing available water for permit-exempt use. The Plan addendum solves the questions posed by the Hirst case: how to provide water for permit-exempt domestic use while supporting instream flow rules and preserving senior water rights?

Section 2 of 6091 states that a county or city may rely on or refer to applicable minimum instream flow rules adopted by Ecology to comply with the requirements of this chapter relating to surface and groundwater resources.

Section 4 relates to the addition to RCW 56.17.110 for subdivisions:

*If water supply is to be provided by a groundwater withdrawal exempt from permitting under RCW 90.44.050, the applicant's compliance with RCW 90.44.050 and with applicable rules adopted pursuant to chapters 90.22 and 90.54 RCW is sufficient in determining appropriate provisions for water supply for a subdivision, dedication, or short subdivision under this chapter.*

### Concluding Remarks

- 1) The Commissioners were aware of the Hirst case by documents included in the court proceedings.
  - a. The Commissioners initiating the stipulation agreement with the Yakama Nation did not consider the arguments of MVCC/FW were moot, nor did they consider the fact that they were being led to commit to perspectives before the Hirst case was decided.
  - b. The Commissioners should have waited until the Hirst case decision was made and the resolutions to the problems it created were corrected in significant measure by ESSB 6091.
- 2) The arguments of MVCC/FW and the Yakama Nation are resolved by several factors.

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<sup>22</sup> 6091 Section 6 (3)(b)

<sup>23</sup> [Watershed planning - Washington State Department of Ecology](#)

## Okanogan County Farm Bureau Zone Code and its Relationship to Comprehensive Plan

- a. The Planning Enabling Act is legislatively in intent distinct from the Growth Management Act. Okanogan County declared through resolution it will not plan under GMA.
  - b. MVCC/FW and Yakama Nation sought to meld PEA mandatory elements with GMA mandatory elements seeking to make a GMA problem an Okanogan problem.
  - c. The ESSB 6091 provides the County with the definition as well as water availability which is both legal and factual for the Methow and Okanogan watersheds.
- 3) The 2021 Comprehensive Plan and the resulting zone code reflect the noted errors and are invalid. They need to be replaced to reflect the will of the people of Okanogan County and conformity with the PEA and the Hirst fix, 6091.
  - 4) Determination of water availability occurs at the time of building permit application and at the time a subdivision application is made. This will also include special development regulations for projects like a Planned Development.

### **IV. The problem with MVCC/FW water availability analysis and its contortion of water law.**

It is important to remember that water is scarce in Okanogan County and elsewhere in the continental USA because it often is not where we need it and can access it. All other key resources are the same particularly those extracted through mining. The resolution of scarcity occurs when someone decides to figure out how to make a particular resource more abundant and/or available. In Okanogan County water scarcity was solved by figuring out how to transport surface water through ditches and canals to where it was needed. Later on, when well drilling technology was developed and electricity was available to run pumps groundwater became accessible. The early settlers did the hard work for us to dig the water transportation systems that developed the surface water rights we have today used in agriculture. Water availability in the future will depend on creativity, and hard work free from regulation that has an agenda to control population and stifle human creativity.

To substantiate that the elements of the Hirst case apply to Okanogan County or to promote an agenda of limited development MVCC/FW has sought to create the concept of water scarcity. The primary target is permit-exempt groundwater withdrawals for domestic use. The rationale presented is woke, Malthusian, and Neanderthalic, because the scarcity claimed, becomes a created scarcity through regulation rather than true scarcity, in fact.

The carryover from the Hirst case is reflected in Futurewise's statement to the Okanogan County Hearings examiner after the decision in 2016 but before the Hirst fix of ESSB 6091:

*Okanogan County has a choice to make. It can allow many small rural lots and apartments outside cities and towns that greatly exceed the available water in the county. This will allow those who subdivide first to create new lots and new apartments, but condemn everyone else to existing lots that are unbuildable because all of the water is already used up under Washington's first in time, first in right water allocation system. Or the county could attempt to equitably limit lots and development to those that can be served by the available water resources. The county's current comprehensive plan and zoning hews to*

*the first approach, an approach that will create some winners, but many, many losers. We recommend another approach, one that seeks to attempt to match new development with available water resources. That is the fairer approach.*<sup>24</sup>

### **How MVCC, Futurewise, and the Tribes developed the water scarcity problem:**

**The first argument for water scarcity is over-allocation.** Both Water Resource Inventory Area (WRIA) 48 & 49 along with many of the sub-basins and streams are claimed to be over-allocated. It is pointed out that Ecology has on a common occurrence curtailed water right holders in favor of minimum instream flows (MIF) for the Methow and Okanogan Rivers. This was supported by Washington State University in the *Columbia River Basin Long-Term Water Supply and Demand Forecast 2011* Legislative Report documented that from 1977 through 2006 there were unmet demands in the Methow Basin, WRIA 48, and the Okanogan Basin, WRIA 49<sup>25</sup>.

#### Analysis:

However, the *Forecast* calculated unmet demand due to curtailment of interruptible and pro-ratable water rights for each WRIA for the historical period (1977–2006) and the 2030 forecast<sup>26</sup>. Interruptible water rights are generally given on a conditional basis subject to Minimum Instream Flows (MIF). Interruptible water rights include those classified below class I rights and senior water rights on stream appropriations. Pointing to interruptible rights is not an adequate criterion for water scarcity; it is an understood water management decision to preserve instream flows by shutting down interruptible water rights subject to instream flow during low flows due to drought. The reasoning also misrepresents the applicability of MIF in streamflow water management. A MIF is not a static value. What an MIF value is depends on which day of the year and how the present flow compares to flows at the same time in previous years. These values are based on the individual water year. Secondly, the MIF value is an exceedance value. For example, the Methow MIF is based on a 48% exceedance. This means that stream flows in the Methow will exceed the minimum instream flow level 48% of the time. Conversely, it also means during other years 52% of the actual stream flows will likely be below the set minimum instream flow. So actual overallocation will show up when stream flows are less than 48% exceedance and higher than 52% of the time. This is also true for the Okanogan basin.

**The problem of permit-exempt uses:** Closely associated with the concern over permit-exempt withdrawals is the use of Ecology's statement, that demands for water usage reduce water legally available for existing senior water rights including instream flows<sup>27</sup>. The question that is raised is; What is the purpose of MIF?

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<sup>24</sup> Futurewise Letter to Dan Beardslee, Okanogan County Hearings Examiner; *Information to inform future decision regarding the use of permit exempt wells*, February 17, 2017 p. 7

<sup>25</sup> Futurewise Letter to Dan Beardslee, Okanogan County Hearings Examiner; *Information to inform future decision regarding the use of permit exempt wells*, February 17, 2017 p.4

<sup>26</sup> *Columbia River Basin Long-Term Water Supply and Demand Forecast 2011* p. 38. [1112011.pdf \(wa.gov\)](#)

<sup>27</sup> Letter from Washington State Department of Ecology to Okanogan County Planning on Scope of the EIS p. 2 (Nov. 13, 2015) enclosed with the paper original of this letter.

### Analysis:

Ecology's statement is too broad of a statement and requires better context. First, it is the purpose of MIF to protect water for fish and riparian habitats. Several things were also done in association with setting MIF. Where appropriate further appropriation of surface water was curtailed and in some cases, water available for appropriation was defined usually as an interruptible right conditioned on MIF being met. In some watersheds a reservation of water was set aside for permit-exempt groundwater withdrawals in other watersheds, permit-exempt groundwater withdrawals were permitted as a *de minimus* use. The result of this mechanism of water management includes the protection of senior water rights<sup>28</sup>. Applying this statement to permit-exempt wells threatening senior water rights and MIF has some brackets. In the Methow WAC 173-548 has defined 2 cfs of water per reach, 14 cfs total for permit-exempt use for single domestic and stock use that is a protected right above MIF. After this set aside is used up MIF are to be preserved by ending the appropriation of permit-exempt use from the 14 cfs Reservation. In the Okanogan WRIA 49 the following provision is made:

*When the cumulative impacts of numerous domestic diversions begin to significantly affect the quantity of water available for instream uses or the maintenance of lake levels, then any water rights issued after that time shall be issued only for in-house use if no alternative supply is available.*<sup>29</sup>

A similar provision exists in other WRIs where no permit-exempt set aside exists. Appropriation of permit-exempt uses in these cases is considered a *de minimus* use based on the low impact and a long time frame before cumulative effects are detectable. Also, it is understood that groundwater is more abundant than surface water geologically.<sup>30</sup> Ecology will need to demonstrate that permit-exempt use is affecting particular MIF rules. In this framework, Ecology is to discern whether or not a watershed is going to be over-allocated resulting in impairment of senior water rights based on evidence that MIF are not being met in a particular basin. In extreme drought years there is also the provision to limit water use of rights based on first in time first in right.

### **Water limitations in the Methow:**

To illustrate the water scarcity and over-appropriation MVCC/Futurewise utilize the watershed studies for WRIA 48 & 49. For WRIA 48, the Methow River, the 2cfs reservation in WAC 173-548 is discussed as a finite limitation that requires limiting subdivision to the available water. If build-out occurs without any further subdivision 1092 homes in the lower Methow will not have access to the reservation. If build-out utilized all possible lot subdivisions under current zoning, 24,313 parcels will not have access to the reservation in the lower Methow. It should be noted,

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<sup>28</sup> By requiring these water availability determinations to consider impairment of minimum flows and closed streams instead of the intent of minimum flow regulations, the Court has elevated the protective status of minimum flows and closed streams beyond the intent of the regulations establishing them. *Whatcom county v. Hirst Decision Requires Counties to Independently Protect Minimum Instream Flows*, By Tom Pors, December 7, 2016

<sup>29</sup> WAC 173-549-070(2)

<sup>30</sup> <https://www.usgs.gov/special-topics/water-science-school/sc>



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that under each scenario other reservation reaches still have water available in their 2 cfs reservation<sup>31</sup>.

### Analysis:

Water availability in the Methow for future development has several options available. The Methow Watershed Plan 2005 notes that the 2 cfs reservation in the Early Winters Reach can't be used due to the cancellation of the Early Winters Resort which put the buildable land into Conservancy. This water could be moved downstream to provide water for the cities of Winthrop and Twisp. It also proposed a mobile use of excess water left in the reservation reaches where the excess water could be moved to reaches that need more water<sup>32</sup>. This action will address both the municipal and domestic water needs if subdivisions are kept at the current parcel size without further subdivision while leaving water for 3662 more homes after covering the 1092 home water deficit in the lower Methow.

If development heads towards the maximum build-out scenario with added subdivisions, particularly in the lower Methow other factors come into play. The Lower Methow also includes Pateros which can provide access to municipal water upstream from the confluence of the Methow River with the Columbia River to a suitable point. If this level of development occurs agricultural lands will be subdivided making agricultural water available for domestic use. The small development of six or more lots allowed in the lower Methow would require a water right which will not be provided from the 2 cfs reservation. One of the sources for such a water right is an appropriation from an agricultural water right. Although Ecology does not advocate changing agriculture water use to year-round domestic use, RCW 90.94.030 (3) (a) includes acquiring senior water rights (which are mostly agriculture rights) among the measures that improve watershed functions or offset potential impacts to instream flows from permit-exempt wells in rural county areas.

A more realistic view is to consider the actual water availability for WRIA 48. Each of the 7 reaches of the Methow can support 1820 wells based upon the 2 cfs reservation. This means that 12,740 homes with single domestic exempt wells can be built in the Methow Valley from the 2 cfs reservation. Current use to date since December 28, 1976, when the rule went into effect is 3430 homes subject to the reservation rule. This is an average of 72 homes built each year. If development grows at this pace over the years, complete consumption of the reservation is 129 years away. As noted earlier there are management options that can solve water distribution within the reservations and utilization of unused agricultural water.

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<sup>31</sup> Draft Evaluation of Reservation Quantities Established by WAC 173-548 under current and potential Future Buildout Scenarios, Aspect Consulting May 13, 2011

<sup>32</sup> Methow Basin Watershed Plan, 2005 p.19

### **Water Limitations in WRIA 49, the Okanogan Basin:**

The Okanogan basin, WRIA 49 according to MVCC/Futurewise and the Tribes is over appropriated. For example, some streams in the watershed are 41,188-54,143 percent over-appropriated in the summer.<sup>33</sup>

#### Analysis:

A brief interview of farmers in the Okanogan WRIA, notes their water availability has remained consistent over the years even though residential homes have gone in around them. These water use figures show extreme usage that should be drying up these watersheds, indicating there needs to be a justification for these figures. Not recognized in the high over-appropriation figures is the fact that surface diversion of water for agriculture on sub-basin streams has a priority rate that is classified as Class I through V and possibly more users from the stream. In drought years all lower class users must curtail the use of their water to ensure class I right holders and senior water right holders will be able to fully appropriate their rights as well as contribute to maintaining instream flows. The fact that lower priority rights are interruptible has resulted in many users dropping their right to divert water leaving the priority senior rights.

The Okanogan Basin doesn't have a reserve system like the Methow, but it does have options. The Hirst Fix, ESSB 6091 requires that watersheds without a groundwater regulation within their WAC must engage in developing a Plan Addendum to their existing watershed plans which identifies potential impacts of exempt well use and identify evidence-based conservation measures and projects that will improve watershed health and offset potential impacts to instream flows associated with permit-exempt domestic water use<sup>34</sup>. Okanogan County did complete the Plan Addendum on October 1, 2020. In summary, the projected growth through the 20-year planning cycle ending in 2038 resulted in the determination that there will be 578 new dwellings within the Okanogan Basin County lands, necessitating a total consumptive use demand from the domestic permit-exempt wells of 203 afy. The addendum identified the project sources for the necessary offset for this use.

The Plan Addendum went even further than the required watershed improvements and offsets for the 578 new homes. The Water and Tributary offset projects achieve a net surplus of 2,666-acre feet per year and 3.22 cubic feet/second. These offsets can support up to 7590 single domestic permit-exempt wells for homes.<sup>35</sup> Current development in the Okanogan watershed using permit-exempt wells since 2018 is 50 homes per year. This means we have up to 151 years of water as the noted projects get completed.

### **CONCLUSIONS:**

Water availability in both WRIA 48 and 49 at current growth levels will exist from 1 ¼ to 1 ½ centuries from now with project development and management. MVCC/FW and the Yakama

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<sup>33</sup>Futurewise Letter to Dan Beardslee, Okanogan County Hearings Examiner; *Information to inform future decision regarding the use of permit exempt wells*, February 17, 2017 p.6

<sup>34</sup> RCW 90.94.020 (2), (3), (4)

<sup>35</sup> Watershed Plan Addendum, Okanogan River Basin (WRIA 49) pp. ES-2-ES-3

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Nation are expecting the county plan to deprive people now of their ability to use their property and promote economic growth so that people up to 100 years from now have water to do what they want. This is a reversal of known economic outcomes. It has long been demonstrated that growth and being able to create wealth in the present time results in the sustainable ability for future generations to innovate, solve problems, and continue to prosper. Eroding this base by limiting the ability to use one's property as they see fit by confining development to existing known water supply curtails economic sustainability while denying the very means water scarcity is overcome.

- 1) The Hist decision on October 6, 2016, did curtail all permit-exempt groundwater withdrawals including the 2 cfs reservation in WAC 173-548 permit-exempt groundwater withdrawals for single domestic use. This is based on the argument that permit-exempt withdrawals were impacting MIF, senior water rights, and water for fish. As noted in the discussion above this made MIF a water right senior to permit-exempt withdrawals turning MIF rules upside down and invalidating the original intent of MIF. ESSB 6091 did not accept this position and reinstated the use of reservations in listed WRIs for permit-exempt use including the Methow and also provided the means in WRIs without groundwater rules to increase water availability through mitigation offsets. The efforts of MVCC/Futurewise seek to introduce the Hirst decision limitation on permit-exempt withdrawals by limiting development density to known water availability.
- 2) By participating in the Stipulation agreement and fulfilling it the BOCC is promulgating the reversal of the Hist fix regarding water availability for permit-exempt use.
- 3) The BOCC should also realize that a main player in the Okanogan water bank is MVCC. Their goal is to encumber access to senior water rights for permit-exempt withdrawals. Notice that in promoting water scarcity, the organization does not advocate senior water rights as a solution to provide permit-exempt groundwater withdrawals but confines water availability to only the 2 cfs reservation in the Methow and principally unavailable in the Okanogan basin due to over-appropriation. This effort will seek to overturn the provision in the Stream Flow Restoration Act that recognizes senior water rights purchases as an option to offset permit-exempt groundwater withdrawals<sup>36</sup>. The people of Okanogan County deserve to have the senior water rights acquired and developed by our predecessors stay in the County, able to offset permit-exempt wells as well as provide for future economic development needing water as some agriculture lands are converted to other uses.
- 4) The water banking concept is a part of the Plan Addendum. The issue is to ensure senior water rights placed into the water bank are not only usable for agricultural use but also flexible enough to convert to year-round use for permit-exempt withdrawals and commercial uses in a developing economy.
- 5) The BOCC needs to recognize that within Washington State code the time is every 8 years for the Growth Management Act for planning updates. For the Streamflow Restoration Act, the planning horizon is 20 years<sup>37</sup>. Development of comprehensive plans for cities and

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<sup>36</sup> RCW 90.94.030(3)(a)

<sup>37</sup> RCW 90.94.030(3)(c) and **RCW 36.70A.130(5)(b)**,

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counties under the GMA should be a planning horizon of 20 years.<sup>38</sup> It is inappropriate for the BOCC to consent to a global finite figure for water availability as MVCC/Futurewise has proposed due to the provisions in 6091.

- 6) The BOCC needs to implement the Okanogan Watershed Plan Addendum. Only minimal efforts have been achieved such as the Antoine Valley Ranch water rights, the Johnson Creek Culvert, and possibly the application for the Pine Creek water right.

### **V. Problems with the current zone code that reflect the bad decision associated with the lawsuit and the resulting Stipulations.**

The central issue with the revised zone code is its connection with the new 2021 Comprehensive Plan. The Comprehensive Plan has as its purpose to guide development and policy applications for the various land uses and water resources. For these reasons, the Comprehensive Plan establishes the DNA of the zoning code and carries with it the implications of the lawsuit and the Stipulations made with the Yakama Nation.

The specific concern is the evidence that the County is restricting land use based on a concept of confining land use to perceived water availability. Language in the Comprehensive Plan supports this concept:

*Goal WR-1: Make a clear conscious connection between watershed planning and land use planning in Okanogan County*

*WR-1.1: Utilize existing and future information and current scientific information to identify areas where water is legally and physically available, use the Comprehensive Plan and zoning to direct development to such areas to avoid over-development elsewhere.<sup>39</sup>*

There is also the pressure from MVCC/FW which is stated again here:

*We recommend another approach, one that seeks to attempt to match new development with available water resources. That is the fairer approach.<sup>40</sup>*

This pressure is evident in MVCC/FW push to move R-1 designation to R-2 or even R-5 according to their talking points. The noted statements in the Comprehensive Plan open the door to yielding to the concept to use low-density development to reduce water appropriation in line with their fixed view to limit water use to known water availability.

The SEPA Environmental checklist reveals the perspectives of water availability that are concerning:

*Following the adoption of its Comprehensive Plan, Okanogan County is updating various sections of the Okanogan County Code, Chapter 17A, Zoning. The intent of this code amendment is to bring consistency between the adopted Comprehensive Plan and the*

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<sup>38</sup> RCW 36.70A.130(3)(b)

<sup>39</sup> 2021 Comprehensive Plan pp. 17-18

<sup>40</sup> Futurewise Letter to Dan Beardslee, Okanogan County Hearings Examiner; *Information to inform future decision regarding the use of permit exempt wells*, February 17, 2017 p. 7

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*development regulations and zoning map. Code updates include replacing the Rural 1 zone with Rural 2 zone. This will also result in a map change to change the zoning designation of all the properties currently designated R1 to R2. In addition, the Rural 1 zone change to Rural 2 will support the health department requirement of a two-acre minimum lot size to maintain a well head protection zone and meet onsite septic system requirements.*

*This revision to the code will reduce land available for development.*

*The water availability section of the code was revised to incorporate current statutory regulatory and judicial requirements.<sup>41</sup>*

*However, the revisions to the zone code will reduce land available for development and thus are anticipated to reduce environmental impacts associated with development in the County, including demand for water. The water availability section of the code was revised to incorporate current statutory, regulatory and judicial requirements<sup>42</sup>.*

These entries in the SEPA document reveal that the County has been prejudiced by the lawsuit which brought concepts from the Hirst case into the planning document. What they reveal:

- 1) The intent is to comply with the comprehensive plan
- 2) The principles of the comprehensive plan require adjusting land use density to conform with available water supplies
- 3) The goal is to reduce or minimize development to limit water appropriations

Based on the comments in Section III these prejudices in the Comprehensive Plan must be removed so that the County is properly appropriating the Hirst fix of ESSB 6091 and also recognizing there is a distinction of intent of the PEA compared to the GMA. The second reminder for the County is it must focus efforts on completing the projects in the WRIA 49 Plan Addendum and ensure that when agricultural water rights become available due to the retirement of agricultural land to other uses, this water is preserved to be accessible to the citizens of Okanogan County to use to facilitate its economic development and provide water for domestic as well as commercial uses.

### *Discussion of 17.010.140 Water Availability:*

*In general, the Water Availability section does not clearly follow the Hirst fix ESSB 6091. The lack of definitions of key terms and a failure to articulate a clear pathway for a property owner to appropriate water for their project makes this section very onerous to those who read it. Being non-committal leaves the door open for the County to manipulate outcomes that are in line with reducing development density to claim protection of water resources.*

§ A (1) (2) Potable water: Potable water is not defined in 17.020 Definitions. The definition will clarify ambiguity for some regarding what that means and why it is important

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<sup>41</sup> SEPA Environmental Checklist, December 2023, pp. 2-3

<sup>42</sup> Ibid. p. 7

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§ A (3): This requirement will be clarified if a definition is provided for both legal and physically adequate water supply in 17.020 or by adding the conditions in the body of the water availability analysis. For example, how does an applicant determine that water is legally available on their property? If there is no approved well, how does an applicant prove water is physically available without drilling an exempt well or embarking on an expensive hydrological study if the source is not from a water right or from a public water supply? Utilize the clearer language of RCW 19.27.097 Section 1 (b) and (c); Section 2 and Section 6 and RCW 58.17.110 Section 4 (4)<sup>43</sup>.

Please note the suggestion for these answers in the Appendix.

### **Specifics relating to the present Redline version of the proposed 17 Zoning code.**

*The R-1 zoning 17.040.050* is still showing hesitancy and clarity that an R-1 parcel is a legitimate option by pushing the two-acre preference. The provision must clearly state the R-1 is a legal option. For this reason, the County isn't forthcoming in clearly stating the owner/purchaser's responsibilities and limitations for owning a 1-acre lot. By emphasizing a public water supply for a 1-acre lot the options available for developing a 1-acre lot is limited. The proposed revision is noted in the Attachment section of these comments.

*Minimum Requirement § 17.030.060 A*, should read: Maximum of one single-family dwelling unit and one accessory dwelling per 1 acre as long as adequate provisions for water and septic are permitted by Okanogan County Public Health.

*Rural 5 § 17.050.060 A*, should read: Maximum of one single-family dwelling unit and one accessory dwelling per 5 acres as long as adequate provisions for water and septic are permitted by Okanogan County Public Health.

*Agriculture § 17.070.070*, The property setbacks have been increased by 25 feet more than stated in the 17A 2015 zone code. With the larger parcel sizes, this is not necessary.

*Methow Review District § 17.130.110 b 5 c*: The restriction that no building structure shall be built within 50 feet, measured horizontally or vertically of a ridgetop does not necessarily prevent light or glare. Homes built below a ridge line emit light and glare due to their orientation to the sun. The same is true on ridge tops. Orientation on a ridge is more important than whether or not the home is on the ridge. People should have the freedom to build on a ridge top if they wish. If there is an issue with this it should be orientation in relationship to the sun.

*Table 17.220.020*:

1. Rural 2 should be changed to Rural 1 with a density of 1/1 and height of 35

*17.255.050 Energy Facilities*: State-of-the-art nuclear energy facilities are not mentioned.

*17.255.???*: There is no section addressing establishing a state-of-the-art nuclear energy facility in Okanogan County like there is for Solar.

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<sup>43</sup> ESSB 6091

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36.70.200 & 36.70.810 provide for the establishment of a board of adjustment, but no mention is made of having a hearings examiner provided in the Planning Enabling Act. Considering the controversy created by this document and enforcement plans it would be better to have a board of adjustment consisting of the required 5 or more members.

### **VI. Implications and actions the county faces**

- A. The present Board of County Commissioners must initiate revocation of the 2021 Comprehensive Plan as it does not comply with the Planning Enabling Act.
- B. The amended Zone code must be revised to be compatible with the PEA Comprehensive Plan.
- C. The County must cease using the concept that land use planning must be consistent with water availability. That concept is a GMA problem, not a PEA problem nor an Okanogan County issue since there are options for water use management and increasing water availability for permit-exempt uses as defined by 6091, the Hirst fix.
- D. Water availability analysis is initiated by the applicant for a building permit or a subdivision permit. This programmatic approach avoids the pre-planning prejudice of confining land use planning based on known water availability.
- E. The County is being pushed into a form of County governance where land use is being confined to existing public services like utilities, and roads, and where other services already exist, rather than expanding those services, we all pay for through our taxes to serve people where they want to live and create economic opportunities.
- F. With the known availability of water resources and the ability to increase them, the County faces the question of impairing property rights, especially the right to develop one's property due to a promulgated view of water scarcity. The obligations of the County are:
  - a. Maintaining a database tracking water availability regarding the permit-exempt reservation for single domestic and stock water in the Methow
  - b. Project execution of the permit-exempt offsets developed in the watershed Plan Addendum and tracking usage of the offsets in the Okanogan basin.
  - c. Ensuring senior water rights that become available due to changes in land use decisions remain in Okanogan County and can be repurposed for other uses that benefit the development and economy of Okanogan County.
- G. The County needs to start a natural resources department initially staffed by a water resources person to focus on project development and acquiring funding for the needed projects in the Okanogan Plan Addendum. It is noted that the natural resources planner, Angela Hubbard has probably not been filled since her departure. The webpage referencing the Natural Resource Planner looks like it has not been updated since Andy Lampe, Bud Hover, and Mary Lou Peterson were commissioners.

FURTHER ISSUES WITH THE COMPREHENSIVE PLAN AND ZONING CODE REWRITE

- A. **36.70 – Planning Enabling** offers more discretion and fewer requirements. The Planning Enabling Act (RCW 36.70) predates the GMA and provides a framework for local governments to voluntarily engage in land use planning and RCW zoning but without the same mandates or scope as the GMA.

**COMMENT:** The current Okanogon County Comp Plan and proposed zone code have far exceeded the beneficial requirements of RCW 36.70 and 36.70A.040 for a county that does not meet full GMA requirements.

- The BOCC has failed to prove, with supporting facts, the need for all proposed changes, some, of which infringe on personal property rights, violate State Law RCW requiring “Assure Regulations NOT result in an unconstitutional taking of private property rights,” which is the need for the changes, what harm has been done to require the changes.
- It is the responsibility of the County to ensure our Comp Plan and Zone Code comply with current State Laws.
  - Any updates needed, specifically under the Planning Enabling Act and Partial Planning RCWs, should be noted, and addressed, new definitions added and areas zoning would or would not be allowed, then let it go through the public hearing process.
- Instead, these types of updates are becoming full rewrites including “opinions” “dreams” and “misconceptions” that are being allowed into policy documents affecting our historic customs, culture, and Ag. and Natural Resource-based way of life.

Under RCW 36.70, counties can choose to develop and implement comprehensive land use plans and zoning regulations, but they are not required to meet the more rigorous standards set by the GMA.

- B. **The Growth Management Act (GMA)** requires that the fastest-growing cities and counties with population 50,000 + to complete comprehensive plans and development regulations to guide future growth and, if necessary, revise their plans every ten years to ensure they remain up-to-date. **Okanogon County does not meet the population requirements, to fully plan under GMA.**

**COMMENT:** Okanogon County's first comprehensive plan was adopted in 1965, 30+ years before the WA ST Legislature passed GMA. Okanogon County historically has never met the population requirements of GMA, and we still do not to this day.

Office Of Financial Management, required to track state population and density numbers, continues to report **Okanogon County is not meeting and continues to be below projected population growth numbers.** 2023 OFM reports the population of 42,700 with 26,325 people living in unincorporated areas of Okanogon County that this



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zoning code would impact. Statistics and facts show Okanogan County's population is far from a rapid growth increase, including lack of development, lack of new housing, and therefore limited need for wells. The BOCC has failed to provide facts lack of water availability has anything to do with development, residential housing, or population. The BOCC supports biased ideologies driven by groups with their agendas. We support a balance, and that balance must be based on facts.

- The BOCC has failed to provide factual proof of any water availability.
- The BOCC has failed to provide factual proof there is a lack of water availability for residential wells.
- The BOCC has failed to provide an adequate permitting process.
  - Add utilize the already established local water committee that worked on the WIRA 48 & 49, the information and reports from WIRA 48 & 49 when landowners want to either build a residential house or new development.
  - Before the Building Official approves the building permit, the landowner must provide proof from a certified well driller, on a certified Weel Log Report, gallons per minute, depth, pump size, etc., the fully completed form must be signed by the WA ST Certified Well Driller. Once the landowner has that in hand, they submit a copy to the Building Department, to be sent to the water committee of either WIRA 48 or 49 for approval. Once approved the landowner can start the Building Permit process, because they now have proof of water availability.
- The BOCC has failed to utilize OFM facts, to update Comp. Plan and zone code.
  - 2023: Okanogan County Population: 42,700
  - Unincorporated Okanogan County: 26,325 to which this proposed zone code applies.
  - **June 2023 Office** Financial Report: State population growth since 2020 is **below the annual increase from last decade. King County's main contribution of population increase, (not Okanogan County).**
  - Okanogan County rates 6th lowest population density, **@ 8.2 people per sq mile, in WA ST**  
In comparison: population density compared to OK.CO. @ 8.2 people per sq. mile  
Chelan:27.9    Douglas 24.5    King 1,110    Whatcom 119.9
- Since 1975, our population density has only changed by 3.29 people per square mile. A little over 3 people per sq mile, in 49 years, in the largest county in WA ST. The BOCC had failed to provide supporting facts to justify the need for proposed zone code changes or restrictions based on population and density facts. It is unjustified that a County planning under the Planning Enabling Act, Partial Planning County has a zone code that is over 200 pages!

- C. **The counties which do not meet the population growth** threshold outlined in GMA can opt-out, which the County has already done.<sup>44</sup>
- Under RCW 36.70A.040, counties that do not meet the **population growth thresholds** outlined in the GMA can opt to partially plan. This means they are not required to develop comprehensive plans covering all GMA elements, but they must still adopt development regulations, such as Critical Areas Ordinances, natural resource lands conservation, and protect environmentally sensitive areas.
  - Okanogan County is one of Eleven Counties referred to as “partially planning” jurisdictions, NOT required to fully plan under GMA.
    - **Comment:** These areas must be removed for compliance.
  - The current Comp. Plan and zone code look as if we ARE a fully GMA county, addressing opinions that are above and beyond, not required, under the Planning Enabling Act and partial planning county.
  - Our county leadership is allowing our comp plan and zone code to imply we are a full GMA county driven by lawsuits, instead of enforcing facts, following laws, and looking out for ALL of our best interests.
  - There are various sections of the zoning code with potential violations of state law that specifically state counties when working on comp plans and zone codes must “Assure regulations NOT result in unconstitutional taking of private property rights.”
    - **Comment:** These areas must be removed for compliance.
    - Light and Galar, building on ridgetops, and all other sections must be removed.
  - RCW 36.70A.040- These areas must be removed; they also do not meet the requirements of the Planning Enabling Act and Partial Planning requirements for zone code. Okanogan County is not planning under GMA. Light and Glare issues do not apply to the county zone code. This is a taking of private property rights requiring “no exterior light with a direct source visible from a neighboring property shall be installed.” Does this mean the county is going to REGULATE us FROM a light on our Flag in our yard? There are no lights along the County roads. This should be removed from the zone code. Landowners should be able to light their houses and property for their safety reasons, it is their property, their right. If this is an issue within one of the towns or cities, it should be taken up with them, and their zone codes not be incorporated into the county zone code for the unincorporated portion of Okanogan County.
  - Okanogan is not meeting the projected growth population or density numbers, continues to be below growth expectations, and cannot provide supporting factual records of housing or development is increasing.
  - BOCC signed a Proclamation regarding the Housing Crisis elevating it to critical proportions, due to the lack of available and affordable housing and homelessness. Okanogan County will need 2,023 housing units over the next 20 years, and agriculture laborers represent over 26% of jobs in Okanogan County. Why are there several

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<sup>44</sup> Resolution 72-98 Dated August 25, 1998

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sections of this zoning code restricting development and making it harder to address new housing needs?

- The proposed zone code conflicts with the BOCC Proclamation Crisis for housing.
  - **Comment:** The BOCC must review and remove the restrictions to support the Proclamation signed on 4/16/2024. Because this proposed zone code conflicts with BOCC Proclamation Crisis for Affordable Housing and Homeless Housing

**D. The BOCC must clarify this section, Dormitory-type housing:** Does the county mean, low-income housing, State-funded housing, or Farm Employee housing? Most housing units are being constructed within city limits due to the water and sewer infrastructure and availability of stores. These housing units would fall under City/Town zone codes, not county. If the County is referring to farm employee housing for our agriculture workers, wouldn't parking be addressed during the CUP permit process? **17A.160.060: Density:** “When adequate public infrastructure is available”

- Usually, there is no public infrastructure in the unincorporated portions of the county, other than possibly roads and power. Sewer and water are usually public infrastructure located within cities and towns.
- *Define:* BOCC has failed to express and define the definition of this section.
- This section does not support the BOCC Housing Crisis Proclamation.
- *Revise in direct conflict:* This section does not support the BOCC Housing Crisis Proclamation the BOCC spells out the need for in the next 20 years.
- There are several USDA programs to assist interested Ags. Producers to address housing shortages for Agricultural Workers. They can either build multi-family housing units on-farm or off-farm, (usually within the city).
- BOCC must review zone code and remove restrictions that will impact the utilization of these beneficial programs and meeting the goal of the BOCC Proclamation
- **Remove** “Off street parking” will be addressed if built within city limits.
- **Remove:** Parking spaces will be addressed during the CUP process for buildings on private property.
- **Remove:** The County has provided a blanket authority under (D) in this section, “requirements may be reduced by approval authority” when in reality, The specifics under this section should be considered site-specific, conditions through the application process, through the **Conditional Use Permit (CUP)** process.
- **Remove** All requirements from the proposed zone code to propose any density restrictions. Any density restrictions proposed by the County are unsupported and can be challenged and backed up by facts from OFM.
  - Okanogan County's population is not meeting state population projections or density projections
  - Okanogan County has 26,325 people living in unincorporated Okanogan County this zoning code will impact

- Okanogan County continues to show below-projected growth in population and density projections.
- Okanogan County is NOT having a housing development surge/rapid increase, therefore the need for an increased number of wells

E. **The County faces the question of impairing property rights**, especially the right to develop one's property due to a promulgated view of water scarcity.

- OFM continues to report Okanogan County is not meeting and below projected population growth numbers. Okanogan County continues to be below the estimated population growth.
- **Comment:** BOCC must conduct a full review of property sold to State, Federal, and Tribal Agencies, land in Conservation Easements, land purchased through any state-funded program or conservancy, addressing reducing development, no longer being farmed, domestic and irrigation wells no longer being utilized, etc., in Okanogan County over the past 30+ years, currently and proposed, to fully understand how much water is no longer being utilized when farm ground is taken out of production, development is restricted etc.,
  - The BOCC is facing potential litigation impairing our private property rights and doing so through the pretense of "water availability."
  - Instead of hiring an Enforcement Officer, we suggest hiring Staff to perform this study, a full review beginning in 1975, the total number of wells, irrigation and domestic have been "purchased by various State Agencies, when land was purchased, Conservation Easement long term development impacts in Okanogan County, and the totals recorded, THEN conversations can begin based on facts how much water is no longer being utilized and back in the aquifer vs "lack of water availability"
  - In addition to population and density numbers not meeting growth expectations

**Comment:** The BOCC has failed to provide actual and factual evidence Okanogan County has water availability or "lack of water" issues, lack of development pressures lack of density population pressures. Most changes have occurred due to outside pressures, opinions, lawsuits, and perceptions of what "could" happen, NOT justified and supported by current laws we are operating under and supported by facts. OFM population and density numbers continue to state Okanogan County continues to be below projections for population and density numbers. These are facts our plans should be based on. Below is an example of how the County allowed variations into County plans not based on facts, yet driven by pre-determined outcomes, that continue to impact development and residential housing to this day, with the County fringing on violations of private property rights of landowners.

BOCC must look at this history, review the zoning code, and remove all sections that do not apply to the definition of land use to establish zone code documents to comply with the Planning Enabling Act and Partial Planning, to avoid potential future litigation.

- History records reflect:
  - Comp plans and zone codes have been approved by public perception instead of utilizing facts. Example from 1975
  - Contract signed between Okanogan County BOCC and WA ST Dept. of Community Development 4/23/1975. Contract to be completed by 6/30/1975 (2 months)
  - Total \$8,400.00. The funds and contract were specifically for the County to propose amendments to its comp plan to provide for the effects on land use by major proposed recreation (ski hill) and mining developments, specifically for the upper Methow Valley.
  - Initiate and monitor an ongoing water quality sampling program on the Methow River, its tributaries, and ground waters in the Upper Methow Valley, air quality sampling program in the Upper Methow Valley is sufficient to be useful in determining “baseline” air quality levels.
  - Conduct special studies of environmental characteristics where information exists that there is unusual sensitivity to the effects of land development.
  - Transport members of the Planning Department, Planning Commission, Board of Adjustment, and other officials to and from Aspen, Vail Colorado to visit with their counterparts in those communities to learn of the impacts of major recreational activities in their jurisdictions.
  - Coordinate with state, federal, and local agencies to aid in the planning effort and also help to assess the impact of a major destination ski area in the Upper Methow Valley.

This contract language had pre-determination of the outcome to be achieved.

- Stop the Ski Hill recreation site
- Stop mining
- Stop current development
- Stop future development through water
- All based on non-factual information
- State-funded dollars supporting, was the start of the upper Methow Valley changing the way of life as it once was, with nothing based on facts, reports, or factual studies, currently resulting in negative impacts 49 years later based on the same lack of facts.

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1975 Twisp pop:750      2022: Twisp pop.:1,035      **47** years increased **285**  
1975 Winthrop pop.408      2022 Winthrop pop.:555-      **47** years increased **147**

1975 Okanogan County population was 26,800, of that 12,118 of the population lived in unincorporated portions of Okanogan County. The density of 4.91 people per sq mile.

49 years later, (2024), our density has only increased by 3.29, people per sq mile, (currently 8.2) for the largest county in WA State.

Okanogan County ranks the 6th LOWEST population density in the State.

There was no population or development threat. No threat to water from development.

- F. **SEPA-** The SEPA approved and signed by Commissioner Branch on 12/28/2023 does not reflect the current proposed zone code. SEPA reflects changing from R-1 to R-2 increasing larger lot sizes. SEPA has not been updated.

**Comment:** The zone code cannot be passed with the SEPA document that has not been updated. **The BOCC as the Responsible SEPA Official must update SEPA and follow the RCW public comment process for new review.**

**Violation:** The BOCC, as the responsible SEPA official, **has failed** to properly provide an updated factual SEPA document for the proposed zone code, and must be changed.

- Removing language changing from R-1 to R-2
- Okanogan County continues to be below state population projections and density projections.

**Comment: SEPA needs to be updated: BOCC SEPA signed by Commissioner Branch 12/28/2023 is in direct conflict with the Proclamation Declaring Affordable Housing, Homeless Housing Crisis in Okanogan County be elevated to level of critical portions, signed by the BOCC 4/16/2024. Stated OFM estimated Okanogan County will need 2,023 housing units over the next 20 years. Currently, there are 574 families and individuals on the waiting list for permanent housing with the Housing Authority of OK CO and the Colville Indian Housing Authority. The lack of available and affordable housing is increasing and is recognized as a crisis affecting the livelihood of individuals, families, businesses, and our county-wide community, with agriculture laborers representing over 26% of jobs in Okanogan County.**

The BOCC recognizes the OFM statement of the needed housing units, yet fails to recognize that Okanogan County continues to fall below the projected estimated population and density numbers. We fail to meet the numbers. Yet the Comp. Plan and proposed zone code appear we are exceeding the full GMA population of 50K, when in fact Okanogan County probably will not reach for another 50-75 years at the rate we are going. It is unacceptable for the SEPA Responsible Official, our Board of County Commissioners to submit an approved SEPA

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document with the following language, when we are NOT GMA, AND is in direct conflict with the BOCC signed Proclamation.

**REMOVE** the following language from SEPA: Okanogan County continues to be below state population projections and density projections. Does not match the zone code. SEPA is in Direct conflict with the BOCC Proclamation.

- Removing language changing from R-1 to R-2
- Increasing larger lot sizes.
- Limit development
- Reduce land for future development
- Require SEPA review
- Limits the number of allowable units in certain zones resulting in larger lot sizes and reduced development.
- Reduced density
- The proposed code amendment limits the number of allowable units in certain zones. It proposes to replace the Rural 1 zone with the Rural 2 zone, which will result in larger lot sizes and reduced development.
  - These changes are anticipated to limit development, which is anticipated to result in a corresponding reduction in demand for transportation, public services (including water), and utilities.

**Comments: Once updated BOCC must follow RCW public comment process for a new review. Okanogan County facts continue to support fewer restrictions under RCWs for Partial Planning/Planning Enabling Act Comp. Plan and zone code for Okanogan County.**

- G. **Requesting the BOCC put on record and identify how many properties will** become non-conforming as a result of adopting this proposed zone code, to adequately address RCW 64.06 when property is sold. Let property owners know upfront how this proposed zone code affects them. Most people have no idea how this overburdensome zone code will affect them until they try to sell their property or try to do something with their property.

**Comment:** Potential legal/litigation issue. This request can easily be addressed by the Assessor making a notation on the Taxsifter program for the parcels that will be affected. The BOCC should ensure this is completed before the adoption of the zoning code so the people can truly understand how many will be impacted.

- H. **The County is Required to Coordinate with the Colville Confederated Tribes.** The record does not reflect the date (s) the Tribe was invited, or the meetings that occurred, for the Tribe to sit down at the table for coordination to review the proposed zone code. HB 1241 requires coordination with Colville Tribes.

## Okanogan County Farm Bureau Zone Code and its Relationship to Comprehensive Plan

**Comment:** The county failed to provide proof of dates of meetings with the Colville Tribal Council and/or Tribal Members and their comments.

- I. **Okanogan County failed to provide proof of planning with Okanogan-Wenatchee National Forest to coordinate land use policies and plans for public and private lands in the County.** Each agency had committed to consult with the other before adopting proposed changes in land use policies and plans, dating back to 1975 and current required coordination.

**Comment:** BOCC failed to provide proof of coordination dates with Okanogan-Wenatchee National Forest to coordinate land use policies and plans for public and private lands in the County.

J. **Periodic Update OK. CO. Due June 2027 HB 1241 Passed 3/3/2022**

**Comment:** Request BOCC to continue any decision of this zone code until **May 2027, at which time a new zone code and comp plan could be updated for compliance with HB1241. An Act Relating to Planning under the Growth Management Act; and reenacting and amending RCW 36.70A.130**

Partially Planning Counties. Commerce has provided a checklist. HB 1241, passed the State Legislature passed March 30, 2022. Specifically, for the 11 partially planning counties, such as Okanogan County, to address specific areas our deadline is June 30, 2027, and 10 years thereafter.

- Does NOT require Partially Planning Counties to submit comp plans to the Department of Commerce.
- Partially Counties are not required to develop Comp. Plans, those who have adopted and maintain a Comp. Plan must ensure it remains consistent with any updates of development regulations.
- State Commerce has published June and Sept 2024, a new checklist we must follow to submit our periodic update, online.

**Periodic Update Review Requires Partially Planning Counties to review:**

- **Critical Areas**
- **Resource lands (ag. Forest and mineral resource lands)**
- **Siting of organic materials management facilities**
- **Tribal participation in planning**
- **Shoreline Management Act (SMA)**
- **State Environmental Policy Act (SEPA)**
- **Use of best available science (BAS)**
- **Compliance with the Planning and Enabling Act**

- K. **Request Statement:** BOCC recognizes the value of Farming Ranching and all Values of economics that Agriculture Producers bring to Okanogan County. The lifestyle to maintain



## Okanogan County Farm Bureau Zone Code and its Relationship to Comprehensive Plan

rural character to encourage and appreciate the hard work and continuation of Agriculture in Okanogan County and the traditional values and activities of our customs and cultures.

### **I. Requesting the BOCC to organize a working group to focus on the Periodic Update Checklist, consisting of the following members:**

- a. Farm Bureau
- b. Cattlemen's Association
- c. Hort Association
- d. CCT Tribe
- e. Timber Industry
- f. NW Builders Association
- g. Realtors Association
- h. WA ST Department of Commerce, (providing the training on each section, checking on progress and/or being the lead for the group)

Request scheduling work sessions, January 2025, to meet the deadline requirement of June 30, 2027 as outlined in HB 1241.

Once the working group completes one of the required sections, it is then turned over to the Planning Commission Board for their full review process.

Therefore, we are requesting any decision of this zone code is continued until May 2027 to meet compliance of HB1241.

## APPENDIX

### Comments on Okanogan County Zoning Code

**CLARIFYING HOW AN APPLICANT OBTAINS LEGAL AND ACTUAL WATER AVAILABILITY:**

Two areas require proof of an adequate water supply, a building permit, and a subdivision permit. The specific actions requiring proof of adequate water supply are noted in 17.010.140 § A, B, C.

**I. Legal availability of water**

The legal availability of water is determined by the provisions in RCW 19.27.097. 1)(a) Each applicant for a building permit of a building necessitating potable water shall provide evidence of an adequate water supply for the intended use of the building. Evidence may be in the form of a water rights permit from the Department of Ecology, a letter from an approved water purveyor stating the ability to provide water, or another form sufficient to verify the existence of an adequate water supply. An application for a water right shall not be sufficient proof of an adequate water supply.

The first two means is to have a water right or a letter from a water purveyor that grants you access to the water being purveyed. The water available from these two sources is both legal and factually available.

The third is another form of water access such as the permit to withdraw groundwater for permit-exempt domestic use.

In Okanogon County, there are different rules establishing legal water for the Methow, Okanogon, and multiple rules for Foster Creek, Sanpoil, Kettle, and Nespelem watersheds.

**In the Okanogon** legal water is established through the Stream Flow Restoration Plan which Okanogon County completed called the Okanogon Basin Watershed Plan Addendum. The task of the Plan Addendum is at a minimum, that the Okanogon watershed plan must develop an addendum that includes those actions that the planning units determine to be necessary to offset potential impacts to instream flows associated with permit-exempt domestic water use<sup>45</sup>. So far there are sufficient mitigation offsets in each subbasin for the immediate future. Legally available water for a building permit requires informing the Okanogon County Planning Office where your lot and building site are located and the proposed location of the well. The review process for legally available water includes that the well location is where water is factually available for appropriation and proper setbacks are in place between the well, house, and on-site septic system.

**In the Methow watershed**, legally available water is based on evidence of an adequate supply that must be consistent with the specific applicable rule

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<sup>45</sup> RCW 90.94.020

requirements which are stated in WAC 173-548. In summary, this means groundwater withdrawals are permitted in those areas of the Methow that have access to the 2 cfs reservation per each of the 7 reaches of the Methow watershed. This is a reservation above Minimum Instream Flows for permit-exempt single domestic and stock water for a total of 14 cfs. Permit-exempt withdrawals are prohibited in the identified closed basins. Legally available water for a building permit requires informing the Okanogan County Planning Office where your lot and building site are located and the proposed location of the well. The review process for legally available water includes that the well location is where water is factually available for appropriation that accesses the 2 cfs reservation and water is available in the reservation to appropriate and proper setbacks are in place between the well, house, and on-site septic system.

**The multiple rules for Foster Creek, Sanpoil, Kettle, and Nespelem watersheds require consultation with the Okanogan Planning Department regarding legal water availability.**

**II. Factually available water**

Factual water availability is already established by a water right and a letter from an approved water purveyor. The factual water availability for a permit-exempt well under 90.44.050 requires proof that it is available by drilling the well.

The applicant for a building permit must obtain a start card for the well from Ecology which allows a well driller to drill the well and provide the necessary well log. The applicant is to take the well log which will state the functionality of the well including a pump test. This will establish the factuality of water on the applicant's property.

**III. Potable water**

In Washington State, "potable water" refers to water that meets safe drinking standards as established by either state or local health authorities or by the U.S. Environmental Protection Agency (EPA). According to the Washington Administrative Code (WAC) and Revised Code of Washington (RCW) provisions, potable water must be clean, safe, and suitable for human consumption. It must also meet EPA's National Interim Primary Drinking Water Regulations,

For a permit-exempt well, a certificate of potable water is required for a building permit. The certificate of potable water is obtained from the Okanogan Health Department:

To obtain a certificate of potable water from the Okanogan County Health Department for a building permit, you generally need to demonstrate that the water source on your property meets health and safety standards. Here's a step-by-step overview of the process:

1. **Water Testing:** First, have your water tested for contaminants such as coliform bacteria and nitrates, typically required for private permit-well sources. You can obtain sample bottles and testing forms from the Okanogan County Public Health District (OCPHD). These samples are usually submitted directly to the Health Department, following guidelines for handling and submission. Testing costs are around \$35 per test.
2. **Well-Site Evaluation:** If you have a new or unapproved water source, you may need a well-site evaluation, where the Okanogan County Public Health Department assesses the site for possible contamination risks. This evaluation ensures the well is safe and located according to Washington Administrative Codes (WACs) for private or public water systems. If your well already exists, a sanitary survey might be needed instead.
3. **Submit Application and Documentation:** After completing testing and evaluation, submit your test results and a completed "Determination of Water Adequacy" form to the Health Department. This certificate confirms the water meets local and state health standards.
4. **Approval:** If your water source meets all standards, the Health Department will issue a certificate of potable water. This document is essential for your building permit application through the Okanogan County Building Department.

**Water for a subdivision:**

RCW 58.17.110 requires that cities or counties' legislative bodies can not approve a proposed subdivision unless there are adequate potable water supplies. In these cases, the potable water source will be municipal water or from an approved water purveyor. However, if the water supply is to be provided from a permit-exempt withdrawal the applicant's compliance with RCW 90.44.050 and with applicable rules adopted according to chapters 90.22 and 90.54 RCW is sufficient in determining appropriate provisions for water supply for a subdivision, 13 dedication, or short subdivision under this chapter.<sup>46</sup>

The county needs to be specific by defining the applicable rules noted above that will apply within the application process. For example, there is no clear statement in Title 16 Subdivisions regarding water availability and whether or not a permit-exempt groundwater source is available for a subdivision.

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<sup>46</sup> RCW 58.17.110 (1)(2)4)

PROPOSED WORDING FOR R-1 DESIGNATION

Chapter 17.040  
RURAL 1

Sections:

- 17.040.010 Purpose of classification
- 17.040.020 Permitted uses
- 17.040.030 Conditional uses
- 17.040.040 Accessory uses
- 17.040.050 Lot area and width
- 17.040.060 Density
- 17.040.070 Property line setbacks
- 17.040.080 Height
- 17.040.090 Lot Coverage
- 17.040.100 Parking
- 17.040.110 Special Provisions

**17.040.010 Purpose of classification**

The purpose of the Rural 1 designation is to provide a wide range of rural/high-density and compatible development options consistent with Okanogan County's comprehensive plan (LU-1.3).

**17.040.020 Permitted Uses**

Permitted uses are as indicated on the district use chart Chapter 17.220 OCC.

**17.040.030 Conditional Uses**

Conditional uses are as indicated on the district use chart Chapter 17.220 OCC.

**17.040.040 Accessory uses**

Accessory uses are as follows:

- A. Normal accessory uses customary and incidental to the permitted and /or conditional use of the property;
- B. Accessory dwelling units;
- C. Farm worker housing;
- D. Bed and breakfasts.

**17.040.050 Lot Area and width**

Lot area and width requirements are as follows:

- A. The minimum lot area is 1 acre
- B. The minimum lot width is 100 feet

### **17.040.060 Density**

Density Restrictions are as follows:

- A. Maximum of one single-family dwelling unit per acre except that one single-family dwelling unit and one accessory dwelling may be permitted on any lot so long as adequate provisions for water and septic are permitted by Okanogan County Public Health and based upon proposed site plan.
- B. Maximum of one multi-family dwelling with number of units determined by Okanogan County Public Health provided there is adequate provision for water and septic and site plan requirements are met.
- C. The density of RV parks, campgrounds, hotels, motels etc shall be determined by Okanogan County health district standards for on-site treatment or connection to public water and/or sewer.

### **17.040.070 Property line setbacks**

- A. All permitted structures shall have the following property line setbacks
  - 1. Front, the minimum is 25 feet
  - 2. Side, minimum is 5 feet
  - 3. Rear, minimum is 25 feet
- B. Manufacturing, commercial, or industrial structures: for structures greater than 35 feet in height, property line setbacks shall be a minimum of one foot horizontal for every one foot of vertical height. Example: A 65-foot-tall structure shall be required to be set back 65 feet from all property lines. If a waiver from adjacent property owner(s) is provided, the standard set back in this section (OCC 17.040.70 (A)) applies.
- C. Structures located on a lot that is adjacent to railroad facilities, and the structure is an accessory to a designated railroad loading facility, shall be exempt from the setback along the property line bordering railroad property and/or railroad right-of-way.

### **17.040.080 Height**

Height restrictions are as follows:

- A. The maximum height for all uses in the zone shall be 35 feet except as noted in OCC 17.220.020.

### **17.040.090 Lot coverage**

Maximum lot coverage is 35 percent of the total lot area.

### **17.040.110 Special Provisions**

- A. As a condition of county permissions to subdivide a lot into 1-acre parcel(s) all 1-acre subdivision applicants shall file with the county auditor a statement, which runs with land of each 1-acre parcel, including the following words: *Prospective buyers understand and take responsibility that the seller of this lot does not*

*warrant that the lot will be able to supply adequate minimum state-required fresh water supply for the intended land use or that the lot will comply with all horizontal setbacks and soil types required by the state concerning potential sewage disposal systems.*

- B. Before land purchase, prospective buyers are encouraged to:
  - 1. Research or consult with county planning and health departments for additional guidance.
  - 2. Must develop a prospective site plan based on the requirements in WAC 246-272A to show understanding of residential water and sewage requirements as part of their purchase decision as well as the development of their property.
- C. Water availability and sanitation requirements can be filled if the proposed building unit has permission from a municipal water and sewage treatment facility.