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Reply to: Spokane Office

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**SENT VIA EMAIL: [phuston@co.okanogan.wa.us](mailto:phuston@co.okanogan.wa.us)**

SEPA Responsible Official  
Okanogan County  
Office of Planning and Development  
123 - 5th Ave. N. Suite 130  
Okanogan, WA 98840

Dear Madam or Sir:

**RE: Comments on Environmental Impact Statement Addendum A: Revisions to the Okanogan County Comprehensive Plan February 11, 2011**

These comments are submitted on behalf of my clients, Nancy and Jim Soriano, on the Environmental Impact Statement Addendum A: Revisions to the Okanogan County Comprehensive Plan dated February 11, 2011 ("Addendum A"). Please include these comments in the record for this matter and include me on the mailing list for any further notices.

First, we incorporate by reference our recently submitted comments on the revised Comprehensive Plan and the comments submitted on behalf of Futurewise and the Department of Ecology on Addendum A.

As set forth below, it appears that Addendum A fails to comply with the requirements of SEPA by: (1) failing to comply with the requirement to analyze impacts as required by SEPA; (2) not considering the impacts of failing to fully designate natural resource lands in the Tunk Valley; (3) failing to consider the quantity and quality of groundwater in the Tunk Valley; and (4) failing to consider impacts to habitat necessary for sharp-tail grouse in the Tunk Valley.

**1. ADDENDUM A FAILS TO COMPLY WITH THE REQUIREMENTS OF THE STATE ENVIRONMENTAL POLICY ACT.**

The County's Addendum and subsequent addenda must comply with the requirements of the State Environmental Policy Act ("SEPA"). SEPA environmental review is required for any local agency decision that is not categorically exempt, including, as here, amendments of a County comprehensive plan. WAC 197-11-704(b)(ii).

SEPA requires the disclosure and full consideration of environmental impacts in governmental decision making. *Polygon Corporation v. Seattle*, 90 Wn.2d 59, 61, 578 P. 2d 1309 (1978), citing *Norway Hill Preservation & Protection Ass'n v. King County Council*, 87 Wn.2d 267, 552 P.2d 674 (1976). The Court of Appeals in *Moss v. Bellingham* restated the long-standing rule that the purpose of SEPA is to function "as an environmental full disclosure law." 109 Wn. App. 6 (2001). Agency decisions must consider more than the narrow, limited environmental impact of the immediate, pending action and cannot close their eyes to the ultimate probably environmental consequences. *Cheney v. Mountlake Terrace*, 87 Wash.2d 338, 344, 552 P.2d 184 (1976). SEPA specifically required that the County conduct a detailed and comprehensive review, rather than take a "lackadaisical approach.". *Eastlake Cmty. Council v. Roanoke Assocs., Inc.* 82 Wn.2d 475, 494, 513 P.2d 36 (1973); see also *Norway Hill Pres. & Prot. Ass'n v. King County*, 87 Wn.2d 267, 273, 552 P.2d 674 (1976)(SEPA requires a "detailed statement"). SEPA further requires that the County demonstrate that environmental impacts were considered in a manner sufficient to amount to prima facie "compliance with the procedural requirements of SEPA." *Sisley v. San Juan County*, 89 Wn.2d 78, 64, 569 P.2d 712 (1977).

SEPA regulations specifically require that the County "carefully consider the range of probable impacts, including short-term and long-term effects" of a proposal. WAC 197-11-060(4)(c). Moreover, the regulations specifically state:

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

WAC 197-11-060(4)(d).

Washington's State Environmental Policy Act Handbook specifically provides that the review of comprehensive plan amendment should include consideration of the future development allowed by that action, stating:

If the nonproject action is a comprehensive plan or similar proposal that will govern future project development, the probable impacts need to be considered of the future development that would be allowed. For example, environmental analysis of a zone designation should analyze the likely impacts of the development allowed within that zone. The more specific the analysis at this point, the less environmental review needed when a project permit application is submitted.

Washington Department of Ecology, State Environmental Policy Act Handbook (1998) at 66 (hereinafter referred to as the "SEPA Handbook").<sup>1</sup>

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<sup>1</sup> Available at <http://www.ecy.wa.gov/pubs/98114.pdf>.

Here, the Addendum made virtually no effort to analyze the probable impacts of the enactment of the revised comprehensive plan. Instead, the document contains a generic description of the County's proposal and a deferral of impacts analysis to other documents (such as the Shoreline Master Program and Critical Areas Ordinance) and later addenda – "[A]dverse impacts caused by proposed revisions to those regulations will be examined in addendums B, C, D, and E of this environmental impact statement." Addendum A at 8. Important impacts, such as those to groundwater supplied, are unaddressed – how much water is available and how will the proposal impact that supply?

The SEPA Handbook further states, in regards to actions such as this governed by the Growth Management Act, "It is not possible to meet the goals or requirements of GMA or to make informed planning decisions without giving appropriate consideration to environmental factors. The GMA nonproject actions such as the adoption of policies, plans, and regulations form the basis for subsequent "on the ground" project decisions that directly affect our environment." SEPA Handbook at 75. The guidance in the SEPA Handbook could not be any clearer to this situation:

Q: Is environmental review necessary for a jurisdiction that is updating an existing comprehensive plan to satisfy GMA?

A: Yes, updating an existing comprehensive plan is an action that requires environmental review under SEPA. The type of environmental review required will vary depending on whether an EIS was prepared for the existing plan, how recently the EIS was prepared, and how extensive the revisions will be. As a general rule, the environmental review should address any probable significant adverse impacts that will result from the revised plan that were not analyzed when the existing plan was adopted.

SEPA Handbook at 131. Accordingly, the County must analyze its decision to designate or not designate lands– this must include impacts to water supply, water quality, and sharp-tail grouse habitat.

Growth Management Hearing Board cases addressing SEPA requirements in GMA actions mirror the requirements of the SEPA Handbook. In *Hood Canal v. Jefferson County*, Case No. 03-2-0006, Final Decision and Order (Aug. 15, 2003), the Hearings Board struck down a similar effort of Jefferson County to defer evaluation of environmental impacts because the proposed action was a nonproject comprehensive plan action, stating:

The County argues that the review that was conducted at this stage was appropriate because the County has flexibility in preparing an EIS and a general discussion of the impacts of alternate proposals is proper because the comprehensive plan affected a land use designation. WAC 197-11-442(1) and (4). However, **this regulation does not excuse the County from an analysis and evaluation of environmental impacts of alternatives; it just means that the**

**impacts and alternatives may be discussed “in the level of detail appropriate to the scope of the nonproject proposal and to the level of planning for the proposal.” WAC 197-11-442(2).**

Addendum A does the same thing – defers much of the analysis to later planning processes and later SEPA documents. While SEPA does not require the County to evaluate a laundry list of unrelated environmental considerations, it does require that the County evaluate probable significant environmental impacts, such as impacts to available water supply and wildlife habitat. WAC 197-11-402 (1). Here, the County made no effort to look the impacts of the revision to the comprehensive plan as required by SEPA.

**2. ADDENDUM A FAILS TO CONSIDER IMPACTS OF LAND DESIGNATION AND IMPACTS OF FAILING TO FULLY DESIGNATE NATURAL RESOURCE LANDS IN THE TUNK VALLEY.**

The description of the alternatives in Addendum A (pages 3-7) is vague and confusing, particularly in regard to the designation of resource lands and the impacts of that decision. First, Addendum A lacks a quantification of existing lands used for agriculture, forestry, and mining in the County. There is no description of available water supplies, fish and wildlife abundance and habitat, or existing and projected housing units. Second, there is no analysis of the environmental impacts of the proposal – what will be the impacts of resource land conversion? Are there adequate water resources to support that conversion? None of these issues are analyzed in Addendum A.

These shortcomings are particularly problematic given the proposal for the Tunk Valley that fails to adequately designate resource lands. Historically, land use in the Tunk Valley has been exclusively grazing and timber resource. These land uses are extremely valuable to the County and their value and importance can only increase with time. These resource-based land uses are also compatible with the County's obligation to protect critical areas, including sharp-tail grouse habitat.

The County's proposal fails to designate the entirety of the Tunk Valley as natural resource lands for timber and grazing. This area is currently devoted to resource use and has long-term significance for resource production warranting resource land designation. Despite this, Addendum A lacks any discussion of the impacts of the re-designation of this area – particularly to existing and future water resources and wildlife habitat (both discussed below).

These decisions appear to be based on an erroneous statement in the draft Comprehensive Plan that the County may not designate all qualifying resource lands if more than the minimum necessary to sustain the industry. That is incorrect. The County must designate all lands that qualify as lands of long-term commercial significance.

Instead of applying the correct standards, the draft Comprehensive Plan states that only 27,600 acres is needed to maintain a viable base for agriculture and 420,000 acres is needed to maintain a viable base for the cattle industry in the County. See Draft Comp. Plan at 17. This is

insufficient. Importantly, in this context, the County must consider and analyze the environmental impacts of this decision. Again, there is no discussion of these impacts, as required by SEPA.

Unlike the current proposal in the draft revision to the comprehensive plan, the 2009 Zoning Map designated the entire Tunk Valley as resource lands. This designation occurred based upon current and historical use, neighborhood input, and recognition of water shortage issues in the Valley. The proposed designation and parcel sizes will result in a loss of water and impact existing residents and the resource economy in the Tunk Valley.

This proposal has other impacts that are not addressed anywhere in Addendum A:

- What are the traffic impacts associated with the proposed designations in the Tunk Valley? Many of the dirt roads in the areas are impassable during parts of the year. The County's SEPA document must recognize this and address impacts to emergency response, road infrastructure, dust (from increase use of unpaved roads), and other impacts associated with development in areas that have unsuitable infrastructure to support this level of development.
- The Addendum does not describe or analyze public safety impacts associated with the proposed increase in development in the Tunk Valley. A FEMA report concluded that much of the Tunk Valley was indefensible from wildfire. The County must assess wildlife risks and defensibility as part of the SEPA process.
- The Addendum fails to disclose or analyze proposed impacts to aesthetics if increase development is allowed in the Tunk Valley. Aesthetics is a component that must be included in a SEPA document and the Addendum lacks any analysis of this issue in the Tunk Valley.

All of these impacts must be disclosed and analyzed.

**3. ADDENDUM A FAILS TO ANALYZE IMPACTS TO THE QUANTITY AND QUALITY OF GROUNDWATER IN THE TUNK VALLEY.**

Addendum A fails to disclose and analyze impacts of the revision to the comprehensive plan to water quality and quantity in the Tunk Valley. The ground water section lacks any discussion the existing condition of ground water resources. Addendum A at 9. Likewise, the surface water section does not discuss the existing condition of surface water resources, surface water availability, or water quality, particularly in the Tunk Valley. *Id.* at 9-10. The surface water section also does not explain whether the proposed Comprehensive Plan is consistent with established Instream Resource Protection Plans applicable to watershed in the County.

Moreover, there is no discussion of whether there is actually any available water to support the proposed re-designations and accompanying land use changes proposed by the revision to the comprehensive plan, including impacts senior water rights holders. The proposed zoning in Tunk

Valley includes one-acre densities for properties along Tunk Creek. The rest of the Tunk Valley is designated for one and five acre lots. The proposed parcel sizes will result in a loss of water for existing residents adversely impacting the resource economy in the Tunk Valley.

This is particularly important because a significant number of Okanogan County's subbasins and streams are already overappropriated.<sup>2</sup> Existing data, which is not discussed in Addendum A, indicates that there is insufficient water to support the proposed level of development in the Tunk Valley. During heavy rains (which are infrequent) and snowmelt, Tunk Creek flow increases, but there is little during other times of the year.

In 1974, the Department of Ecology published a Water Supply Bulletin focusing on water supply in Okanogan County. This early conclusion is confirmed by the later data collected by Department of Ecology's stream gauge on Tunk Creek. First installed in 2002, the gauge has monitored stream flow nearly continuously since that time. Flows range between 0.1 cubic feet per second (cfs) and 49.8 cfs.<sup>7</sup> Low flows occur during summer and fall season.

There have been two primary studies conducted on water availability in the Tunk Creek Basin, the first completed by the Department of Ecology in 1974 and the second by the USGS in 2009.

These studies indicate that the Tunk Creek Basin has limited groundwater supply and Tunk Creek surface waters and local groundwater are likely connected. Nearly 40 years ago, water shortages were already reported. The 1974 study reports that one Tunk Valley well did not yield enough water for domestic use. The authors state that of the few wells already in use, most had yields barely adequate for stock or domestic use. The Department estimated that approximately 60,000 acre-feet of groundwater is present.

The more recent study published by USGS in 2009, focused on four subbasins in the Okanogan River Basin of which Tunk Creek is one. The report states that limited groundwater storage is present in the Tunk Creek due to the subbasin's hydrology and geology. The study also points out a high potential for groundwater withdrawals to affect Tunk Creek streamflow. Of critical import, the study concludes that overall groundwater availability is limited and provides just enough water for current domestic uses without any expansion. The study also concludes that due to limited groundwater storage, any withdrawals from existing shallow wells will decrease Tunk Creek stream flows.

The Department of Ecology has also recognized hydraulic continuity between Tunk Creek and the subbasin's groundwater, as set forth in the approval of a transfer of a surface water right (withdrawing directly from Tunk Creek) to a groundwater right. The new wells were located approximately 1015 feet from the Creek. Ecology's hydrogeologist found hydraulic continuity exists between ground and surface waters.

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<sup>2</sup> See generally <http://okanogancd.org/Ok%20Watershed%20Plan.html> and cited pages enclosed with this letter.

The conclusions to be drawn from these reports are that groundwater is in short supply in the Tunk Creek basin and insufficient to support domestic use. SEPA requires the County to consider these impacts and Addendum A fails to do so.

Given the hydrologic connection between the Creek and groundwater, the County's EIS must consider and analyze the quality of groundwater. *Id.* Tunk Creek is currently listed as a water quality "impaired" water body for pH and fecal coliform pursuant to §303(d) of the federal Clean Water Act. Tunk Creek will require preparation of a plan to improve water quality by limiting pollutant load. Consequently, the County must analyze how its decisions impact surface water pollution that may ultimately impact the quality of the groundwater feeding Tunk Creek. Also, given the new development that would be facilitated by the proposed Comprehensive Plan, the County must analyze the impact of new onsite septic systems to groundwater supplies.

The current draft of Addendum A fails to meet the County's SEPA obligations.

**3. THE ADDENDUM LACKS ANY ANALYSIS OF IMPACTS TO SHARP-TAIL GROUSE HABITAT IN THE TUNK VALLEY.**

The Addendum fails to analyze impacts of the proposed revision to the Comprehensive Plan to sharp-tail grouse habitat in the Tunk Valley. Instead, the Addendum contains a generic statement that "[t]he proposed policies encourage the use of development practices that recognize those areas critical to wildlife in Okanogan County. The net result of the proposed policies and designations should decrease the likelihood of impact to the environment than possible with the current comprehensive plan and designations." Addendum A at 10.

This ignores the impacts to sharp-tail grouse habitat. Specifically, the proposed densities in the draft plan would ruin essential riparian habitat by depleting very scarce water resources. Moreover, the proposed urban densities would fragment habitat and fail to protect sharp-tail grouse habitat. The addendum fails to analyze these impacts and, in fact, completely fails to even mention sharp-tail grouse, a State Threatened Species. This despite the fact that every county in the State of Washington is obligated and required to protect State Threatened Species and their habitats.

According to a WDFW official, few counties still have any sharp-tail grouse or associated habitat and none compare to Okanogan County. For instance, Lincoln County may have as few as four birds remaining. As a comparison, just one lek in the Tunk Valley has 22 males and there are at least six leks in the Valley (and possibly more). If we lose sharp-tail grouse in the Tunk Valley, which supports the most important population in the State, there is virtually no hope for this species in Washington.

Addendum A must disclose and analyze impacts to this species. The Washington Department of Fish and Wildlife estimates that there are only 712 adult sharp-tail grouse left in Washington State. This remnant population of what was once the most abundant game bird in the State, is now found on 2.8% of their historical habitat. Much of this habitat is on private property. The

Department of Fish and Wildlife states that the objectives of the Recovery Plan for Sharp-tail Grouse cannot be accomplished without protecting habitat on private property.

Within Okanogan County, a significant population of sharp-tail habitat is the Tunk Valley. It is an important hub of the populations that occur to the north and to the south in the Colville. It is essential to the viability and the genetic health of the sharp-tail grouse in Okanogan County that these populations not become small and isolated. Sharp-tail populations depend on the riparian habitat associated with Tunk Creek as well as the sub-irrigated areas found throughout the Tunk Valley, and the surrounding thousands of un-fragmented acres of steppe shrub for survival. These areas provide essential breeding and survival habitat. Much of the area depended upon by sharp-tail grouse in the Tunk Valley is privately owned.

The proposed designations in Tunk Valley include one-acre densities for properties along the Tunk Creek. The plan's emphasis on one-acre lot development without accompanying regulations to protect critical areas would result in destruction of these critical habitat areas. Accordingly, to comply with SEPA, the County must disclose and analyze impacts to sharp-tail grouse and take necessary action to avoid those impacts.

#### CONCLUSION

For the reasons set forth above, it appears that Addendum A fails to meet the requirements of SEPA. Accordingly, the document should be redrafted consistent with the requirements of the law and re-circulated for public review.

Very truly yours,

BRICKLIN & NEWMAN, LLP