

Date: November 25, 2010 (comments in red text were added after written comments were submitted)

To: Perry Huston
Office of Planning and Development
123 Fifth Ave N, Suite 130
Okanogan, WA 98840
phuston@co.okanogan.wa.us

Subject: Comments on the Critical Areas Ordinance

Dear Mr. Huston:

Please accept the following comments on the proposed Critical Areas Ordinance (CAO) from the Methow Valley Citizens' Council. The Methow Valley Citizens Council works to maintain the rural and agricultural character of the Methow Valley through planning and conservation of the quality of our water, air and wildlife. We want to ensure that the goals and policies of the CAO are consistent with conservation of the rural and agricultural landscape.

GENERAL COMMENTS

- The CAO should include description that identifies the purpose and need for the regulations. These should include management of Aquifer recharge areas, Fish and Wildlife Habitat, Frequently Flooded Areas, Geologic Hazard Areas and Wetlands.
- We support the CAO policy to maintain and update maps showing location of known Flood Hazard Areas, Aquifer Recharge Areas, National Wetlands Inventory, Geologic Hazards and Stream Type maps with setback requirements depicted on the map legend. These maps should be available for public review. However in the area of aquifer recharge areas and wildlife habitat, the maps are inadequate.
- The CAO review should be triggered not just by a Subdivision application but by any request or action in which soil, plant or wildlife habitat disturbance is possible including roads. Currently a developer can build roads prior to submitting any applications to or receiving approval from the County. Often times these developments never come to fruition. These roads are scars that zigzag across the landscape disturbing wildlife habitats.
- The CAO should provide for air quality protection and wildland fire protection.
- The CAO should reference supporting plans such as the County All-Hazards Mitigation Plan and state air quality regulatory framework. The CAO needs these references to provide for coordination when wildfires occur and in providing input to state air quality regulators.
- The goals of the CAO should add protection of safe drinking and irrigation water supplies for the health and well-being of the people of Okanogan County.
- The CAO should add a goal to protect aquifer recharge areas from contamination by fecal coliforms.
- The CAO should add a goal to protect aquifer recharge areas from mine tailings.

- The CAO should include a policy that provides for transportation planning to provide for maximum use of human powered modes of travel and mass transportation to prevent air pollution.
- The CAO should include a policy that provides for transportation planning to provide for wildfire access and highway safety.
- The CAO should include guidance to identify causes or sources of environmental degradation and work with property owners to develop workable solutions to redress or eliminate these impacts.

AQUIFER RECHARGE AREAS

- The CAO omitted reference to existing mapped aquifers, published in (a) the Okanogan Watershed Plan for WRIA 49, and adopted by County Commissioners, April 6, 2010, and also (b) in a ground water data compilation by the Department of Ecology (<http://www.ecy.wa.gov/pubs/99342.pdf>). An example of aquifer locations is attached (Figure 1). The Watershed Plan estimates the amount of surface and ground water present in the Okanogan River and its tributaries, the amount of water available, the amount being used, the number of water rights claims, and other legal claims to Basin water; aquifer recharge area identification, the amount of instream flow that must be left in streams for fish and wildlife, future water needs for cities and towns, and strategies for increasing water supplies. The Plan gives a good scientific description of the physical properties of the watershed, including summaries of climate and hydrology. In
- The claim that there are no mapped aquifers in Okanogan County should be changed to acknowledge the location of known aquifers.
- The CAO should adopt a planning framework to protect critical aquifer recharge areas. Sewer systems need to be managed for high quality of the aquifer; to assure adequate high quality stream flows for fisheries and to assure the quantity and quality of downstream users' water supplies within the limits of natural stream flows.
- The CAO should include planning direction to protect those areas overlain by glacial till that have overallocated water rights. The CAO should include policies to protect the water rights of senior users and of existing households.
- The CAO should include a policy that no interruptible water sources will be considered as adequate water sources for residential development.
- The CAO should include a policy that sewage treatment systems will meet or exceed all state and county requirements to assure that ground and surface water remains unpolluted.
- The CAO should include a policy that storm water runoff systems will be designed to meet all state and county requirements to assure that ground and surface water remains unpolluted.
- The CAO should include a policy that water quality will be protected and enhanced by establishing setbacks for septic tanks near wetlands and waterways.
- The CAO should include a policy that any new development that applies for status as a municipality or applies for a subdivision of more than 10 residences will install a state-of-the-art secondary treatment sewage disposal facilities.

- The CAO should include a policy that developments situated within critical aquifer recharge areas will install tertiary water effluent systems.
- The CAO should include a policy that ensures water conservation will be considered and encouraged in building and landscape design.
- The CAO should include a policy that water quality will be protected and enhanced by designing and engineering adequate storm water and drainage systems for all new roads include adequate culverts to prevent soil loss.
- The CAO should include a policy that water quality will be protected and enhanced by limiting livestock access and establishing setbacks for standing water and residential and agricultural chemical use adjacent to critical areas and within the shoreline management zone.
- The CAO should include a policy that encourages preservation and enhancement of beaver ponds and wetlands as a method of water storage, water purification, and conservation.

WETLANDS

- The CAO should include a policy that encourages preservation and enhancement of beaver ponds and wetlands as a method of water storage, water purification, and conservation.
- The CAO should include a policy to address aspen protection. Wetland regulations value aspen stands very highly. Areas with aspen need to allow for natural processes to occur. While it is important to maintain water tables in aspen stands, it is also important to allow for aspen regeneration through changes in the overstory stocking levels.

FLOODPLAINS

- We support the policy prohibiting development within the 100-year floodplain.
- The Channel Migration Zone should be formally adopted and included within the Flood Hazard Zone to avoid construction that would become safety and liability risks. Too many homes have been swept away. While it is good to see the CMZ study defined, it needs to be formally adopted so that it can be used to help regulate development within this area that is known to be at risk of flooding in the future. Additionally, as a Geologically Hazardous Area, the CMZ must be included in the Shoreline Master Program, and made consistent in both documents.
- The boundary of the CMZ should be used to define setbacks in the Zoning and Shoreline Ordinances. Setbacks from the CMZ or floodplain need to be measured horizontally, rather than vertically, to avoid new county liabilities from those who would build on small elevated portions of the channel migration zone surrounded by floodplain and then sue the county when they are inundated.
- The CAO should include a policy that the 100-year flood plain will remain free of substantial structures, sewage disposal, dumps, mine tailings and impervious surfaces. This is to protect citizens and the county from liability for flood damages and to prevent pollution of surface water. The floodplain will include the Channel Migration Zone. The location of the floodplain will be used in the Zoning and Shoreline Ordinances and included as part of the Geologically Hazardous Areas Map.

- The CAO should reinstate the policy to protect public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, and bridges located in areas of special flood hazard.

AIR QUALITY

- The CAO should include a goal to maintain a high standard of air quality to sustain life and to provide clear views of the surrounding scenery.
- The CAO should include policies that ensure air quality monitoring will occur and that there is adequate enforcement of measures to assure clean and healthful air and to control dust, wood smoke, and other fine particulate matter.
- The CAO should include a policy that limits new wood stoves to EPA-approved systems for new and planned construction. All new homes and developments should be using clean burning heating elements that are EPA approved.
- The CAO should include a policy or acknowledge existing policies that limit burning during air inversion periods.
- The CAO should include guidance to encourage new developments to find non-polluting alternatives to woodburning devices.
- The CAO should include guidance to encourage non-burning methods of handling organic waste, such as composting, and development of brush disposal sites and recycling centers.

WILDLIFE HABITAT

- The CAO falls short of the county's requirement to "identify, designate and protect the functions and values of critical areas" for wildlife habitat protection. Species of concern are not listed where they are now found and land types are incorrect.

We are concerned because the CAO lacks guidance for protection of important wildlife such as mule deer range and many other species of wildlife. We are losing winter range in the Okanogan to unplanned developments and unnecessary road building. Open spaces, forests and fields provide valuable connectivity between public and private lands along historic and seasonally important migratory routes. Mule deer critical range and grasslands are an important part of our landscape that also stimulate our economy and provide outdoor recreation for thousands of people each year.

- The CAO should specify that maps of critical wildlife habitat need to be kept confidential except on a need to know basis.
- Counties do not have the authority to designate all Level 1 and in some cases Level 2 Habitat as non-regulatory, and this wording should be changed in the descriptions of Level 1 and 2 Habitat. On federal and state lands, Level 1 habitat is most certainly regulatory, and for many species such as raptors and endangered fisheries, the U.S. has legislative, judicial, treaty and contractual regulations for these species and in many cases, for their habitat as well. These regulations include aspects of trade in endangered species, protection of rearing habitat, protection from direct harassment and harm, and designation of critical habitat. In the case of wildlife, the State Department of Fish and Wildlife is the regulator, not the county.

- The county has no authority over federal and state jurisdictions, although it is possible to compel coordination, which may involve regulation and enforcement. The claim of sovereignty over state and federal jurisdictions erodes the credibility of the county's support for contractual agreements that occur on state and federal lands, including for example, logging, mining or varmint control. If the county is serious about enforcing its statute on "Customs and culture", then this could be included in this section, as a means of ensuring that communication occurs between federal and state regulators and county officials. But the current wording of these definitions as strictly non-regulatory sends a message that the county is overreaching its authority, and is not serious about representing the electorate or the county's best interests.
- The CAO needs to include policy measures and regulations for wildlife, not just maps.
- The CAO should include policy measures to protect critical wildlife habitat for **all** state species of concern as well as federally endangered species. Lesser known species and habitats described in the Washington Department of Fish and Wildlife's 2008 "Priority Habitat and Species List", should be included, as well as the following well-known species that are important wildlife species in the Okanogan:
 - Bald Eagle, *Haliaeetus leucocephalus*
 - Common Loon, *Gavia immer*
 - Golden Eagle, *Aquila chrysaetos*
 - Great Gray Owl, *Strix nebulosa*
 - Harlequin Duck, *Histrionicus histrionicus*
 - Northern Goshawk, *Accipiter gentilis*
 - Peregrine Falcon, *Falco peregrinus*
 - Pileated Woodpecker, *Dryocopus pileatus*
 - Prairie Falcon, *Falco mexicanus*
 - Sharp-tailed Grouse, *Tympanuchus phasianellus*
 - Elk, *Cervus canadensis*
 - Gray Wolf, *Canis lupus*
 - Grizzly Bear, *Ursus arctos*
 - Townsend's Big-eared Bat, *Corynorhinus townsendii*
 - Western Gray Squirrel, *Sciurus griseus*
 - Wolverine, *Gulo gulo*
 - Pygmy, Short-horned Lizard *Phrynosoma douglassii*
 - Snake dens
- The CAO should include management recommendations for animal pests that are also huntable species. If left unmanaged, these species can cause problems for homeowners and businesses. Existing permits may sometimes be necessary to remove problem animals. These include
 - Bullfrog, *Lithobates catesbeianus*
 - Wild Turkey, *Meleagris gallopavo*
 - Mule deer
 - Wild horses
- If the county cannot fulfill its obligation to protect Wildlife Critical Habitat through the CAO, the responsibility to do so should include cooperation with the State Department of Fish and Wildlife.

- The CAO should include guidance to avoid or minimize development impacts at the watershed or landscape scale by promoting development methods and techniques to address impacts caused by site-specific uses and cumulative impacts.
- The CAO should include a policy to reserve unbuildable areas, publicly owned lands, and biologically sensitive natural areas such as rivers, creeks, ridges and slopes to create an integrated, contiguous pattern of open lands that serve multiple functions, such as wildlife habitat/migration corridors, hiking trails, recreational uses, stormwater retention, and/or buffers between incompatible uses.
- The CAO should include guidance that avoids fragmentation of corridors or areas identified through best available science as important for protecting regional bio-diversity. Such actions should not interfere with continued use of lands historically used for the production of food, agricultural products, commercial timber production, grazing of livestock, or for the extraction of minerals in the accustomed manner and in accordance with best management practices.
- The CAO should include guidance that encourages private development that incorporates design standards that minimize environmental degradation and maximize functional open space. Examples of such approaches include low impact development techniques, conservation subdivision design, clustered development, green building design and utility extension policies.
- The CAO should include guidance that encourages natural solutions such as bioengineering techniques, where possible, to address environmental impacts of development on the watershed. Examples of such techniques include using live/dead plants and inorganic materials to prevent erosion, control sediment and other pollutants, providing habitat restoration of native vegetation on river banks to enhance natural decontamination of runoff before it enters the river, and creation of wetland systems for the treatment of storm water.
- The CAO should include policy that identifies and protects riparian habitat adjacent to critical fisheries from destruction or encroachment by incompatible land uses and development methods.
- The CAO should include a policy that encourages preservation and enhancement of beaver ponds and wetlands as a method of water storage, water purification, and conservation.
- The CAO should include policy that ensures water quality and quantity will be maintained and enhanced for native fisheries and spawning grounds.
- The CAO should include policy that domestic pets will not be permitted to harass wildlife.
- The CAO should include policy that provides for critical wildlife migration corridors between hiding cover, forage, water and critical breeding sites.
- The CAO should include policy that provides protection for critical habitat for migratory bird habitat and nesting habitat.
- The CAO should include policy that protects eagle, hawk and owl nests through retention of the largest nearby trees, nest trees and snags.
- The CAO should include policy that provides for protection of the shrub-steppe through education, habitat protection, and conservation easements (or other mechanisms).

November 29, 2010

- The CAO should include guidance to discourage unregulated off-road motorized vehicle access that has potential to harm critical wildlife habitat.
- The CAO should include guidance to restrict vehicles from harming wildlife during seasonal periods of wildlife nesting or breeding.
- The CAO should include policy that developments and disturbed areas within critical habitat areas will be revegetated with species native to the site, to the extent possible.

Sincerely yours,

Vicky Welch, President, Methow Valley Citizens' Council

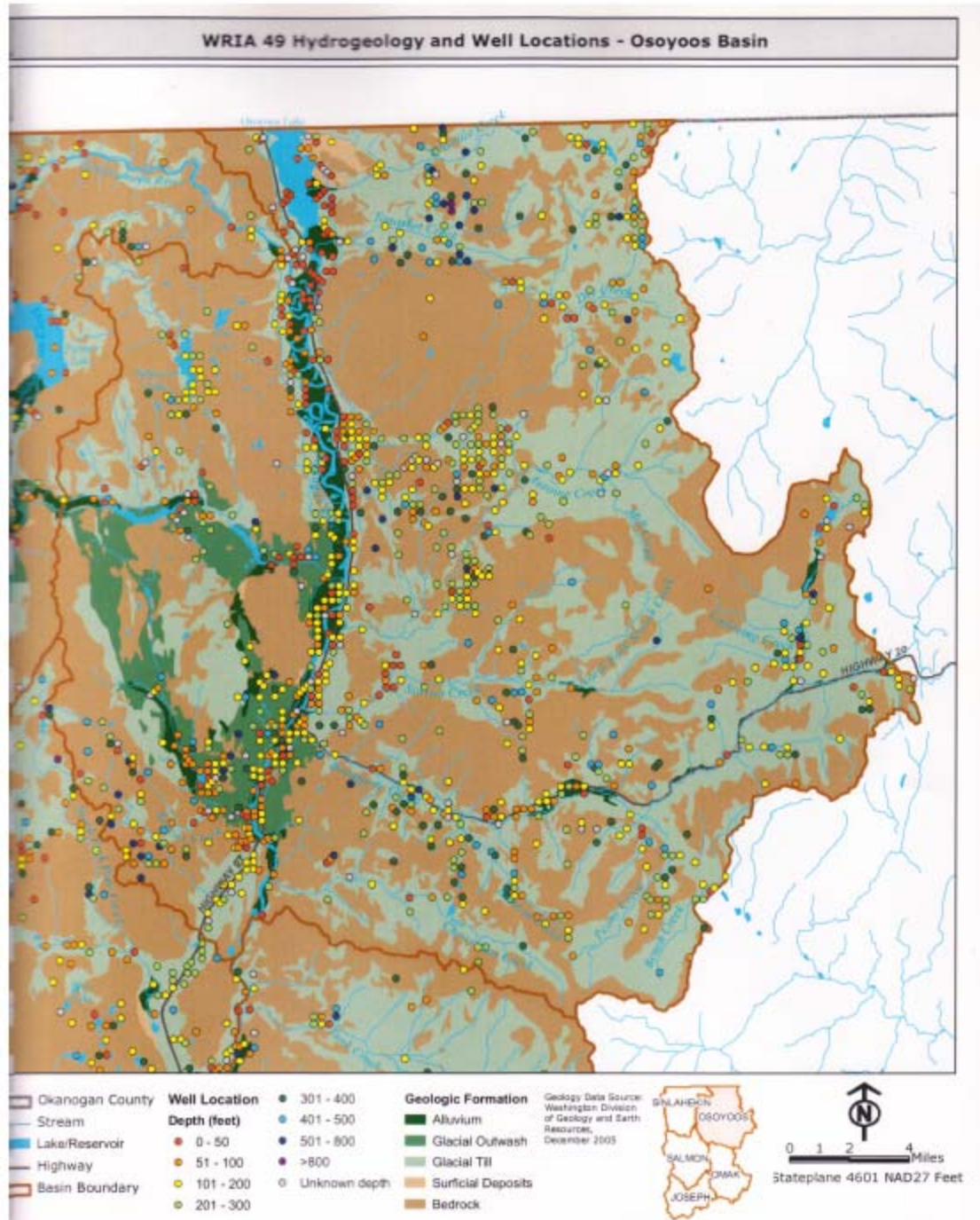


Figure 1. Mapped aquifers in Osoyoos Basin (green).