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**Before the Hearing Examiner for Okanogan County, Washington**

IN RE APPEAL OF THE JUNE 16, 2020,  
PRELIMINARY APPROVAL OF LUDWIG  
SHORT PLAT 2020-2

No. \_\_\_\_\_

**Notice of Appeal Under  
OCC § 16.45.010**

**I. Introduction and Notice**

As authorized by Okanogan County Code (OCC) §16.45.010, Methow Valley Citizens Council (MVCC) files this appeal of the June 16, 2020, Preliminary Approval of Ludwig Short Plat 2020-2 by the Okanogan County Office of Planning and Development. As explained below, the Preliminary Approval fails to find that the applicant has demonstrated that the resulting plat will have legally and physically available water. Appellant respectfully requests that the Hearing Examiner direct the responsible official to deny the Application for Short Plat.

A copy of the Preliminary Approval of Ludwig Short Plat 2020-2 is attached as Exhibit A.

1       **II.     Appellant**

2 Appellant Methow Valley Citizen Council’s contact information is:  
3 P.O. Box 774  
4 Twisp, WA 98856  
5 Phone: (509) 997-0888  
6 Email: [jasmine@mvcitizens.org](mailto:jasmine@mvcitizens.org)

7       **III.    Applicant**

8 The applicant for the short subdivision approval being appealed is:  
9 Mark & Eden Ludwig  
10 16300 38th Ave NW  
11 Stanwood, WA 98292

12       **IV.    Standing**

13       4.a Members of MVCC have residences and farms downstream from, adjacent  
14 to, and near the proposed Ludwig Short Plat and will be aggrieved by the  
15 reduction of water available to them from the Methow River, its tributaries, and  
16 ground water if the short plat is approved and a new residence is built that is  
17 served by a residential well. They are also aggrieved by the impacts of the short  
18 plat on the Methow River and the fish, wildlife, and industries that depend on the  
19 river flows.  
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22       4.b Appellant has commented on the Ludwig Short Plat Application.

23 Appellant’s comment letter is attached as Exhibit B.  
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25       **V.     Basis for Appeal**

1 MVCC appeals the grant of Preliminary Approval for this short plat because the  
2 County has not found, and cannot find, that the applicant has legally and  
3 physically available water for a second lot or residence.<sup>1</sup> As stated in Appellant’s  
4 comment letter on the proposed short plat,<sup>2</sup>  
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6  
7 “Subdivision is proposed for parcel 5120160002, located at 238 Twisp  
8 Carlton Road, approximately 2 miles north of the Town of Carlton,  
9 Washington. The legal description of this property is Lot 16, Furey,  
10 East, Pfau and Mussons Plat No. 3, as per Plat Thereof, Recorded in  
11 Book “C” of Plats, Page 48, Records of the Auditor of Okanogan  
12 County, Washington.

13 This application proposes to subdivide the existing lot at parcel  
14 number 5120160002 into two lots. One lot has an existing single-  
15 family residence served by an existing well and the second lot is  
16 proposed to be served with a second permit-exempt well. The  
17 proposed lots are in the area identified as the “Lower Methow” by  
18 WAC 173-548-020(1).

19 WAC 173-548-030(2)(a) reserves 2.0 cubic feet for per second for  
20 “Single Domestic and Stock Use” in the “Lower Methow.” Wells using  
21 these reserves are exempt from the water right permitting  
22 requirements and have priority over the instream flows. They do not  
23 have to be curtailed if the instream flows are not being met in the  
24 Methow River or the regulated tributaries. This is important because  
25 the instream flows are not met in a typical year. New wells that do  
26 not qualify for the reserve are subject to the minimum instream  
flows and are to be interrupted when instream flows are not met.

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<sup>1</sup> In *Whatcom County v. Hirst*, 186 Wn.2d. 648 (2016), the Washington State Supreme Court held that a county must find that there is legally and physically available water before it can grant a building permit or approval for a subdivision.

<sup>2</sup> Footnotes omitted. See Attachment B for citations.

1 They may also be interrupted by senior water rights holders who are  
2 not receiving the water to which they are legally entitled.

3 The Washington State Supreme Court concluded in the *Campbell & Gwinn*  
4 decision in 2002 that single domestic use is use “by a single home,” and not  
5 use by several homes, a multiunit residence, or a subdivision. This  
6 interpretation is consistent with Ecology’s report on the Methow Instream  
7 Flow Rule, which defines “single domestic use” as “[w]ater used by a single  
household including up to one-half an acre lawn or garden irrigation.”

8 Since the Ludwig Short Plat proposes to use permit-exempt wells for two  
9 lots, two homes, and two households, it is not a single domestic use under  
10 WAC 173-548-030.”

11 In contrast to making the required finding of legally and physically available  
12 water, the County in Condition 16 merely states that “[e]ach lot must be served  
13 by an adequate water supply.” Moreover, Condition 16 refers only to Department  
14 of Health requirements for water but does not include Department of Ecology  
15 requirements, found in the Methow Rule. This ambiguous condition is insufficient  
16 for approval of this proposed short plat, at either the preliminary or final stage as  
17 required by OCC § 16.12.040B.3 and state law. RCW 58.17.060 and RCW  
18 58.17.110 require that in deciding whether to approve a short subdivision or short  
19 plat, Okanogan County “shall determine ... [i]f appropriate provisions are made  
20 for, but not limited to, ... potable water supplies ....”  
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1 RCW 58.17.110(4) also provides that [i]f water supply is to be provided by a  
2 groundwater withdrawal exempt from permitting under RCW 90.44.050, the  
3 applicant's compliance with RCW 90.44.050 and with applicable rules adopted  
4 pursuant to chapters 90.22 and 90.54 RCW is sufficient in determining  
5 appropriate provisions for water supply for a subdivision, dedication, or short  
6 subdivision under this chapter.  
7

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9 The Methow Instream Flow Rules, Chapter 173-548 WAC, were adopted  
10 pursuant to chapters 90.22 and 90.54 RCW. But Okanogan County has not found  
11 that the applicant complies with the Methow Instream Flow Rule. In fact, as  
12 demonstrated above, preliminary approval of the short subdivision without  
13 requiring that the reserves may not serve as the water source for the new lot and  
14 any subsequent development violates the Methow Instream Flow Rule.  
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16  
17 Therefore, Okanogan County has failed to find that appropriate provisions have  
18 been made for water supply, as required by the Okanogan County Code and RCW  
19 58.17.060 and RCW 58.17.110. If the Preliminary Approval is allowed to stand,  
20 the subdivision could result in the acquisition of the second lot by a buyer who  
21 believes he or she has a legal water supply, when in fact there is no water supply  
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1 available for a new lot or residence from the Methow Rule's 2 cubic foot per  
2 second (cfs) reserve.  
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4 The County apparently approved the proposed Ludwig short plat under an  
5 exception in its December 2019 Interim Ordinance 2019-11. That ordinance  
6 prohibited using the 2 cfs reserves for subdivisions, thus agreeing with Appellant's  
7 position that the Methow Rule does not allow use of the 2 cfs reserve for  
8 subdivisions. The ordinance, however, provided an exception for the division of  
9 one lot with an existing single-family residence into two lots.<sup>3</sup> Appellant contends  
10 that this exception to the prohibition violates the Methow Rule and state law and  
11 has so advised the County. In any case, an Okanogan County Ordinance cannot  
12 legally authorize violations of RCW 58.17.060 and RCW 58.17.110.  
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17 **VI. Request for Relief**

18 Appellant respectfully requests that the Hearing Examiner find that the  
19 Preliminary Approval for Ludwig Short Plat 2020-2 is unlawful and reverse the  
20 Administrator's decision. Appellant requests that the Hearing Examiner find that  
21 Condition 16 must 1) state that water is unavailable from the Methow Rule's 2 cfs  
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26 <sup>3</sup> This ordinance was replaced by Interim Ordinance 2020-4 in June of 2020, which includes the same exception.

1 reserve for single domestic use, and 2) require proof of physically and legally  
2 available water prior to final approval.  
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7 Respectfully submitted on July 6, 2020,

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11 Jasmine Minbashian  
12 Executive Director, Methow Valley Citizens Council  
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**DECLARATION OF SERVICE**

The undersigned declares under penalty of perjury that on this 6<sup>TH</sup> day of July 2020, the undersigned caused the following documents to be served on the persons listed below in the manner shown: Notice of Appeal Under OCC § 16.45.010 in Re Appeal of the June 16, 2020, Preliminary Approval of Ludwig Short Plat 2020-2 and Exhibits A and B.

Pete Palmer, Director of Planning  
Okanogan County  
Office of Planning and Development  
123 5th Ave. N. Suite 130  
Okanogan, WA 98840

Administrator  
Okanogan County  
Office of Planning and Development  
123 5th Ave. N. Suite 130  
Okanogan, WA 98840

<input checked="" type="checkbox"/>	By United States Mail, postage prepaid and properly addressed
<input type="checkbox"/>	By Legal Messenger or Hand Delivery
<input type="checkbox"/>	By Facsimile
<input type="checkbox"/>	By Federal Express or Overnight Mail prepaid
<input checked="" type="checkbox"/>	By Email:

<input checked="" type="checkbox"/>	By United States Mail, postage prepaid and properly addressed
<input type="checkbox"/>	By Legal Messenger or Hand Delivery
<input type="checkbox"/>	By Facsimile
<input type="checkbox"/>	By Federal Express or Overnight Mail prepaid
<input checked="" type="checkbox"/>	By Email: <a href="mailto:planning@co.okanogan.wa.us">planning@co.okanogan.wa.us</a>

Mark & Eden Ludwig  
16300 38th Ave NW  
Stanwood, WA 98292

<input checked="" type="checkbox"/>	By United States Mail, postage prepaid and properly addressed
<input type="checkbox"/>	By Legal Messenger or Hand Delivery
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Signed and declared on July 6, 2020,



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