

The Methow Valley Citizens Council



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Ms. Char Schumacher
Okanogan County Office of Planning and Development
123 5th Ave N Ste 130, Okanogan, WA 98840

Emailed: cschumacher@co.okanogan.wa.us

**Re: Hummingbird Heaven Hideaway SEPA and Project Comments
SP2016-9, 2016-10, 2016-11, 2018-9, 2018-10, 2018-11**

10 September, 2018

Dear Ms. Schumacher,

Please accept the following comments from the Methow Valley Citizens Council (MVCC) concerning the county's August 14 SEPA MDNS and conditional approval for 6 short plat applications submitted by Harry Burkholder. MVCC's mission is to raise a strong community voice for the protection of the Methow Valley's natural environment and rural character.

We urge the county to deny these applications. We believe the county is not legally obligated to approve the subdivision of these properties and that it should not do so, for the following reasons.

1. This proposal warrants heightened scrutiny because the area in which the property is located should never have been zoned to allow 5-acre density.

The Rezone of this property from 20 to 5-acre minimum density was improperly conducted. It did not take place through traditional application and public notice processes, but instead was up-zoned, with no public participation, when the existing lines of the Methow Review District were re-drawn to follow property boundaries. The rush to secure vesting for these improperly up-zoned parcels appears to be an attempt to gain immunity for the proposed development in case the rezone is corrected in the future.

2. The applications contain gaps and incorrect information that bar approval and vesting.

According to OCC Title 20.08.040, applications are vested when a determination of completeness is made. Under 20.08.030(B), an application can be determined to be complete only when, among other things, a fully completed and signed application and SEPA Checklist are submitted. The applications are incomplete because:

- a. No legal water availability exists for Phase I (permit exempt wells) or Phase II (water

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right) because the Applicant cannot qualify for a single domestic use well (Phase I) or a new water right (Phase II) under the Methow Instream Flow Rule (WAC 173-548).

- b. Much of the required information – impact on wildlife, traffic studies, residential density studies, erosion impacts, wildfire impacts, and others – has not been gathered or provided.

3. Any water available for the proposed developments is likely interruptible, and therefore not an adequate or reliable source.

In August of 1991, DOE issued a report authored by Darrell Monroe and Chrissie Caspar entitled, “Methow Tributary Report, Thompson Creek”. In that report, the DOE states water rights claims in the Thompson Creek Basin pending at the time could not be adjudicated because there was **“insufficient water to satisfy the developed uses on a continual basis...and domestic uses established under RCW 90.44.050 are subject to curtailment to meet the needs of more senior water rights in water short years.”** (Emphasis added.)

The status of Thompson Creek has not changed since that report. Consequently, any available water source in the Thompson Creek Basin is interruptible and therefore not continually physically available. Consistent with WAC 246-290-420, the Department of Health does not consider an interruptible water source an adequate or reliable source for domestic use.

4. There is no legally available water for Phase I because the proposed development is a group use and hydraulically connected to the closed waters of Thompson Creek.

- a. The Methow Rule (WAC 173-548) makes water from the 2 cfs reserve available only for “single domestic” use and stock watering.
- b. The Phase I Development consists of three short plat applications and is clearly a group domestic use, not a single domestic use, as established by the Washington Supreme Court, which held that “[t]he developer of a subdivision is, necessarily, planning for adequate water for group uses, rather than single use....” *Ecology v. Campbell and Gwinn*, 146 Wash. 2d 1 (2002).
- c. Because group domestic uses are expressly and unambiguously prohibited under the Methow Rule, and the Project and each of its Phases are clearly a group use, no portion of the Project can lawfully use permit exempt well water from the 2cfs reserve. RCW 58.17.110(4) requires that where a water source proposed by a short subdivision is a permit exempt well, the well must be consistent with Ecology instream flow rules. Phase I is not consistent with the Methow Rule because it is a group domestic use.

5. There is no legally available water for Phase II because the applicant has no water right.

The three short plats in Phase II of the proposed development rely on a non-existent water right for domestic water use.

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- a. Although Mr. Burkholder applied for water rights in 1992 and 2003, Ecology has not yet processed the applications and recently confirmed that it has no plans for processing them at this time.
- b. A water right application is not evidence of water availability. Most water right applications are never granted. If a water right were granted in this basin, it necessarily would be conditioned to require compliance with the Methow Rule. *Postema v. Pollution Control Hearings Bd.*, 142 Wn.2d 68, 80 fn. 2, 11 P.3d 726, 734 fn. 2 (2000). Because the Methow does not meet its instream flows, the water right would have to be interruptible and so could not serve as a source of water for residential uses.
- c. These applications are especially unlikely to be granted because the applicant would have to establish that there is no hydraulic connection to:
 1. Thompson Creek (which is closed to appropriations);
 2. the Twisp River (which has minimum instream flow water rights that are already not met); and
 3. the Methow River (which also has minimum instream flow water rights that are already not met)
- d. Even if the applicant could demonstrate that Phase II is truly in an isolated basin, he would also need to establish a way to mitigate the impacts of his proposed water rights to the Class III wetland in the Project area. No such mitigation is proposed in the application. He would also have to mitigate his impact on the senior water rights holders in the area that currently have difficulty obtaining the water to which they are legally entitled. This proposed use will likely impair senior water rights.
- e. Because no water right currently exists, Ecology has no plans to process the pending water right applications, and it is highly unlikely the applicant could establish that Phase II of the project is truly an isolated basin, this Project cannot demonstrate the existence of even a speculative future water right to establish legally available domestic water.

6. Wildfire risk and firefighter safety are not adequately evaluated.

In addition to the above concerns about legally available water to support the development itself, MVCC is concerned that the proposed development is planned for an area that is prone to wildfires. The subdivision is located in dense, steep, forested terrain that cannot be safely defended in the event of a wildfire.

Safe egress for homeowners and emergency personnel and fire-fighting equipment is also a major issue in this area of narrow, winding, dead-end roads. The current county road standards under which the applicant is trying to vest his proposal do not reflect the increased need for fire protection considerations in this area.

Permitting additional 5-acre development in this location would not reflect important safety lessons learned during recent, multiple consecutive seasons of intense landscape-scale wildfires. It

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also would not reflect a responsible approach to land use planning for fire-prone landscapes, according to the most current research.

In the summer of 2015, the devastating Twisp River fire reached the southern edge of the applicant's proposed development and was only stopped through the aggressive and repeated use of airdropped fire retardant. Such resources are not available at all times, are not always effective, and do not represent an adequate form of planning or mitigation for protecting lives and property in the Wildland Urban Interface.

The Applicant states that irrigation and landscaping would not be allowed in Phase I and does not recommend any measures to prevent fire spread or protect homes. The only mitigation proposed in the MDNS at this time is an ill-defined "30-foot buffer" around each home. This recommendation does not meet currently recommended practices for wildfire protection in the Home Ignition Zone, nor would it do anything to mitigate other clear and present dangers to life and safety posed by new development in this location.

7. A traffic study must be conducted, and an evacuation plan needs to be prepared.

A new development of this size that proposes to use existing roads, including narrow dirt roads with hairpin turns and sharp corners with minimal visibility, needs to prepare a traffic study to ensure that the additional traffic on the roads can be managed safely in all seasons, and include emergency use.

The applicant has prepared no traffic study and speculates without reference to any data regarding the likely future population of the Development or the frequency of road use.

Actual data from existing roads in comparable developments needs to be compiled, more realistic projections applied, and a reasonable evacuation plan presented given the projected future road traffic, emergency considerations and the constraints of the landscape.

8. Impacts to County Emergency Services need to be studied and mitigated.

The proposed development site lies significantly outside of town limits and will rely entirely on County public services – from firefighting to emergency medical services and policing. The impact on County public services of an additional 24 residences in the area needs to be studied and mitigated.

9. Impacts to critical wildlife habitat require more evaluation.

The proposed development is located in important wildlife habitat. Federally listed species include but may not be limited to grey wolf and lynx. State listed species include golden eagle, white headed woodpecker, pileated woodpecker, and western bluebird.

The SEPA application does not address the proposed development's potential impacts nor proposed mitigations for impacts to critical wildlife habitat.

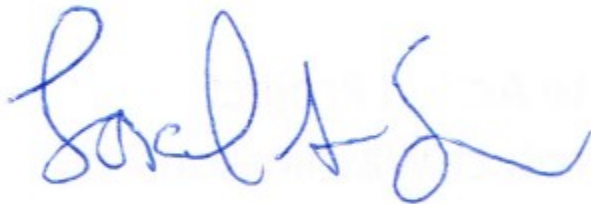
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10. Impacts to the wetland area need to be evaluated and mitigated.

The Phase II project area includes a Class III wetland that every proposed parcel will abut. Impacts of the proposed Phase II Development on this wetland, including the proposal for shallow wells, need to be analyzed and mitigated.

To summarize, there are numerous concerns related to these proposed developments that warrant a denial of the application. We appreciate the opportunity to comment and are glad to discuss our concerns at your convenience.

Sincerely,



Lorah Super

Program Director,
Methow Valley Citizens Council