February 25, 2014

VIA EMAIL AND HAND DELIVERY
bocc@co.kittitas.wa.us

Kittitas County
Board of Commissioners
205 W 5th Ave, Ste 108
Ellensburg WA 98926-2887

Re:  Kittitas County Farm Bureau Written Comment on:

- Kittitas County’s Proposed Amendment to Comprehensive Plan, Chapter 2
  (Water Rights); and
- Kittitas County’s Proposed Revision to Comprehensive Plan, Chapter 8
  (Rural and Resource Lands)

Dear Commissioners Jewell, O’Brien and Berndt:

The Kittitas County Farm Bureau (the “Farm Bureau”) represents the interests of all types of
agriculture in Kittitas County. The Farm Bureau is affiliated with the Washington State Farm
Bureau, which is a grassroots advocacy organization representing the social and economic
interests of farm and ranch families at the local, state and national levels.

Kittitas County’s proposed changes to its Comprehensive Plan and development regulations, as
those relate to water and water rights and the development or rural and resources lands, directly
impact the social and economic interests of local farm and ranch families. The Farm Bureau
participated as an intervenor in Kittitas County Conservation v. Kittitas County, Eastern
Washington Growth Management Hearings Board No. 07-1-0004c and briefed issues related to
the appeal of the decision in that case, which resulted in the Washington State Supreme Court
Case of Kittitas County v. Eastern Washington Growth Management Hearings Board, 172
Wn.2d 144, 256 P.3d 1193 (1911) (“Kittitas”).

The Farm Bureau has broken its comments down by general subject matter and within each
subject matter provides specific comment on various issues. The Farm Bureau requests that this
comment letter become a part of the written public record.

As a matter of general comment, the Farm Bureau, as an intervenor in the Growth Board case
that led to the Kittitas decision, has not been provided an opportunity to participate in the
settlement negotiations with the Petitioners and the County. The Farm Bureau objects to the
process Kittitas County has followed in “settling” its GMA compliance issues. Kittitas County’s failure to provide the Farm Bureau with an opportunity to participate in the settlement discussions has deprived the Farm Bureau and the agricultural community it represents of the opportunity to participate in decisions that directly impact the social and economic aspects of agriculture in Kittitas County and, because some of the issues set forth in these settlement agreements have statewide significance, the State of Washington.

Comment Regarding Proposed Amendment to Comprehensive Plan, Chapter 2 (Water Rights):

The Farm Bureau believes the settlement agreement relating to water rights, Kittitas County’s modification of its Comprehensive Plan as it relates to water, and the proposed modifications to Chapter 13.35 KCC go beyond what Kittitas County was required to do in the Kittitas decision. The issue before the Supreme Court in the Kittitas decision was whether the County’s subdivision regulations allow multiple subdivisions side-by-side, in common ownership, which then can use multiple exempt wells contrary to the Growth Management Act’s ("GMA") requirement to protect water quality and quantity. Kittitas at 175. Specifically, what the Growth Board found was that Chapter 16.04\(^1\) failed to assure that authorized subdivisions did not contravene or evade water permitting requirements through the use of multiple, separately evaluated subdivision applications relying on permit-exempt wells in an attempt to evade Ecology v. Campbell & Gwinn, L.L.C., 146 Wn.2d 1, 43 P.3d. 4 (2002). Id. at 177.

In deciding the specific narrow issue in the Kittitas decision, the Washington Supreme Court focused on Kittitas County’s duty to protect public groundwaters from detrimental land uses. Id. at 178. Kittitas County’s responsibilities under RCW 19.27.097 (Building Permits) and RCW 58.17.110 (Subdivisions) require it to assure adequate potable water is available when issuing building permits and approving subdivision applications. Id. at 179. The Supreme Court concluded Kittitas County is required to plan for the protection of water resources in its land use planning. Id. at 179. In summary, the Supreme Court, in the Kittitas decision, confirmed Kittitas County had the authority to ensure its Comprehensive Plan and development regulations protect water resources in its land use planning and to assure adequate potable water is available for building permits and subdivision applications.

Kittitas County’s proposed modifications to its Comprehensive Plan, at Paragraph 2.2.3, go substantially beyond what the Supreme Court in the Kittitas decision determined was Kittitas County’s responsibility. Specifically, statements such as “Kittitas County may place limitations on the establishment of new uses of groundwater based upon the county’s authority to protect ground and surface water” are not within the scope of the Supreme Court’s ruling in the Kittitas decision. Further, statements such as “restrictions on the establishment of new uses of groundwater do not interfere with existing rights because a water right does not become a vested

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\(^1\) Chapter 16.04 KCC was the provision of the Kittitas County subdivision code that provided for certain exemptions to the subdivision code, which allowed multiple divisions of land without any kind of review. Those exemptions from the subdivision code were later completely eliminated when Kittitas County adopted KCC 16.06.040, which effectively repealed the exempt/administrative segregation process within Kittitas County and “sunsetted” the process for existing applications.
property right until after the water is put to beneficial use” are legal interpretations of Washington State water rights law that are beyond Kittitas County’s authority to make. The authority to regulate water resides solely with the Department of Ecology and/or the courts. Kittitas County uses what is in effect a circular logic to conclude that requirements set forth in Kittitas are not restrictions on water rights but rather are requirements for the establishment of new uses for water. The Supreme Court did not give Kittitas County the ability to set requirements for the establishment of new uses of water. Instead, the Supreme Court confirmed Kittitas County’s Comprehensive Plan and land use regulation “must regulate to some extent to assure that land use is not inconsistent with available water resources.” Kittitas at 178. The Farm Bureau believes that Kittitas County’s statements in its Comprehensive Plan are clearly beyond the Supreme Court’s ruling in the Kittitas decision and as a result open the door for Kittitas County and similarly situated governmental entities to embark on a whole host of regulation that may be contrary and adverse to agriculture in Kittitas County and in the State of Washington.

Kittitas County refers to RCW 58.17.170(3), which is a subsection of Washington State’s subdivision vesting law. Kittitas County has no authority under RCW 58.17.170(3) to apply new groundwater regulation to existing lots. RCW 58.17.170(3) provides that lots created within a subdivision approved for final plat are governed by the statutes, ordinances and regulations in effect at the time of the approval and for a period of seven (7) years after the final plat approval. RCW 58.17.170(3)(a) provides that if the legislative body finds that a change in conditions creates a serious threat to public health or safety in the subdivision, Kittitas County may apply new statutes, ordinances and regulations. That portion of RCW 58.17.170(3) is not applicable in this situation. First, it requires a change in conditions. There is no change in conditions. The Yakima River Basin has been over appropriated since 1905 when the United States government, acting by and for the Bureau of Reclamation, withdrew all of the unappropriated water within the Yakima River and its tributaries. The changed circumstances contemplated in RCW 58.17.170(3)(a) have to occur within the existing subdivision. What Kittitas County is suggesting is that preexisting conditions related to an over appropriated water supply countywide are not specific to the individual subdivision. As a result, the legislation is beyond the scope of Kittitas County’s authority in RCW 58.17.170(3).

All that Kittitas County was required to do in order to comply with the Supreme Court’s decision in Kittitas is adopt language that requires all developers who propose a new structure or new subdivision to demonstrate they have a legal right to use water for the purposes within the subdivision or the building that require water use and to adopt language consistent with Kittitas County’s proposed Section 13.35.025(3), which reads:

All applicants for land divisions shall also submit information on “proximate parcels” held in “common ownership” as those terms are defined in WAC 173-539A-030 and otherwise demonstrate how the proposed new use will not violate RCW 90.44.050 as currently existing or hereafter amended.
The County’s proposed settlement agreement with the Washington State Department of Ecology and the petitioners in the GMA case goes significantly beyond what is required by the Washington State Supreme Court and is detrimental to agricultural interests in Kittitas County.

Comment Regarding Kittitas County’s Proposed Revision to Comprehensive Plan, Chapter 8 (Rural and Resource Lands):

The Farm Bureau has long advocated that there has to be a process that allows agricultural families some flexibility in managing their land to account for the need to bring younger family members into the farming operation, add facilities for hired labor and sell land. Agricultural land, to a farm family, is where most of the capital is. When a county restricts the agricultural community’s ability to access that capital, they weaken the local farm economy. Often land must be used to raise money to continue operating, and in some cases expand operations.

The County’s recent modifications to the subdivision code, which eliminate the exempt/administrative segregation process, negatively impacted the agricultural community’s ability to manage its land. While the County did adopt modifications to Chapter 16.09 KCC relating to cluster platting and conservation platting, some of the proposed changes to the Comprehensive Plan cause the Farm Bureau concern because it appears it may be further limiting cluster platting and conservation platting, which at the present time are the most available processes for managing land.

The Farm Bureau has the following comments on specific sections of the Comprehensive Plan.

- GPO 8.5 is proposed to read as follows:

  Rural lands adjacent to resource lands shall require buffering that sustains compatibility between land use activities while maintain [sic] the rural character of Kittitas County.

  The Farm Bureau is unsure what that language means and how it would impact cluster plats and conservation plats.

- GPO 8.7 is proposed to change to read as follows:

  The use of cluster platting and conservation platting shall be limited to specific rural areas to lessen the impacts upon the environment and traditional agricultural/forestry uses and to provide services most economically. The use of other innovative land use techniques will be examined provided such techniques protect rural character.

  The “other innovative land use techniques” are undefined and the last sentence is effectively meaningless. The use of the term “specific rural areas” is unclear. KCC 16.09.025 specifically allows cluster platting and conservation platting and appears to provide the only necessary level of “specificity.”
• GPO 8.17 is proposed to change to read as follows:

Land use development within the Rural area will not be allowed when it is determined through review that such development results in sprawl within Kittitas County.

The term “sprawl” is undefined. This language appears inconsistent with KCC 16.09, which specifically allows cluster platting and conservation platting to occur in certain zones.

• GPO 8.21B provides:

Buffers and setbacks found necessary for the protection of water resources, rural character and/or visual compatibility with surrounding rural areas shall be required where development is proposed.

This type of blanket statement in a Comprehensive Plan does not appear to have any implementing development regulations and potentially can conflict with multiple different types of existing development regulations. Having no rules or guidelines for the implementation of this GPO creates significant uncertainty for landowners who may be proposing to develop their property. Also, without rules, it is completely subject to interpretation and may result in an unconstitutional taking of private property.

• GPO 8.28 is proposed to read as follows:

Clustering of development can occur only where it results in the protection of open space and protects against conflicts with the use of farming or resource lands. The County requires the inclusion and protection of easements for wildlife habitat networks, public access, and recreational use where habitats and access do not exist.

Again, this GPO appears to directly conflict with Chapter 16.09 of the Kittitas County Code because 16.09.025 provides specific areas where cluster platting and conservation platting can occur and this proposed GPO appears to limit where cluster platting can occur. That, coupled with the requirement that undefined “easements for wildlife habitat networks, public access, and recreational use where habitats and access do not exist” with no specific rules to implement those provisions creates the risk of an unconstitutional taking of private property.

The Farm Bureau reserves the right to comment further on these proposed changes. The Farm Bureau also encourages the Board of County Commissioners to recognize that the agricultural community has been the steward of agricultural land in this county for the last 150 years. As the steward of that agricultural land, the local agricultural community has created a vibrant economy and directly and indirectly employs a significant portion of the county population. It is
incumbent on Kittitas County leadership to not allow outside influences who know nothing about agriculture to negatively impact the agricultural community’s ability to be stewards of their land.

Sincerely,

Mark Charlton
President
Kittitas County Farm Bureau

cc: John Stuhlmiller, Washington State Farm Bureau
February 25, 2014

The Honorable Paul Jewell
The Honorable Gary Berndt
The Honorable Obie O’Brien
Board of Commissioners for Kittitas County
205 W 5th AVE STE 108
Ellensburg Washington 98926-2887

Dear Commissioners Jewell, Berndt, and O’Brien:

Subject: Comments on the GMA Compliance on Water/Land Use Issues - 2014

Send via email to: bocc@co.kittitas.wa.us; doc.hansen@co.kittitas.wa.us; neil.caulkins@co.kittitas.wa.us

We strongly support the proposed settlement and amendments
Thank you for the opportunity to comment on the proposed comprehensive plan development regulations for the GMA Compliance on water and land use issues. The Kittitas County Conservation Coalition, RIDGE, and Futurewise strongly support the proposed settlement and these amendments. The amendments and proposed settlement protects senior water rights holders, assures that current rural residents and their families will have the right to use water in their homes, and provides standards so that future lot buyers will be assured that the property they buy has a legal right to drinking water. Water is essential for our homes, our farms and ranches, and our businesses. Without the important protections in the proposed settlement many rural Kittitas County residents will face real hardships in low water years. The Board of Commissioners for Kittitas County is showing real leadership in working to resolving this important issue.

We also support the proposed measures to better protect rural character in rural Kittitas County. They will protect Kittitas County’s quality of life as growth continues in Kittitas County.

We believe this package has the potential to resolve the areas of non-compliance with the Growth Management Act facing the county. We very much appreciated the opportunity to work with Commissioner Jewel and county staff. They were all helpful and professional during the process of discussing and resolving these issues. We thank all of you for your help.
We do have a few suggestions set out below.

**Exhibit A: GMA Compliance 2014 Staff Recommended Revisions to Planning Commission Recommendation Description: Proposed Revisions to Comprehensive Plan Chapter 8 Rural and Resource Lands**

We agree that the comprehensive plan amendments in Exhibit A are significant improvements to the existing comprehensive plan, will protect Kittitas County residents and property owners, and protect the rural environment and rural character. We strongly support them.

We do have two suggestions to clarify the language of the Comprehensive Plan amendments. On page 9 of 45 proposed GPO 8.14C reads “[d]evelopment shall be located distances from streams, rivers, lakes, wetlands, critical areas determined necessary and as outlined within existing Shorelines Management Program, the Critical Areas Ordinance and other adopted resource ordinances in order to protect ground and surface waters.” It would seem clearer to add a “the” and delete “existing” since the county will be updating its shoreline master program and critical areas regulations in the near future. So the GPO could read as follows with our suggested addition double underlined and our suggested deletion double struck through:

GPO 8.14C: Development shall be located distances from streams, rivers, lakes, wetlands, critical areas determined necessary and as outlined within the existing Shorelines Management Program, the Critical Areas Ordinance and other adopted resource ordinances in order to protect ground and surface waters.”

Similarly, we recommend a clarification to GPO 8.57 on page 22 of 45 to clarify the policy. So the GPO could read as follows with our suggested addition double underlined:

GPO 8.57 Encourage Require landowners and developers to approach project design using techniques in a flexible and creative manner to provide for and protect which includes open spaces and a visual gratification rural environment characteristic of Kittitas County including preservation of open spaces, adequate buffering between development and natural areas, and preservation of critical areas and forested lands.

**Exhibit B: GMA Compliance 2013 Staff Recommended Revisions to Planning Commission Recommendation Description: Amend Definition KCC 17.08.033 Agriculture Production, KCC 17.050 Allowed Uses in Resource Lands, KCC 17.15.060 Allowed Uses in Rural Non-LAMIRD Lands, KCC 17.15.080 Allowed Uses in Urban Lands and KCC 17.56 Forest and Range Zone Chapter 17.08**

As part of our discussion, we believed we had all agreed that for lots greater than one-half acre in the Agriculture 5, Rural 5, Agriculture 20, Forest & Range, and Rural
Recreational zones impervious surfaces would be limited to half of the lot. We did not see this provision in Exhibit B. Limitations on impervious surfaces are needed to protect rural character and water quality.

In a recent review of these studies, Schueler concludes that “this research, conducted in many geographical areas, concentrating on many different variables, and employing widely different methods, has yielded a surprisingly similar conclusion – stream degradation occurs at relatively low levels of imperviousness (10-20%)”. Recent studies also suggest that this threshold applies to wetland health. Hicks found a well-defined inverse relationship between freshwater wetland habitat quality and impervious surface area, with wetlands suffering impairment once the imperviousness of their local drainage basin exceeded 10%.

Suggested language clarifying this point is in “Amendment to Rural Non-LAMIRD Table for Compliance w Suggestions Feb 21 2013 .docx” in footnote 49. Our suggestions are shown in redline and highlighted in yellow. This file also includes our other recommendations related to land uses which are also shown in redline and highlighted in yellow.

Exhibit B makes other changes to the allowed use table for Rural Non-LAMIRD Lands in Kittitas County Code (KCC) 17.15.060.1. We support a number of those changes, but have concerns about two. First, agricultural sales and produce stands are no longer allowed in the Forest & Range zone. A significant amount of land in the Forest & Range zone is used for farming and ranching. Product stands can help bolster farm and ranch incomes and we recommend that this use not be deleted from that zone.

Second, footnote 37 in KCC 17.15.060.1 is modified to add the note “temporary asphalt plants only” to “Prohibited in the Liberty Historic Overlay Zone.” Footnote 37 is applied to many uses, such as feedlots and nurseries, that have no connection to asphalt plants so we recommend that this addition be deleted.

We also recommend that restaurants and retail sales uses not be allowed in the Rural Recreation zone. Despite its name, that zone is primarily a residential zone applied to relatively remote areas. These uses would be incompatible with those zones in increase impacts on neighboring uses.

We further recommend that convalescent homes not be allowed in the Agriculture 20 and Forest & Range zones. Again, these are low densities zones and these relatively intensive

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1 Chester L. Arnold, Jr. & C. James Gibbons, Impervious Surface Coverage: The Emergence of a Key Environmental Indicator, 62 JOURNAL OF THE AMERICAN PLANNING ASSOCIATION 243, p. 248 (1996) and enclosed with this letter with the filename “9373702.pdf.” The Journal of the American Planning Association is a peer reviewed journal, see the Instructions for Authors webpage enclosed with this letter with the filename “JAPA Instructions for Authors.pdf.”
uses that put significant demands on emergency services first responders and do not make sense in zones applied to such rural areas. 

Exhibit C: GMA Compliance 2013 Staff Recommended Revisions to Planning Commission Recommendation Description: Amend Section 17.15.070 Allowed Uses in Rural LAMIRD Lands

Like the other proposed provisions, we agree that the development regulation amendments in Exhibit C are significant improvements to the earlier limited area of more intense rural development (LAMIRD) provisions. We believe they will help protect Kittitas County residents and property owners, the rural environment, and rural character. We strongly support them.

We do have a clarifying recommendation for footnotes 50 and 51 in Table 17.15.070.1, Rural LAMIRD Use Table on page 8 of 8. Rather than refer to “existing” LAMIRDs we think it is clearer to refer to LAMIRDs existing on a certain date. We inserted March 31, 2014, but another current date would work too. Here are our suggestions with our additions double underlined and our deletion double struck through.

50. Any new Type 3 LAMIRD is required to be at least one-half mile from another Type 3 LAMIRD, and will permit only one business and/or businesses associated with the primary business in the new LAMIRD Type 3. Type 3 LAMIRDs existing as of March 31, 2014 are not limited to one business.

51. Permitted only within existing Type 3 LAMIRDs existing as of March 31, 2014.

Criteria for Conditional Uses

In our discussions we had also agreed to amend KCC 17.60A.010.7, the criteria for conditional use permits, to add “E. Has sufficient supply of water legally available for the intended use without adversely impacting surface and ground water flows.” We still think this makes sense and recommend it be adopted.

Proposed Amendment to Chapter 2, Comprehensive Plan Regarding Water Rights and Development Regulations Regarding Adequate Provision of Potable Water

The Kittitas County Conservation Coalition, RIDGE, and Futurewise strongly support these amendments and proposed development regulations. Water in the Yakima basin is over allocated and priority dates entitling water rights holders to use water in low water years are old, 1905 for many low water conditions. This puts many property owners in a real bind. How will property owners with wells drilled after 1905 get the water they need?

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for their families, homes, and businesses? Without the important protections in the proposed regulations and settlement agreement many rural Kittitas County residents will face real hardships in low water years.

The amendments and proposed settlement protects senior water rights holders, assures that current rural residents and their families will have the right to use water in their homes, and provides standards so that future lot buyers will be assured that the property they buy has a legal right to drinking water. Water is essential for our homes, our farms and ranches, and our businesses. The Board of County Commissioners for Kittitas County is showing real leadership in working to resolving this important issue. The commissioners are to be congratulated for their real wisdom and foresight.

**The Settlement Agreement**

For the reasons we explained above, the Kittitas County Conservation Coalition, RIDGE, and Futurewise strongly support the settlement agreement. With this agreement Kittitas County is solving a very serious problem facing many current and future residents and businesses. This is a model many areas of the state would be wise to follow. Again, we thank the Board of County Commissioners for their leadership and hard work. We also thank county staff for their hard work on these important issues.

However, the agreement contains several dates for events that have passed. We recommend that those dates be updated.

If you require more information please contact Tim Trohimovich at 206-343-0681 Ext. 118 or tim@futurewise.org

Very Truly Yours

Tim Trohimovich
Director of Planning & Law, Futurewise

Doug Kilgore
RIDGE

Kittitas County Conservation Coalition

Enclosures
17.15.060 Allowed Uses in Rural Non-LAMIRD Lands

17.15.060.1 Allowed Uses in Rural Non-LAMIRD Lands

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### Rural Non-LAMIRD

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### Footnotes

17.15.060.2 Footnotes Associated with Rural Non-LAMIRD Use Table.
1. Provided use is integrated into and supports the on-site recreational nature of the master planned resort and short-term visitor accommodation units constitute greater than fifty percent (50%) of the total resort accommodation units.

2. No new residence shall be permitted except that related to the business or enterprises allowed in this zone such as janitor or night watchman. Any such residence shall meet the requirements of the residential zone.

3. Not permitted in the Agriculture Study Overlay Zone. Clubhouses, fraternities and lodges limited to facilities that serve traditional rural or resource activities (such as granges).

4. Provided:
   a. The shelters are used to house farm laborers on a temporary or seasonal basis only, regardless of change of ownership, if it remains in farm labor-needed status;
   b. The shelters must conform with all applicable building and health regulations;
   c. The number of shelters shall not exceed four (4) per twenty (20) contiguous acres of land area;
   d. The shelters are owned and maintained by the owner or operator of an agricultural operation which clearly demonstrates the need for farm laborers;
   e. Should the parent agricultural operation cease or convert to non-agriculture use, then the farm labor shelters shall conform with all applicable buildings and health regulations.

5. No sign advertising a home occupation shall exceed sixteen (16) square feet in size. Home occupations with no outdoor activities or noise are permitted; home occupations with outdoor activities or noise are a conditional use. In-home daycares with six (6) or fewer individuals receiving care in a twenty-four (24) hour period are permitted; in-home daycares with seven to twelve (12) individuals receiving care in a twenty-four (24) hour period require a Conditional Use Permit.

6. Provided short-term visitor accommodation units constitute greater than fifty percent (50%) of the total resort accommodation units.

7. When used for temporary occupancy for a period not-to-exceed one (1) year related to permanent home construction or seasonal/temporary employment.

8. Utilities are defined and regulated by KCC Chapter 17.61, Utilities.

9. Utilities are defined and regulated by KCC Chapter 17.61, Utilities. Limited to the capital facilities, utilities, and services necessary to maintain and operate the master planned resort.

10. In considering proposals for location of campgrounds, the Board shall consider at a minimum the following criteria:
    a. Campgrounds should be located at sufficient distance from existing rural residential/residential development so as to avoid possible conflicts and disturbances;
    b. Traffic volumes generated by such a development should not create a nuisance or impose on the privacy of nearby residences or interfere with normal traffic flow;
    c. Landscaping or appropriate screening should be required and maintained where necessary for buffering;
    d. Adequate and convenient vehicular access, circulation and parking should be provided;
    e. Public health and safety of campers and those reasonably impacted by the campground (i.e. health, water, sanitation).

11. Campgrounds and Recreational vehicle sites with power and water are permitted; campgrounds and recreational vehicle sites without power and water require a conditional use permit.

12. The following standards shall apply to the approval and construction of mini-warehouses:
    a. A mini-warehouse proposal (application) must include plans for aesthetic improvements and/or sight screening;
    b. All buildings with storage units facing property boundaries shall have a minimum setback of thirty-five (35) feet;
    c. No commercial or manufacturing activities will be permitted within any building or storage unit;
    d. Lease documents shall spell out all conditions and restrictions of the use;
    e. Signs, other than on-site direction aids, shall number not more than two (2) and shall not exceed forty (40) square feet each in area.

13. Campgrounds and Recreational vehicle sites with power and water are permitted; campgrounds and recreational vehicle sites without power and water require a conditional use permit.

14. Limited to farm implement repair and maintenance.

15. Limited to offices directly related to tourism and recreation.

16. Retail sales are limited to groceries and sales directly related to tourism and recreation. Structural footprint containing all of these activities may not exceed 4,000 square feet.

17. Limited to composting facilities.

18. Limited to those services typically found on other destination resort properties and designed to serve the convenience needs of the users and employees of the master planned resort. Shall be designed to
discourage use from non-resort users by locating such services well within the site rather than on its perimeter.

21. No new cemeteries. Existing cemeteries may expand or enlarge in compliance with applicable standards and regulations.

22. When located not less than forty-five (45) feet from the centerline of the public street or highway and selling goods produced on site.

23. Hay processing and small-scale processing of agricultural products produced on the premises are permitted without a conditional use permit.

24. Excluding swine and mink, provided a minimum of one (1) acre is available. When located in the Liberty Historic Overlay Zone, this use is subject to the provisions of KCC Chapter 17.59.

25. Existing schools are permitted; new schools require a conditional use permit. Not permitted in the Agriculture Study Overlay Zone.

26. Where the use is only serving a residential PUD and where all applicable standards are met. Electric Vehicle Infrastructure subject to provisions of KCC Chapter 17.66.

27. Subject to the following requirements:
   a. ADUs shall be allowed as a permitted use within designated UGAs;
   b. ADUs shall be subject to obtaining an Administrative Use permit in areas outside UGAs;
   c. Only one ADU shall be allowed per lot;
   d. Owner of the property must reside in either the primary residence or the ADU;
   e. The ADU shall not exceed the square footage of the habitable area of the primary residence;
   f. All setback requirements for the zone in which the ADU is located shall apply;
   g. The ADU shall meet the applicable health department standards for potable water and sewage disposal;
   h. No mobile homes or recreational vehicles shall be allowed as an ADU;
   i. The ADU shall provide additional off-street parking;
   j. An ADU is not permitted on the same lot where a special care dwelling or an Accessory Living Quarters exists.
   k. An ADU must have adequate acreage to meet maximum density within the zone classification.

28. Subject to the following requirements:
   a. Accessory Living Quarters shall be located within an owner-occupied primary residence;
   b. Accessory Living Quarters are limited in size to no greater than fifty percent (50%) of the habitable area of the primary residence;
   c. The Accessory Living Quarters are subject to applicable health district standards for water and sewage disposal;
   d. Only one (1) Accessory Living Quarters shall be allowed per lot;
   e. Accessory Living Quarters are to provide additional off-street parking;
   f. Accessory Living Quarters are not allowed where an Accessory Dwelling Unit or Special Care Dwelling exists.

29. Maximum of four (4) boarders and two (2) bedrooms dedicated to the use.

30. Subject to the following requirements:
   a. The Special Care Dwelling must meet all setback requirements for the zone in which it is located;
   b. The Special Care Dwelling must meet all applicable health department requirements for potable water and sewage disposal;
   c. Placement is subject to obtaining a building permit for the manufactured home;
   d. Owner must record a notice to title prior to the issuance of building permit which indicates the restrictions and removal requirements;
   e. The Special Care Dwelling unit cannot be used as a rental unit;
   f. The Special Care Dwelling unit must be removed when the need for care ceases;
   g. A Special Care Dwelling is not permitted on the same lot where an Accessory Dwelling Unit or Accessory Living Quarter exists.

31. Structures and facilities associated with the operation of shooting ranges are permitted and subject to all associated Kittitas County building codes and regulations. Shooting Ranges may be operated in conjunction with other permitted or conditional uses for the specified zone. Shooting Ranges are subject to periodic inspection and certification as deemed necessary by the Kittitas County Sheriff’s Department. In considering proposals for the location of Shooting Ranges a detailed site plan shall be required; the Board’s review of said site plan and the proposal as a whole shall include, but not be limited, to the following criteria:
   a. The general health, safety, and welfare of surrounding property owners, their livestock, their agricultural products, and their property.
   b. Adherence to the practices and recommendations of the “NRA Range Sourcebook.”
   c. Adherence to the practices and recommendations of the “EPA Best Management Practices for Lead at Outdoor Shooting Ranges.”
d. Proposed shooting ranges in areas designated as agricultural land of long-term commercial significance shall comply with RCW 36.70A.177(3) as currently existing or hereafter amended, and shall be limited to lands with poor soils or those unsuitable for agriculture.

32. Subject to the provisions of KCC Chapter 17.66, Electric Vehicle Infrastructure.

33. Single family homes located in Twin Pines Trailer Park, Central Mobile Home Park, or Swiftwater shall be subject to the provisions of KCC Chapter 17.24, Historic Trailer Court Zone.

34. When located in the Liberty Historic Overlay Zone, this use is subject to the provisions of KCC Chapter 17.59.

35. Limited to facilities that serve traditional rural or resource activities (such as granges). Allowed as a permitted use in the Liberty Historic Overlay Zone, subject to the provisions of KCC Chapter 17.59.

36. Allowed only as a conditional use in the Liberty Historic Overlay Zone, subject to the provisions of KCC Chapter 17.59.

37. Prohibited in the Liberty Historic Overlay Zone. Temporary asphalt plants only.

38. As of September 1, 1998, mobile homes are no longer allowed to be transported and placed within Kittitas County. Those units presently located in Kittitas County that are to be relocated within Kittitas County must have a fire/life inspection approved by the Washington State Department of Labor and Industries.

39. Mobile homes located in Twin Pines Trailer Park, Central Mobile Home Park, or Swiftwater shall be subject to the provisions of KCC Chapter 17.24, Historic Trailer Court Zone.

40. Permitted when located within an established mining district; conditional use permit required when located outside established mining district.

41. Single family homes located in Twin Pines Trailer Park, Central Mobile Home Park, or Swiftwater shall be subject to the provisions of KCC Chapter 17.24, Historic Trailer Court Zone.

42. Permitted when conducted wholly within an enclosed building (excluding off-street parking and loading areas).

43. Includes truck stop operations. Minor repair work permitted.

44. Limited to facilities that serve traditional rural or resource activities (such as granges).

45. Use shall not exceed 10,000 square feet and no more than eight (8) events shall occur within a calendar year.

46. Existing facilities are permitted; new facilities require a conditional use permit. Limited to agricultural products. Excludes controlled atmosphere and cold storage warehouses.

47. Limited to seasonal, non-structural hay storage.

48. Services limited to resource based industries

49. Lots greater than one-half (1/2) acre will not have more than fifty percent (50%) of the lot covered with impervious surfaces in Agriculture 5, Rural 5, Agriculture 20, Forest & Range, and Rural Recreational Residential zones.

(Ord. 2013-001, 2013;
Commissioner Paul Jewell
Kittitas County
Board of Commissioners
205 W 5th Avenue Ste. 108
Ellensburg, WA 98926-2887

Subject: Kittitas Groundwater Settlement Agreement

Dear Commissioner Jewell:

The Bureau of Reclamation appreciates our inclusion in the review of your draft settlement agreement between Kittitas County, the State of Washington, Futurewise, and others. Although we are not a party to the agreement, we acknowledge the County’s diligence and efforts to conform the County’s planning and permitting authority within the very complex context of the Yakima Basin’s fully appropriated and adjudicated water supply.

Your actions have been very positive and we appreciate your continued efforts.

Sincerely,

Dawn Wiedmeier

Dawn A. Wiedmeier
Deputy Area Manager

bc: CCA-1000, CCA-1002, CCA-1003, CCA-1704, YAK-5000

WBR:WFerry:EGalvez:01/10/14:509-575-5848, Ext. 244
U:/msword/eg/wferry/ Kittitas Groundwater Settlement Agreement
February 26, 2014

Kittitas County Board of County Commissioners
205 W 5th Avenue, Suite 108
Ellensburg WA 98926-2887
VIA Electronic Mail to: julie.kjorsvik@co.kittitas.wa.us

Kittitas County Community Development Services
411 N. Ruby Street, Suite 2
Ellensburg, WA 98926
VIA Electronic Mail to: doc.hansen@co.kittitas.wa.us

RE: Comments on Amendment to Kittitas County Comprehensive Plan and Kittitas County Code to Comply with Washington State Growth Management Plan

Dear County Commissioners and Planning Official Mr. Hansen:

Please accept these written comments into the record for the February 26, 2014 Public Hearing at 6:00 p.m., on the above referenced matter. These comments are focused on the Draft Settlement Agreement with Futurewise, et al, and Draft Exhibit E, the Water Amendments to Chapter 2 of the Comprehensive Plan.

Yakima River Mitigation Water Services LLC (YRMWS) operates a mitigation water bank, the Yakima River Mitigation Exchange, pursuant to a Trust Agreement with the Washington Department of Ecology (Ecology) and has allocated mitigation water to about 160 parcels in Upper Kittitas County pursuant to WAC 173-539A, the Upper Kittitas Groundwater Rule (Rule).

In general, YRMWS supports a County-wide solution but does not support a County-operated mitigation water bank. The current private water banks are successfully operating County-wide and the County has not established an economic rationale for starting a County-run mitigation bank. The County’s legal ability to establish its Domestic Ground Water Mitigation Program as described in the draft documents remains tenuous at best and its ability to secure a permanent, sustainable mitigation water program with senior water rights is even less certain. The County’s proposal to lease water for permanent uses with the future hope and speculation that permanent water can be obtained before a lease period ends is too speculative and does not protect water resources.

YRMWS does not support an Interim Mitigation program that avoids review of impact to local tributaries and streams, which is contrary to the Storage Contract between Ecology and the U.S. Bureau of Reclamation and the standard all others have had to meet to obtain mitigation water. The County seeks to “stretch” the Rule to the Lower County with the goal of pre-empting the Rule with County Code to settle on-going litigation. To avoid inconsistencies, the County Code
should mirror the Rule and be subject to all other agreements, requirements and restrictions that apply to the Upper County, namely the Storage Contract between Ecology and the U.S. Bureau of Reclamation which requires that mitigation be TWSA, and not impair local impacts in tributary streams. The Draft Settlement Agreement Section 3.1(e) indicates that the County and Ecology with assistance from the WTWG created an “over-the-counter” solution for predetermined eligible locations of new groundwater withdrawals which presumably includes a review of impairment to local streams. Why would the Yakama Nation act contrary to its Treaty Rights and allow local impairment to ESA critical streams even on an interim basis? What about those areas not pre-determined for eligibility? Will the County secure water for all impacted tributaries so the County’s program is truly available County-wide?

**Metering requirements should be consistent with WAC 173-173-100 and WAC 173-539A.**
The Draft documents seem to have varying timelines for metering and monitoring. Meter and monitoring requirements are established in Ecology’s authorizing decision documents and reflect the legal requirements under WAC 173-173-100 and WAC 173-539A.

**The Settlement Agreement’s definition of “Indoor Domestic Use” is too limited and should not include 500 square feet of outdoor irrigation.**
The Settlement Agreement defines Indoor Domestic Use as use of water in an approximate quantity of 350 gallons per day (gpd) and outdoor irrigation of up to 500 square feet. Ecology has approved mitigation water in the Upper County for indoor domestic use of water in a quantity of 250 gpd that does not include outdoor irrigation and is supported by a recorded covenant stating so. The Washington Department of Health established 350 gpd as the Maximum Daily Demand and 250 gpd as an Average Daily Demand for residential uses. Both quantities should be accepted under the definition of Indoor Domestic Use so that if the Rule is pre-empted, there are no inconsistencies with mitigation water already authorized, and parcels suitable for 250 gpd will not be allocated more water than needed. Some owners may not desire or need water for 500 square feet of irrigation so it should not be automatically included.

**Density and larger lots does not necessarily protect water quantity or water quality (Exhibit E, Water Amendments).**
While it may be true that rural character is defined by less dense lots of larger size, if, in the end, the number of total units is the same, then the same amount of water is being used.

**Proposed language in Section 13.35.025 (Interim Measures) and 13.35.027 (Permanent Measures) should clarify that these sections are applicable to all areas of Kittitas County within the Yakima Basin.**

**Proposed language in Section 13.35.025 (Interim Measures) and 13.35.027 (Permanent Measures) should be exactly the same.**
Section 13.35.025(4) regarding mitigation water for non-commercial lawn or garden should apply to Permanent Measures. It should be clarified whether or not one must mitigate for 500 square feet of irrigation.
Section 13.35.025(5) regarding mitigation water for commercial and industrial uses should apply to Permanent Measures.
Section 13.35.025(6) should include the requirement that mitigation also be for local tributary impairment as required by the Storage Contract between Ecology and the U.S. Bureau of Reclamation.

Section 13.35.027(7) regarding metering and monitoring should be a requirement for Interim Measures under 13.35.025. However, the meter and monitoring requirements should not be annually in accordance with the agreement between the landowner and the mitigation provider. Mitigation agreements do not define metering or monitoring requirements. Meter and monitoring requirements are established in Ecology's authorizing decision documents and reflect the legal requirements under WAC 173-173-100 and WAC 173-539A.

Section 13.35.025(8) and 13.35.027(5) regarding violation of water limits should not be a matter between the landowner and the provider of mitigation and enforceable as provided in said mitigation agreement.

Enforcement of mitigation water limits authorized by Ecology should be enforced by Ecology or as the County suggests, as a Code enforcement matter. Current mitigation agreements typically do not include enforcement language other than that the owner will abide by Ecology's decision authorizing the specific quantity of mitigation water for specific purposes. To require the provider of mitigation water to enforce water limits would be analogous to a seller of a home being responsible for policing the new owners to make sure they are not using the home in an illegal manner. Providers of mitigation water rights are private parties that do not have the legal authority to perpetually enforce water limits authorized by Ecology. Private water banks could also dissolve and not exist in the future.

Thank you for the opportunity to provide these comments.

Sincerely,

[Signature]
Anne Watanabe, J.D.