FINAL STAFF REPORT

TO:       Kittitas County Board of County Commissioners
FROM:    Kittitas County Community Development Services
RE:    Amendment to Kittitas County Comprehensive Plan and Kittitas County Code to Comply with Washington State Growth Management Plan
DATE:   February 26, 2014 Public Hearing

I. GENERAL INFORMATION

In 2007 the Eastern Washington Growth Management Hearings Board (herein referred to as the “Hearings Board”) made Order for Kittitas County to bring our Comprehensive Plan into compliance with the Growth Management Act (GMA) of Washington State. In July, 2011 the Washington State Supreme Court supported the Order in part and requested the County to address particular issues that the Hearings Board had identified. These issues included:

1) Expanding the City of Kittitas Urban Growth Boundary without conducting a land capacity analysis;
2) Not assuring preservation of “rural character” by allowing Agriculture 3 and Rural 3 zones;
3) Not providing policies and designations protecting rural character and natural resources;
4) Allowing Performance Based Cluster Platting and Planned Unit Development in rural areas at densities not considered rural in nature;
5) Not providing directive policies that assure preservation of rural character and providing for an opportunity for development of a variety of rural densities;
6) Failure to prohibit urban uses and urban environment in rural areas;
7) Failure to prohibit urban uses upon agricultural areas of long-term significance;
8) Failure to provide policy designed to protect water quality and quantity within the rural areas;
9) Failure to provide guidelines for location of Highway Commercial zones; and
10) Allowing “one-time split” land divisions resulting in higher densities than permitted within the underlying zone.

At the request of the County, the Hearings Board extended the period for the County to comply with issue number 8 listed above (Case no. 07-1-0015), ordering that it, within its Comprehensive Plan and County Code, to provide for the protection of water quality and quantity in rural areas. That issue is addressed within this proposal.

On February 11, 2013, Kittitas County adopted amendments to the Comprehensive Plan and the Kittitas County Code addressing all other issues of non-compliance listed above. On May 31, 2013 the Hearings Board issued a decision regarding Kittitas County Code and Kittitas County Comprehensive Plan compliance to the Growth Management Act as a result of adopting those amendments. The Hearings Board found within its decision that the amendments addressed all of the issues except for issue 3) and a portion of issue 5) listed above. The Hearings Board reserved judgment on issue 6) listed above until the County re-addressed issues 3 and 5.

A motion for reconsideration of the decision was filed June 10, 2013 by Futurewise, requesting the Hearings Board re-consider their decision, and that it erred in its conclusion:
• That accessory dwelling units met the intent of the GMA, and
• That in the amendment of the zoning ordinance, the County amended the LAMIRD regulations through its creation of a use matrix table, and, therefore, should be reviewed for compliance to GMA.

The Hearings Board disagreed with the first issue and agreed with Futurewise on the second issue. The Hearings Board concluded that uses allowed within the use tables provided in 17.15.070 needed to be re-evaluated to insure that they meet the rural character of the LAMIRD environment.

II. PUBLIC PARTICIPATION, MEETINGS, HEARINGS AND EXTENSIONS

As a result of the Hearings Board decisions, in March and early June 2013, the County continued discussing the issues that the Hearings Board indicated needed to be addressed. Public participation continued by accepting comments from the public and holding open houses to explain the draft amendment proposals that were being considered. The first Open House was held on June 17 at the “Western Village” building in the Fairgrounds, and the second Open House was held on July 26 at the Fairground’s Teanaway Hall. Comments were received and acknowledged at a joint meeting between the Planning Commission and the Board of Commissioners on August 8, 2013 in the Teanaway Hall. The meeting was open to the public but closed to public testimony so that the Board and the Planning Commission could ask questions of the staff regarding draft Comprehensive Plan and the Kittitas County Code amendment proposals. The joint meeting centered upon providing background in terms of what had been achieved regarding compliance to the GMA and what still needed to be addressed. A power point presentation was made centering upon land use issues and finding a solution for protecting the quantity and quality of water within the County.

The amendments proposed at that time were then presented before the Planning Commission at the Hal Holmes Center on August 14, 2013 and public comments were received. The Planning Commission, at the end of public testimony, moved to continue the public hearing until August 20, 2013 at the Kittitas County Courthouse Commissioner’s Auditorium in order to deliberate on the proposal. The public testimony period remained open to provide more time for comment.

At the conclusion of public testimony and deliberations, the Planning Commission forwarded a recommendation to the Board of County Commissioners to implement changes to the County’s Comprehensive Plan and development regulations which would require that all new uses of ground water in the county be fully mitigated by an offsetting senior water right. This recommendation by the Planning Commission was much different than the proposal they were considering which was to require metering of all new ground water uses within the county and also included other specific methods to protect ground and surface water resources. Because of the complexity of the issue and differences between the original proposal the Planning Commission was considering and what was eventually recommended to the Board of County Commissioners, an extension to resolve the issue was requested by the County and granted by the Hearings Board to continue work for determining a solution. The County began negotiations with the Department of Ecology and petitioners Futurewise, Kittitas County Conservation Coalition, and Ridge in September 2013. These petitioners were included in the negotiations discussion since they were the only group that formally addressed the Hearings Board regarding recommendations made by the Planning Commission in August, 2013. An additional extension was requested and granted to continue the negotiations in December, 2013. The attached draft water “Settlement Agreement,” and the proposed amendments presented as “Exhibits” are the result of these negotiations, staff proposal, and public comment.

III. ISSUES TO BE ADDRESSED
Following is a summary of the issues raised by the Eastern Washington Growth Management Hearings Board in 2013 which we have been ordered to address in our Comprehensive Plan and in Kittitas County Code:

1) **Measures to Protect Rural Character.** The Hearings Board found that the amendment to the Comprehensive Plan policies do not adequately provide “measures” to protect rural character as required by RCW 36.70A.070(5)(c).

2) **Adopting Imperative Language in Policies.** The Hearings Board found that the County made a mistake “in not adopting imperatives” within the language of the policies to assure protection of rural character in designated rural areas.

3) **Adoption of Development Regulations Implementing Plan Measures.** The County must provide within the Code regulations that insure the implementation of these adopted “measures” in policies designed to protect rural character.

4) **Demonstrate How Existing Zones Meet Limited Areas of More Intense Development, Types I, II, and III.** The Hearings Board finds in its Reconsideration that this issue is closely related to the request to provide “Measures to Protect Rural Character,” and that therefore, the County will show what “measures” and implementing ordinances are provided in existing LAMIRDs.

5) **Protection of Water Quality and Quantity.** The issue before the Hearings Board is that the County has not adequately provided for the protection of the water quality and quantity for the rural areas through its Comprehensive Plan and through its implementing Code regulations.

**IV. STAFF REVIEW AND SUMMARY OF PROPOSED AMENDMENTS**

**INTRODUCTION**

Following is a summary of the amendments that are proposed by Kittitas County Planning Staff to be made to the Comprehensive Plan, implementing regulations, and the maps in order to address the issues raised by the Eastern Washington Growth Management Hearings Board and which are summarized above in Section III.

“Exhibit A” outlines the changes proposed to the Planning Commission to Chapter 8 of the Comprehensive Plan. Highlighted sections are proposals which resulted from public comment and were not seen by the Planning Commission. Proposed changes and this exhibit provide the “measures” requested by the Hearings Board and the portions of the Kittitas County Code which implement these defined measures. Exhibit B presents proposed changes to the Kittitas County Code, including matrix changes in KCC 17.15.050 and 17.15.060 designed to address Issue 3 listed above, “Adoption of Development Regulations Implementing Plan Measures.” Exhibit C outlines proposed changes to portions of KCC 17.15.070(1) which assure that the LAMIRDs identified by the Plan meet the intent defined within the State Code and insure that uses allowed remain rural in character. Exhibit D shows proposed changes to the maps within the Plan which demonstrate that the zone classifications and the proposed matrix protect the rural character for the Type 1 and Type 3 LAMIRDs that exist within the County.

Exhibit E presents the proposed amendments to the Comprehensive Plan Land Use Element (Chapter 2) and proposed amendments to the Kittitas County Code addressing the methods protecting water quality and quantity within Kittitas County. The proposed amendments to the Plan replaces language which currently exists within the “Water” Section of the Plan, Section 2.2.3, page 2-8. The Exhibit also presents proposed amendments to the Code which will limit new ground water uses. Proposals within this Exhibit address Issue 5 above, “Protection of Water Quality and Quantity.”
Exhibit F provides the draft Settlement Agreement regarding water issues which resulted from the five-month negotiations with DOE and petitioners noted above. It is presented for review and consideration by the Board of County Commissioners, for public comment and for background to the amendments being proposed to the Comprehensive Plan and implementing regulations. Commissioner approval of this agreement is being requested from staff.

**EXHIBIT A: PROPOSED AMENDMENTS TO CHAPTER 8 OF COMPREHENSIVE PLAN PROVIDING “MEASURES” WITHIN PLAN POLICIES IN ORDER TO PROTECT RURAL CHARACTER**

Exhibit A presents proposed amendments to the policies outlined in Chapter 8 which provide measures within the Plan protecting the rural character within Kittitas County. The exhibit explains the basis for the changes proposed after each policy and the portions of Kittitas County Code which implement the policy being changed. Within the exhibit, development regulations implementing the policies providing measures which protect the County’s rural character are also identified. The Exhibit addresses Issues 1, 2, and 3 listed above in the summary of “Issues to Be Addressed.”

The format of the exhibit is the same as that of the Plan as adopted in February, 2013. GPOs are presented with proposed changes to script in red strikeout and underlined addition. Proposed amendments to these existing policies are primarily revisions of language making the policies more imperative and mandatory as requested by the Hearings Board in its March 2013 Order, thereby providing measures to assure rural character. Following is a list of some of the policies proposed for change.

- GPO 8.3 is amended so “should” is changed to “shall” making it mandatory to promote retaining the County character through its rural zone classifications.
- GPO 8.7 makes it mandatory to limit conservation and cluster platting to specific rural areas which are suitable for such development.
- GPO 8.13 makes it mandatory to “establish development standards” which enhance or preserve rural lands.
- GPO 8.18 provides policy which “directs” rural development rather than “encouraging” rural development.
- GPO 8.20 indicates where cottage industries and home occupations are allowed rather than where they are encouraged.
- GPO 8.22 changes “should” to “shall” making it mandatory to provide mechanisms to provide for roadside stands for agriculture products offering a measure to provide rural character.
- GPO 8.27 is amended to provide criteria where “essential public facilities…shall be allowed” providing the measures which will preserve rural character when public facilities are permitted within rural areas.
- GPO 8.32 is suggested for amendment making it mandatory to develop criteria limiting the density, requiring open space and maximum lot sizes of cluster plats; thereby providing measures preserving rural character.
- GPO 8.34 is amended making the policy more directive in encouraging development which preserves rural character.
- GPO 8.36 is amended making it mandatory for use of Transfer Development Rights for some cluster plats.
- GPO 8.52 and 8.53 are proposed for amendment to make the policy more directive which will provide for a measure preserving the character of the Liberty Historic District.
- GPO 8.54 is proposed for change making it mandatory that development near motorist travel areas be rural in character.
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- GPO 8.61 is proposed for amendment to mandate consideration of commercial activities servicing travelers and local residents in certain areas.
- GPO 8.62 is recommended for change making it mandatory to enforce a protection code and provide a measure protecting life and property.

Exhibit A also identifies those portions of the Kittitas County Code that implement the specific policies designed to protect rural character. For example, GPO 8.1 is implemented by criteria within zones in rural areas (KCC 17.28A A-5 Agriculture Zone, 17.29 A-20 Agriculture Zone, 17.30 Rural Recreation Zone, 17.30A R-5 Rural Zone, 17.40 C-G General Commercial Zone, and 17.36 Planned Unit Development Zone) and by the allowed uses indicated in 17.15.060, Allowed Uses within Non-LAMIRD Rural Areas.

All of the policies listed in this chapter of the Comprehensive Plan that address the issues related to the preservation of rural character have reference to regulations that implement the policy. Many of these policies reference a particular matrix within Section 17.15 of the Zoning Code for the County which identifies the allowed uses within a particular zone classification. Many of these allowed uses require a conditional use permit which involves a public hearing and review of criteria intended to preserve character of the surrounding area. Many of the permitted uses have footnotes which list criteria implementing the policies and the plan measures designed to preserve rural character. GPOs 8.1 through 8.9, GPOs 8.12 through 8.16, GPOs 8.18 through 8.22, GPOs 8.23, 8.27, and 8.28, GPOs 8.32 through 8.34, GPOs 8.36 through 8.38, GPOs 8.40 through 8.44, GPO 8.48, GPOs 8.52 through 8.54, GPO 8.58, GPO 8.59, GPO 8.61, GPO 8.63, and GPOs 8.65 through 8.66 all have Code references listed below them which implement the policy listed.

As a result of comments received during and following the Planning Commission’s review of the proposed amendments in August 2013, a number of additional policies are proposed for consideration for adoption, all of which are designed to enhance the rural environment of Kittitas County. These proposed additions are highlighted in Exhibit A to indicate changes not presented to the Planning Commission. Policies have been added and/or proposed for amendment to place high priority upon farm and natural resources, and to further prevent sprawl (GPO 8.9, GPO 8.10, GPO8.17, GPO 8.20A, GPO 8.28, GPO 8.31A). Policies have also been added which enhance protection of water resources (GPO 8.14A, GPO 8.14B, GPO 8.14C, GPO 8.23A, GPO 8.23B, 8.30, GPO 8.44B, GPO 8.44C). Greater assurance of the preservation of the rural and historic character of the County has been provided with addition of other policies (GPO.8.21A, GPO.21B, GPO 8.32A, GPO 8.44A, GPO 8.56A, GPO 8.57). Finally, Plan policies are proposed for addition or amendment to assure that future development meets the intent of existing and future LAMIRDs (GPO 116A).

In summary, proposed amendments to Chapter 8, “Rural and Resource Element” of the County’s Comprehensive Plan, accomplish the following:
- establishes directive policies that provide measures allowing for a variety of rural densities while preserving rural character,
- establishes policies that identify rural character,
- preserves the uses identified within rural areas, and
- protects water and resource lands.
The amendments proposed and presented to the Planning Commission were accepted, and the body unanimously recommended to the Board of County of Commissioners that proposed amendments to Chapter 8 of the Comprehensive Plan be approved.

**EXHIBIT B - PROPOSED AMENDMENTS TO THE KITTITAS COUNTY CODE TO IMPLEMENT RURAL CHARACTER POLICIES**

To implement the rural protection measures contained in the revised Comprehensive Plan policies drafted in response to Growth Management Hearings Board concerns about the need for adequate measures to protect rural character, staff proposes changes to the Rural Non-LAMIRD use tables and setbacks for development in the Forest and Range zone adjacent to the Liberty Historic overlay zone.

Additional rural character protection measures are as proposed amendments to the Rural Non-LAMIRD allowed use in Table KCC 17.15.060 including:

- **Agriculture 20:**
  - Libraries changed from a permitted use to a conditional use.

- **Forest and Range:**
  - Agriculture sales, freighting and trucking yards and terminals, refuse disposal and recycling, and group homes be removed as allowed uses.

- **General Commercial:**
  - Libraries and museums changed from a permitted use to a conditional use;
  - Day care facilities, hospitals and freighting and trucking yards and terminals removed as allowed uses;
  - Scope of allowed services be limited by the new footnote 45 restricting allowed uses to barbershops, beauty parlors, dry cleaning and laundry branch offices, self-service laundry and cleaning, shoe repair shops and other services not resource-based;
  - Addition of footnote #48 to the matrix to restrict services in rural non-LAMIRD areas to resource-based industries.

Dairies are a use that has been included within the Resource and Rural Non-LAMIRD Use Tables as a conditional use in all zones.

To implement the amended GPO 8.52, staff recommends that Section 17.56.062 be added to KCC Chapter 17.56, Forest and Range Zone, stating:

“Properties bordering or adjacent to the Liberty Historic District are subject to a fifty (50) foot setback from the overlay boundary.”

This addition is recommended to implement the amended GPO 8.52 which assures that potential new uses are compatible with the District.

The Planning Commission reviewed these proposed changes at its August, 2013 public hearing and unanimously recommended approval of the amendments to the Code.
EXHIBIT C – PROPOSED AMENDMENTS TO KCC17.15.070(1), ALLOWED USE MATRIX FOR KITTITAS COUNTY LAMIRDS

WAC 365-196-425 recognizes that Limited Areas of More Intense Rural Development (LAMIRDS) serve several purposes such as allowing small-scale commercial uses, economic development, and employment opportunities consistent with rural character. LAMIRDs are classified as Type 1, 2, or 3.

Type 1 LAMIRDS are described in WAC-365-196-425 as development areas consisting of “infill, development, or redevelopment of existing areas…including commercial, industrial, residential, or mixed-use areas. These may be also characterized as shoreline development, villages, hamlets, rural activity centers, or crossroads developments.” Kittitas County has the following Type 1 LAMIRDS:
- Snoqualmie Pass
- Easton (one portion is also a Type 3)
- Ronald
- Thorp (one portion is also a Type 3)
- Vantage

Type 2 LAMIRDS are identified within WAC 365-196-425 as “small-scale recreational uses…. or tourist uses rely(ing) on a rural location and setting and need not be principally designed to serve the existing and projected rural population.” Kittitas County currently has no Type 2 LAMIRDS.

Type 3 LAMIRDS are designated areas with “small-scale businesses and cottage industries…that are not principally designed to serve the existing and projected rural population and nonresidential uses, but do provide job opportunities for rural residents, through the intensification of development on existing lots or on undeveloped sites.” This more intense development must also be small in scale, consistent with rural character and operationally compatible with surrounding resource-based industries. Kittitas County has the following Type 3 LAMIRDS:
- Easton (one portion is also a Type 1)
- Thorp (one portion is also a Type 1)

Kittitas County LAMIRDs were found in compliance with the Growth Management Act in 2009 and 2010. In 2013 Kittitas County implemented a new code format, moving individually listed permitted and conditional use land uses in each zone to an allowed use table format. The County’s intent was to leave the zoning classifications and allowed uses in existing LAMIRDS unchanged with the exception of changes specifically intended to better protect rural character or maintain consistency across zones. For example, with PUD zones in LAMIRDs retail and restaurant uses were removed as permitted uses; athletic stadiums were removed as an allowed use in the General Commercial zone. However, several changes were inadvertently implemented that introduced inappropriate uses to LAMIRDs, which were noted by public members during review process. Exhibit C is proposed to remedy the errors and provide additional implementing measures to better protect rural character.

Major changes in KCC 17.15.070 proposed as a result of public comment and review include:

- New Type 3 LAMIRDs will have to be at least one-half mile from another Type 3 LAMIRD and permit only one business or businesses associated with the primary business.
- Agriculture processing uses are now allowed in most zones of a Type 1 LAMIRD and all zones in a Type 3 LAMIRD, provided slaughter houses obtain a conditional use permit. Feedlots will not be allowed.
- Nurseries will be allowed in Type 3 LAMIRDS with approval of a conditional use permit.
- “Fraternities” are removed from the use category.
- Libraries require a conditional use in a Type 3 LAMIRD.
- Meeting facilities are not allowed in LAMIRDs.
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- Museums and galleries require a conditional use permit.
- Schools are an allowed use, but now require a conditional use permit rather than being outright permitted as they were in 2009. They are not an allowed use in a Type 3 LAMIRD.
- Banks are not allowed in a Type 3 LAMIRD.
- Bed and Breakfast facilities require a conditional use permit (requiring amendment to Docket code amendments).
- Clinics are not allowed in Type 3 LAMIRDs.
- Funeral homes are not allowed in Type 3 LAMIRDs.
- Hospitals are not allowed in LAMIRDs.
- Hotels and motels require conditional use permits and are only allowed in Type 3 LAMIRDs.
- Retail sales must be in an enclosed building and not exceed 4000 square feet.
- Airports are allowed only in Light Industrial zones in Type 3 LAMIRDs.
- Freight and trucking operations are not allowed in LAMIRDs.
- Hazardous waste and treatment, junkyards, and refuse disposal activities are not allowed in LAMIRDs.
- Manufacturing, wholesale businesses, mining and excavation and rock crushing are not allowed in Type 1 LAMIRDs.
- Wholesale business in Type 3 LAMIRDs will not exceed 4000 square feet (not including hay storage).
- Duplexes are not allowed in Type 3 LAMIRDs.

The amendments proposed and presented to the Planning Commission were accepted, and the body unanimously recommends to the Board of County of Commissioners that the proposed amendments to 17.15.070 be adopted. Some of the current recommendations were not reviewed by the Planning Commission (those highlighted)

EXHIBIT D - PROPOSED AMENDMENTS TO ZONING MAPS OF KITTITAS COUNTY LAMIRDs

Within Kittitas County Ordinance 2013-001 several changes in land classification were made within areas designated as LAMIRDs. Most of the changes in terms of area were a result of zoning existing rights of way. Zones were provided to assure that those lands taken from the right of way easement would be subject to an underlying zone.

The Snoqualmie Type 1 LAMIRD implements changes from the previous Highway Commercial zone to a Rural Recreation zone. It also creates an underlying zone in the PUDs to Rural 5 zone classification where there was no record of an underlying zone. Staff recommends that the Highway Commercial zone be added to the area within the LAMIRD where it previously existed and that the Rural 5 be amended to Rural 3 within the LAMIRD.

The Easton LAMIRD maps display changes made by the 2013-001 ordinance that are primarily zoning of the rights of way and the inclusion of total parcels within the adjacent zone that are divided by the identified LAMIRD line. The map is changed to reflect the zone subject to the LAMIRD line rather than the parcel line. Corrections were also made to the map where parcels were incorrectly identified as rights of way and a parcel was incorrectly zoned. Staff recommends that the parcels remain divided and the zone revert to its original zone as existed prior to Ordinance 2013-001, and that all easements including rights of way be zoned as shown. Staff also recommends that the errors found on the maps be corrected.

The Ronald LAMIRD map implements little change between 2009 and 2013 adopted by Ordinance 2013-001. Rights of way were zoned in 2013. Map comparison also shows that a portion of the PUD zone in the Ronald LAMIRD was rezoned from Rural 3 to Rural 5. Staff also recommends that the amended underlying zone within the PUD be the Rural 5 zone.
The Thorp Type 1 LAMIRD implements little change in zone classifications between 2009 and Ordinance 2013-001 adopted February 11. Rights of way were zoned in the new map and staff recommends that all easements remain zoned. Staff also recommends that all area zoned Agriculture 20 in the LAMIRD be amended to an Agriculture 3 zone since it is characteristic of more intense development within the LAMIRD.

The Thorp Type 3 LAMIRD shows that an area in the LAMIRD was incorrectly shown outside the LAMIRD and was rezoned to an Agriculture 20 zone that had previously been zoned Highway Commercial. The adopted 2013 map shows a portion of previously zoned Highway Commercial within the LAMIRD as Limited Commercial. It also shows rights of way zoned. Staff recommends correction to the LAMIRD boundary map, and that lands identified as Agriculture 20 and Limited Commercial be changed to the previously shown Highway Commercial zone. Also because the Appeals Court in August, 2013 did not support the expansion of the Type 3 LAMIRD north of the I-90 freeway, staff recommended to the Planning Commission that it be recommended to the Board of Commissioners that the 2009 LAMIRD boundary line be re-established.

Finally, the Vantage LAMIRD shows no changes in the zone classifications between 2009 and 2013 except the zoning of the rights of way. Staff recommends no changes be made to the maps.

The Planning Commission reviewed these proposed changes and unanimously recommended to the Board of County Commissioners that they adopt the changes.

**EXHIBIT E - PROPOSED AMENDMENTS TO THE KITITITAS COUNTY CODE AND COMPREHENSIVE PLAN TO ASSURE THE PROTECTION OF QUALITY AND QUANTITY OF WATER IN KITITITAS COUNTY**

Kittitas County proposes measures necessary to become compliant with the Growth Management Act in regards to the use of water and protection of its quality and quantity within the County. Given that the County’s land use authority may exercise some controls of ground/surface water resources and the GMA requires protection of these resources, the County is proposing water use regulations to comply with the Growth Management Act in accordance with the request of the Hearings Board in 2007, Order No. 07-1-0015, Issue 4.

In August 2013, the Planning Commission received comments supporting full mitigation of all future water use by requiring an offset of any new uses through means which would render the new use water-budget neutral. The Planning Commission made a recommendation to the Board of County Commissioners for full mitigation rather than limitation of water suggested by staff.

Petitions for review requesting that the Hearings Board issue a declaration of invalidity for development regulations which do not protect ground and surface water resources in Kittitas County have resulted from past hearings, and the State Department of Ecology moved to intervene on the issue. Ecology’s interest in this issue is to provide technical and legal input and support regarding the County’s GMA obligations related to protecting area water supplies and ensuring that development occurs where water is available.

The County, as a result of the petition, comments and recommendation of the Planning Commission, engaged in discussions with intervening parties to determine how to achieve water protection objectives and comply with the Growth Management Act. As a result of these discussions, a proposed “Settlement Agreement” was developed for proposed adoption by the bodies involved in the discussion, including the Board of County Commissioners. This proposed “Settlement Agreement” is displayed in Exhibit F of this report.

The County’s primary interest in the issue is eliminating the risk of severe curtailment of water use to the exempt well users during a drought and in keeping water rights within the County. In this regard staff proposes to the
Board of County Commissioners to amend the County Comprehensive Plan and Development regulations such that interim mitigation will be immediately made applicable to certain new uses of ground water in lower Kittitas County. This Interim Period, as described in the proposed Settlement Agreement, will last for eighteen (18) months after the effective date of adoption of the ordinance and will require new uses of ground water in lower Kittitas County (the areas outside of the boundaries defined by WAC 173-539A) for domestic, industrial, and irrigation purposes be mitigated by offsetting senior water rights. New uses must be neutral with regard to Total Water Supply Available (TWSA) as measured at the Parker gauge on the Yakima River.

Mitigation for new uses of ground water in lower Kittitas County for domestic purposes may be made available through a county-run mitigation program. The county-run mitigation program may offer offsetting senior water rights via a lease agreement with a senior water right holder at a cost to the user. New uses which are mitigated from the county-run program for domestic purposes may, during this interim period, include watering of up to 500 square feet of lawn or other landscaping. New ground water users may also provide their own mitigation which is sufficient to offset any new use of ground water aside from the county-run program. All applicants for building permits will be required to record whatever mitigation is secured for approval of the permit allowing a new ground water use as a deed restriction with the County Auditor’s office prior to a building permit being approved.

The Interim Period will be followed by a “Long Term Mitigation Requirement” which will require that all new uses of ground water in all of Kittitas County be fully mitigated with regard to local impacts upon tributary streams and creeks as well as TWSA. The long-term requirements will require all new users to provide evidence of stream or creek mitigation as a condition of final plat approval and development (building permit, etc.). The County may continue to offer mitigation through the county-run leased program as defined in the proposed Settlement Agreement for up to five years from the date of the Agreement. However, all mitigation must adhere to the stricter standards of the Long Term Mitigation Requirements and mitigation may not be available in many areas (shown approximately as yellow and red areas on the map provided in Exhibit F). All new uses of ground water after the beginning of the Long Term Mitigation Requirements (approximately after October 1, 2015), will require metering and reporting on an annual basis along with the other requirements implemented during the Interim Period.

Future subdivisions will also be required to place a note upon the final plat document explaining these limitations when these regulations become effective. Exemptions from these limitations will include, but are not limited to, wildfire protection, fire flow testing, fire storage tank filling, pipe breakage and similar emergencies.

Administration of this monitoring will go through the Public Health Department, and enforcement of the regulation will be conducted through existing Code Enforcement procedures. Violators exceeding this maximum usage will be provided a warning and offered technical assistance in use and explanation of the violation.

In order to accomplish these limitations and the eventual metering process, a number of amendments are necessary to be made to the Kittitas County Comprehensive Plan and the Kittitas County Code. Following is a summary of these proposed amendments.

PROPOSED AMENDMENTS TO CHAPTER 2 OF THE COMPREHENSIVE PLAN, SECTION 2.2.3, PAGE 2-8

The recommended amendments to the Comprehensive Plan in Chapter 2 re-words the entire existing “Water” section of the Kittitas County Comprehensive Plan. Existing GPOs are eliminated since these are statements that are already provided by law and are not necessary to repeat within the Plan. The revised section summarizes actions that have already been taken to protect the quantity and quality of ground and surface water, and the
section emphasizes the requirement to provide proof of adequate water supply before building or land use action applications are accepted. As stated in the proposed language:

*The County does not view the restrictions set forth in the Code as establishing new land use requirements. Rather, the County views the restrictions as the method by which the County will determine that property owners are meeting the existing legal requirement for demonstrating an adequate water supply.*

PROPOSED AMENDMENTS TO TITLE 13 OF THE KCC, WATER AND SEWER

Amendment to Chapter 13 of the County’s Code as shown in Exhibit E will be administered by the Department of Health, and is recommended for adoption to insure that adequate water exists for proposed development while preserving the quantity and quality of the water source. This addresses the issue of adequately protecting water quality and quantity with application for building permit, subdivision of land or other land use actions.

General proposed actions include:

- Identifying “Interim Measures” and “Permanent Measures”, the “interim measures” apply to new uses for 18 months after the effective date of the adopted ordinance, and “permanent measures” occur following that period.
- Elimination of all vesting rights to water provided in the State’s subdivision law (RCW 58.17.170(3))
- New uses of ground water mitigation or connection to a municipal service.
- Mitigated and limited water use shall demonstrate metering and annual monitoring of water use.
- 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.

Section 13.35 is amended to indicate the applicability of the new regulation. Display of adequate water supply will be required whenever a person requests for a new structure with potable water, a new use is proposed, additional dwelling units are proposed, or land use action such as land subdivisions, binding site plans, and conditional use permits, which will require water. Under these situations an applicant will have to demonstrate the availability of water by proving water right to the property, having a letter from a water purveyor for adequate water availability, or a certificate from the DOE that water is available.

PROPOSED AMENDMENT TO TITLE 16 OF THE KITMITIAS COUNTY CODE, SUBDIVISION REGULATIONS

Proposed changes to Title 16 are minor amendments and consist of referencing Chapter 13.35. Sections 16.05.20, Requirements, 16.12.150 Road, Sewer and Water, 16.32.050 Short Plat, and 16.36.015, Large Lot Subdivision all reference Chapter 13.35 requiring proof of adequate water supply before application for subdivision is submitted.

PROPOSED AMENDMENT TO TITLE 17 OF THE KITMITIAS COUNTY CODE, ZONING REGULATIONS-

Staff recommends that language be added to reference to Chapter 13.35 for providing proof of adequate water supply for conditional use permits.
EXHIBIT F – PROPOSED SETTLEMENT AGREEMENT

The proposed Settlement Agreement was negotiated over several months between representatives of the County, the Department of Ecology, Futurewise, Kittitas County Conservation Coalition, and Ridge. The Department of Ecology provided funding for a professional facilitator to manage the negotiations which concluded in January. The proposed Settlement Agreement, if approved, obligates the County to implement the following:

1. Require mitigation for all new uses of groundwater in the county via the Interim Mitigation Requirements and the Long Term Mitigation Requirements described in the document and proposed in Exhibit E.
2. Require compliance with the case law known as Campbell & Gwinn as described in the Agreement and proposed in Exhibit E.
3. Require metering and monitoring of new uses as described in the Agreement and proposed in Exhibit E.

The Settlement Agreement also obligates the county to acquire senior water rights suitable to mitigate for existing ground water users within the entire County. The County is concerned that during the next drought period, existing rural well users may be ordered by a court to curtail their use. State law and western water law are clear in their implementation of the prior appropriation doctrine. More senior water rights must be fulfilled before other users are allowed access to water. Courts have already established that the Yakima River Basin is fully appropriated. Senior rights are established as of May 10, 1905. All other rights are junior and subject to curtailment. The recent USGS report established that ground water pumpage in the Yakima River Basin impacts surface flows. Claims that ground water users are intercepting, and are therefore negatively impacting water resources which would otherwise be available for using during drought years could be asserted by senior water rights holders.

The County’s goal with this obligation in the Settlement Agreement is to ensure that rural ground water users retain reliable and adequate water supplies which preserve public health, safety, and welfare in the event that senior or pro-ratable water users in the Yakima River Basin call for curtailment of junior ground water users during the next drought. The best way to prevent rural ground water users from potential curtailment in such an event is to obtain senior water rights to offset the water currently consumed.

The proposed Settlement Agreement also includes several benefits for the County if approved:

1. Ecology and the Appellants (Futurewise, Ridge, and the Kittitas County Conservation Coalition) agree to file a joint request to the Growth Management Hearings Board for a finding of Compliance. This would bring to an end litigation which has been ongoing since 2006.
2. Ecology and the Appellants commit to aid in the defense of the implemented regulations.
3. Ecology commits to initiate the repeal of the Upper County Groundwater Rule (Chapter 173-539A WAC) within 180 days of the implementation of the Long Term Mitigation Requirements.
4. It is agreed by the parties that the County may offer mitigation through a program offering leased senior water rights as described in Exhibit E.
5. This regulation will limit the negative impacts upon existing well users and future water users as a result of future droughts.

Finally, it is important to note that in the Settlement Agreement, any new uses which acquire mitigation through the County’s leased program will be added to the County’s obligation to obtain senior water rights to offset current uses.

The proposed Settlement Agreement has also been discussed with the U.S. Department of Interior Bureau of Reclamation and the representatives of the Yakama Nation. No concerns have been received to date. A letter of
support was received from the Bureau of Reclamation January 21, 2014.

Staff recommends approval of the proposed Settlement Agreement.

**SUMMARY OF CHANGES IN RELATION TO ISSUES**

Proposed amendments to the County’s Comprehensive Plan and the Kittitas County Code address all of the issues presented by the Eastern Washington Growth Management Hearings Board brought by decision made on March 31, 2013 and decision by the Hearings Board regarding reconsideration filed by Futurewise on June 10, 2013.

To address the protection of water quantity and quality required by the Hearings Board, the County staff proposes that new uses of ground water throughout the County be mitigated according to the terms set forth in the proposed Settlement Agreement. These requirements will be outlined within Title 13 of the Kittitas County Code, which addresses water and sewage requirements as implemented by Kittitas County Department of Public Health. These changes will provide for the protection of the water quality and quantity in rural areas.

The Hearings Board on May 31, 2013 requested that the County develop “measures” within its Plan to protect rural character as required within RCW 36.70A.070(5)(c). To provide such measures in its Plan, staff recommends the adoption of more imperative language within the policies as proposed and previously described within this report so that land use applications which come before the County for consideration may be evaluated under the described measures. Staff has shown where existing and proposed amendments to the Kittitas County Code are implementing the Policies of the Plan as requested by the Board.

Finally, the Hearings Board has requested that the County show how rural character in LAMIRDS is being protected, and to make any change to policies, Code or zone classifications to provide protection for rural character. Staff suggests that the previously described changes to the Code and zoning maps be made. These changes serve several purposes such as allowing small-scale commercial uses, economic development, and employment opportunities consistent with rural character. Staff also suggests approving the proposed changes to the LAMIRD maps where errors were found or where some previous changes were made inadvertently.

**IV. ENVIRONMENTAL REVIEW**

Environmental Review has been conducted upon this proposal through the State Environmental Policy Act. Environmental threshold determination of non-significance for land use proposals was issued on September 19, 2013 after review of the completed checklist provided by WAC 197-11. A Determination of Non-Significance for the proposed amendments regarding the water regulations was issued on November 14, 2013 after reviewing the completed checklist for the non-project action.

**VI. AGENCY AND PUBLIC COMMENTS**

A letter objecting to the regulations proposed in August was received on August 7, 2013 by the Yakima Basin Joint Board of irrigation entities including Kennewick Irrigation District, Kittitas Reclamation District, Roza Irrigation District, Sunnyside Division, and Yakima-Tieton Irrigation District, all located within the Yakima River Basin. Concern was expressed by the Joint Board that these regulations would present additional stress to the overall watershed system during drought periods.

Numerous public comments have been received throughout the process of amending the regulation regarding water regulation. Most of the comments were related to concern on how the proposed regulations to limiting the use of water would impact their personal existing development and future plans for the properties owned by the respondents. These comments are available to the public for review.

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No written comments have been received regarding the present proposal at the date of this report.

VII. **RECOMMENDATION**

**Staff recommends approval of the proposed amendments to the Board of County Commissioners in pursuit of compliance to the Growth Management Act. Staff justifies this recommendation by considering the following:**

**Staff Conclusions:**

1) The Eastern Washington Growth Management Hearings Board requested Kittitas County, in May and June, amend its Comprehensive Plan and County Code to address Growth Management Act compliance issues of:
   - Providing adequate “measures” within its comprehensive plan designed to assure the protection of rural character;
   - Illustrating how existing or amended code implement these Plan measures;
   - Illustrating how existing or proposed uses allowed within LAMIRD zone designations assure the protection of rural character within those LAMIRDs and the rural area; and
   - Providing policies and means to assure the protection of water quality and quantity in rural areas.

2) Kittitas County has involved citizens and land owners throughout the County through public meetings and workshops, taken public comment on these issues existing within the County and incorporated many of the comments into findings.

3) Kittitas County has been involved in establishing a draft “Settlement Agreement” to mitigate water use, which can be used in meeting the issue of protecting the quantity and quality of water within the County.

4) Kittitas County has informed the Planning Commission and Board of County Commissioners through public meetings and study sessions of comments received from the public and provided land use proposals to amend the County Comprehensive Plan and land use regulations to meet the concerns expressed by the Hearings Board.

5) Kittitas County has considered and revised the recommendations of the Planning Commission in regards to the proposed regulations in order to be compliant with the State’s Growth Management Act.

6) Proposed amendments will bring the Kittitas County Comprehensive Plan and implementing regulations into compliance with the Growth Management Act.