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September 6, 2007

Klickitat County Board of Commissioners
205 S. Columbus Ave., Room 103, MS-CH-04,
Goldendale, WA 98620

RE: Proposed amendments to the Husum/BZ Corner Sub-Area Plan and zoning ordinance

I. Introduction

I submit these comments on behalf of Columbia Riverkeeper, Friends of the White Salmon, American Rivers, American Whitewater, and Friends of the Columbia Gorge. Each non-profit organization has members that use and enjoy the Husum/BZ Corner area and the White Salmon River. Each organization and their members will be adversely affected by the proposed action. This comment letter adopts and incorporates by reference the May 7, 2007 letter submitted by Keith Hirokawa on behalf of Friends of the White Salmon and the March 4, 2007 SEPA Appeal Brief submitted by Brett VandenHeuvel, on behalf of Friends of the White Salmon.

On May 24, 2007, the Klickitat County Planning Commission recommended amendments to the Husum/ BZ Corner Sub-Area Plan, county zoning maps, and zoning text. The Sub-Area Plan amendment ("plan amendment") would add approximately 1000 acres of Rural Residential 2 ("R-2") zoning and 250 acres of Rural Residential 1 zoning. These actions will allow significant new residential development, which would degrade water quality and quantity, fisheries and wildlife habitat, recreation, and the protected values of the White Salmon Wild and Scenic River. Along with the plan amendment, the County proposes to modify the text of the Resource Lands zoning, which will have the effect of allowing more development without review, among other problems.¹ The County proposes to adopt these major changes without complying with the Planning Enabling Act, the Critical Areas Ordinance, the Shorelines Master Plan, the Lower White Salmon National Wild and Scenic River Management Plan, or ensuring protection water quality and quantity, fish and wildlife, public services, recreation, and other values. As such, Columbia Riverkeeper, Friends of the White Salmon, American Rivers, American Whitewater, and Friends of the Columbia Gorge request that the Board deny the plan and zoning amendments.

II. The plan amendment violates the Planning Enabling Act

¹ For efficiency, this brief refers to the Sub-Area plan amendment, the zoning map amendment, and the Resource Lands zoning text amendment collectively as the "plan amendment."

The plan amendment violates the Planning Enabling Act (PEA) by failing to protect the quality and quantity of groundwater review drainage, flooding, and stormwater run-off, provide a circulation element for traffic, and provide maps and reports necessary to explain the amendments. RCW 36.70.330. In addition, the plan amendment violates the PEA by failing to ensure consistency between the comprehensive plan and the amendment. Further, as discussed in subsection e, the plan amendment violates the PEA because the plan amendment is inconsistent with the alleged need for more housing.

a. The plan amendment fails to protect water quality and quantity

The PEA provides that the comprehensive plan shall “provide for protection of the quality and quantity of groundwater used for public water supplies and shall review drainage, flooding, and storm water run-off.” RCW 36.70.330. The plan amendment fails to protect groundwater. Just the opposite, the plan amendment strips away all the groundwater protection contained in the current plan.²

Nothing in the plan amendment provides for the protection of groundwater. The plan amendment adds nearly 1000 acres of R-2 zoning near the White Salmon River. Most of the potential 500 lots will have individual wells that can withdraw 5000 gallons per day (gpd) without obtaining a water right or any review at all. These wells may be located adjacent to surface water or in the same aquifer as neighboring wells or public water supplies. Local hydrogeology and groundwater expert, Mark Yinger stated,

The great majority of the households will depend on new water wells. Many of these new wells will be completed in the Quaternary alluvium and volcanics that fill the valley bottom. The aquifers within these geologic materials are connected to the White Salmon River. Water pumped from these aquifers for new households will reduce groundwater discharges to the White Salmon River. Development and increasing population in the Rural Centers may impact shallow groundwater quality.

Mark Yinger September 1, 2007 letter to Patricia Arnold (attached as Exhibit 7).

The plan and zoning amendment will facilitate residential density in an area ill-equipped for such growth. Exempt wells may impact private and public water sources. Because there is no public sewer system, nearly all of the new residences will have septic systems. These septic systems will likely contaminate shallow aquifers. WRIA 29 stated, “Under certain conditions, even septic systems meeting current design standards can also release fecal coliform or other pollutants.” WRIA 29. For example, Skamania County PUD has drilled two wells in the Carson area, but both wells had to be abandoned after they found the groundwater contaminated with fecal coliform. WRIA 29. This could easily happen to the Husum/BZ area with increased growth.³ The City of White

² “Current plan” refers to the Husum BZ Corner Sub-Area Plan adopted by Ordinance No. 121895 and reinstated by Ordinance 0081803,

³ The WRIA 29 Lower Wind River Aquifer Study (Yinger, 2004) also found numerous wells in the Carson area and

Salmon is also currently experiencing trouble with well capacity, which may be due to aquifer drawdown because of overuse. Some of the exempt wells in the planning area could draw from the same aquifer as the City of White Salmon.

Instead of protecting ground water through planning, the County alleges that it can address sewage, water usage, stormwater, and water quality by "evaluating each development proposal on its own merits." Findings at 4. This is incorrect. First, it is impossible to evaluate the cumulative effect of hundreds of houses over a twenty year period on a piecemeal basis. Second, once the comprehensive plan is amended, the existing regulations cannot regulate these problems. For example, each home has a 5000 gpd water withdrawal exemption. There is no permission needed, so the County cannot possibly regulate withdrawal from private wells. Likewise, there are no effective regulations in place to control septic system use. The County's rationale is incorrect and violates best available science by failing to protect resources, such as groundwater, surface water, and protected critical areas.

Wisely, the PEA requires that comprehensive plans protect groundwater resources. The County violated this law and violated common sense by ignoring this requirement. The Findings of Fact Conclusions and Decision of the Klickitat County Planning Commission ("Findings") state that a study of the ground water quality and quantity is "cost prohibitive and would need to be based [sic] on a variety of assumption." The County provides no scientific or other factual basis for this excuse. Mr. Yinger disagrees with the County, stating:

The Planning Commission is too quick to dismiss concerns about surface and groundwater quality and quantity. The reason given that it would be cost prohibitive to address these concerns for every potential lot is not a good reason. A study should be done that evaluates potential impact not on a lot by lot basis but on the entire planning unit. The study would broadly identify aquifers and evaluate each aquifer's (1) potential to provide adequate water supplies, (2) water quality, (3) susceptibility to contamination, and (4) connectivity to surface waters. This kind of information should be considered in making zoning changes. Further, the study would provide long term guidance and reference for County planners and the health officer when evaluating each proposed development. This study would not be cost prohibitive. It is the prudent thing to do. It is likely that a groundwater resource study would identify areas where the density of future development should be limited in order to protect existing and future wells from interference and declining water levels.

Yinger letter at 2.

some springs near the confluence of the Columbia and Wind Rivers that were contaminated with fecal coliform (Planning Unit, 10/26/05 meeting, 2005).

Far from evaluating groundwater overuse and contamination, or protecting groundwater, the plan amendment actually removes any existing protections. The plan amendment, without explanation, removed certain text of the "Utilities" section from the current Sub-Area Plan. The plan amendment removed the following sentence: "The Husum/BZ Corner Sub-Area Plan needs to include policies for *insuring that adequate water service is available* at the time that development occurs." Comprehensive plan at 18. The County's decision to remove this requirements harms groundwater resources by preferring exempt wells over planned water services. In addition, unplanned growth without water service allows for more rapid growth, aquifer drawdown, and contamination.

Further, a lack of water planning affects fire protection that depends on adequate water supply. The plan amendment removes the following text: "the major problem for emergency services in this area is the potential lack of adequate water supply." Again, the County did not explain why this text is removed. Why does the County want to hide this information? Why does the sub-area plan need to be scrubbed of all references to water supply?

In addition to the problems noted above, the plan amendment's failure to protect groundwater may degrade surface water. Groundwater and surface water are hydrologically connected in this area. See WRIA 29 and Yinger letter.

b. The plan amendment fails to review drainage, flooding, and stormwater run-off

Similar to the groundwater problem, the plan amendment violates the PEA because the amendment fails to review drainage, flooding, and stormwater run-off. The proposed drastic increase in development will adversely affect drainage, increase flooding by creating more impermeable surfaces, and increase stormwater run-off. The plan amendment fails to review these problems. In fact, the plan amendment removes the protections in the current plan. The plan amendment removed the following policy: "Require adequate storm drainage to serve each development." Sub-Area Plan at 19. The County also removed the policy to "require appropriate infrastructure for new development outside the rural centers." Therefore, the County has removed any analysis or substantive protections of drainage from the plan. This violates the PEA.

In addition, the plan amendment violates the PEA by failing to review stormwater runoff. The dramatic increase in both construction and impermeable surface stormwater calls for a thorough assessment of stormwater impacts on water quality. WRIA 29 stated, "Development activities can cause significant changes in patterns of stormwater flow from land into receiving waters. Water quality can be affected when runoff carries sediment or other pollutants into streams, wetlands, lakes, and marine waters or into groundwater. In general, development in close proximity to streams, wetlands or other water bodies has the greatest potential for affecting water quality across the Western WRIA (LCFRB, 2005)."

The County's action weakens the protection of surface and groundwater from run-off by removing substantive protections. The plan amendment deletes the policy that "discourage[s] development on slopes over 30%" and to prohibit certain grading and fill. Sub-Area Plat at 5. Further, instead of reviewing flooding, the County removed the requirement to "require development with identified flood hazard areas to comply with the Klickitat County Flood Plain Ordinance requirements." Sub-Area Plan at 6. Overall, the County violated the PEA by systematically removing any requirements for drainage control, infrastructure, or flooding. The County failed to meet best available science in making these unsupported changes.

c. The plan amendment does not contain a circulation element

The PEA requires that all comprehensive plans have a circulation element that describes transportation infrastructure and correlates the infrastructure with the land use element of the comprehensive plan. The plan amendment does not contain a circulation element, and, therefore, it violates the PEA.

The plan amendment also fails to correlate transportation to the comprehensive plan. The current version has a circulation section, which the plan amendment removes without any justification. The intense development promoted by the plan amendment is inconsistent with the current plan. The current plan states, "existing road do not make up a coordinated system suitable for more intensive development. Large, undeveloped areas are not served by roads." Further, the plan states, "substandard roads are likely to cause more problems as development proceeds." Sub-Area Plan at 15. The County still faces these problems with its circulation. Removing the text will not make the problems go away. The County has failed to provide an adequate reason for removing the circulation element of the Sub-Area Plan.

By removing the Circulation Section, the County has eliminated the substantive requirements for development. Sub-Area Plan at 17. For example, the county removed the policy to "require new development to include road systems that will accommodate the needs of emergency vehicles." The County did not provide any justification for removing the Circulation element.

d. The plan amendment violates the PEA because it does not contain adequate maps or reports

The PEA requires that comprehensive plans contain any supporting maps, diagrams, charts, descriptive material and reports necessary to explain the elements discussed in subsection a, b, and c above. The plan amendment violates the PEA because it fails to contain the necessary supporting material. For example, the plan amendment fails to contain any maps or reports identifying groundwater resources. There are no materials to show that the level of development proposed is compatible with drainage, flooding, and water run-off in the area. The County has an obligation to provide at least basic material to support its findings that the plan amendment benefits the health, safety, and welfare of the citizens.

e. The plan amendment violates the PEA because there is no need for the dramatic housing increase

The PEA provides that a plan amendment is appropriate “[w]hen changed conditions or further studies by the planning agency indicate a need.” Therefore, the County must demonstrate a need for dramatically increasing the R-2 zoning by 1000 acres and modifying the Resource Lands to facilitate development. The County has failed to show any changed conditions or further studies that prove a change is necessary.

The County’s sole reason for the plan amendment is to accommodate increased population growth in the next 20 years. The County assumes 3 % growth rate, which would result in population increase from the current population of 942 to 1701. However, The Washington office of Financial Management Population projection for 2026 is only 1082 people, which is far less than the County’s projection of 1701. See Buildable Lands Inventory at 8. The County does not describe why its population prediction is much higher than the state’s study.

At a 3% growth rate, the Buildable Lands Inventory (“Inventory”) projects that 323 new homes are required in the next 20 years. The County amended the plan to provide lots for 323 new homes, but failed to demonstrate that the plan amendment was needed. In fact, the Inventory clearly states, as paraphrased by the County itself, “that land designated for residential use is sufficient to meet future growth needs.” Findings at 4. The Inventory concludes that this region will need 65 units in the RC zone, 119 units in the RR2 zone, and 139 units in the RL zone. The Inventory found that the RC, RR2, and the RL have 500 acres, 604 acres, and 16,000 acres “remaining to be developed,” respectively. Therefore, there is more than enough acreage to accommodate the projected growth needs.

The County alleges that although there is more than enough buildable land available, “the reality is that much of that area is not available” due to various constraints, such as landowners who are not willing to sell, building regulations, and lack of adequate infrastructure. The County stated, without explanation, that these constraints “tend to limit the development potential of individual lots.” Findings at 4-5. The County’s rationale is inappropriate. First, the County does not provide any evidence or reasoning to support its departure from the Inventory. Second, the County fails to comply with best available science, as required by the Critical Areas Ordinance (“CAO”). Third, even if there is a need for more lots, the plan amendment and Resource Lands amendment violate the PEA and best available science by creating far more lots than needed for 323 homes. The County failed to describe how many lots will be available under the plan amendment, but simple math shows that: nearly 1000 acres of R-2 will create nearly 500 lots; the R1 zoning will be increased by some undisclosed amount to create more lots, and the Resource Lands zone will allow land divisions of 20 acres or less (changed from 40 acres) without a resource lands evaluation. This change will allow a significant amount of unreviewable development to occur in Resource Lands on 20 acre lots. Overall, the County has opened up potentially thousands of lots for development to accommodate 323 homes.

In addition, the County deleted much of the text in the Sub-Area Plan that protects resources or regulates development in any way. For example, the plan amendment removes the requirement to “discourage development on slopes over 30%” or “discourage non-resource based development proposals in designated forest lands.” Sub-Area Plan at 5, 9. The plan amendment deletes all discussion of protecting water quality, fish and wildlife and avoiding piecemeal development. Id. at 4, 10, 11. It is unclear why the County deleted these substantive protections.

Even if more housing is necessary in this area, that does not create a need to remove most environmental protections and development regulations from the plan.

III. The plan amendment violates the requirement to designate and protect Critical Areas

RCW 36.70A.170 requires that all counties designate agricultural lands, forest lands, mineral resource lands, and critical areas. Further, RCW 36.70A.060 provides that:

“(2) Each county and city shall adopt development regulations that protect critical areas that are required to be designated under RCW 36.70A.170

(3) Such counties and cities shall review these designations and development regulations when adopting their comprehensive plans under RCW 36.70A.040 and implementing development regulations under RCW 36.70A.120 and may alter such designations and development regulations to insure consistency.”

The law, therefore, requires that each County adopt regulations to protect designated critical areas. The plan amendment does not designate any critical areas and provides no maps of areas deemed critical. This violates RCW 36.70A.060 and 170.

Critical areas include fish and wildlife habitat conservation areas, which are defined to include areas inhabited by known federal and state endangered, threatened or sensitive species, habitats of local importance, and areas designated the the Washington State Department of Natural Resources. CAO Section 4.2.A. Although not identified in the Sub-Area Plan, the Husum / BZ Corner Sub-Area contains a large amount of conservation area, including protected species, such as Townsend’s big-eared bat, western spotted frog, Larch Mountain salamander, bull trout, bald eagle, and spotted owl. Sub-Area Plan at 5. The Sub-Area also likely contains the following Washington species of concern: western toad, Columbia spotted frog, golden eagle, merlin, peregrine falcon, sandhill crane, vaux’s swift, lewis’ woodpecker, and pileated woodpecker, among others. See Exhibit 1. See also White Salmon River Subbasin Summary, WDFW (includes description of threatened and endangered species present) (attached as Exhibit 10). In addition, WDFW habitat biologist, Bill Weiler, commented that “we did not notice any fish and wildlife habitats of concern or CAO overlays on the 18,840-acre land within the Sub-Area Plan despite the fact there are western gray squirrel, big game, spotted owl activity sites (among other species) that may impact development and zoning plans.” April 13 letter from Bill Weiler.

These conservation areas are not designated or protected in the plan amendment. The plan amendment only contains a non-descript map labeled “sensitive resources.” The map has a striped symbol to show “biological and cultural resources.” Whatever this may mean, it is clearly not sufficient to designate and protect conservation areas required by the Washington law and the CAO.

We assume that the sensitive resource map in Figure 3 of the plan amendment identifies some protected resources. The plan amendment changes the zoning of several “sensitive” areas

from Resource Lands to R-2. This change facilitates residential development on the protected areas. The "biological and cultural resources" subject to new R-2 zoning include resources in T4N, R10E, Sec 3, T4N, R10E, Sec. 1, T5N, R11, Sec. 35, and others. This change is inappropriate because it fails to protect sensitive areas, or, at the very least, creates an inconsistency with other regulations.

In addition to failing to designate and protect conservation areas, the plan amendment actually removes any protections contained in the current Sub-Area Plan. For example, the plan amendment deletes Goal 2 of Sensitive Areas, which states "Preserve and protect the natural environment." Goal 2 contained substantive protections in policies 2.1, 2.2, 2.3, and 2.4. Each of these deleted policies was designed to protect critical areas. The plan amendment also deleted other requirements to protect critical areas or "sensitive natural resources" by deleting policies 1.1, 1.2, 1.3, and 1.4, and 3.2. As such, the plan amendment fails to protect sensitive areas or conservation areas, as required by state law and the CAO. Further, the County failed to provide any notice or reason for these changes, and failed to comply with best available science.

Further, the Condit Dam is scheduled to be destroyed in 2008, which will allow salmon to return to traditional spawning areas. See Exhibit 3, 4, 5, and 6. The comprehensive plan should acknowledge the return of the salmon and plan accordingly. As the salmon habitat is defined as a critical area, the plan amendment must designate and protect this area. The Condit Dam removal EIS in Exhibit 2 shows the endangered and threatened salmonids that will return to the planning area. The plan amendment offers no protection or even acknowledgement of this important change. WDFW stated, "we also did not see any proposed buffers along fish bearing streams, many of which will become salmon streams once Condit Dam is removed or when fish-passage ladders are installed. We recommend a 200 foot buffer along fish bearing streams which is consistent with the county's critical areas ordinance." April 13 letter from Bill Weiler.

IV. The plan amendment is arbitrary and capricious

The County's decision is arbitrary and capricious because the County did not adequately explain why it decided to dismantle the planning provisions in the Sub-Area Plan. First, the plan amendment changed the requirement that "any division of land that would result in the creation of lots that are less than 40 acres in size shall require a resource lands evaluation." As changed, lots sized 20 acres and greater are exempt from resource evaluation. Therefore, the amendment makes it much easier to divide Resource Land lots without any review. The resource land review is designed to protect forest and agricultural resources, along with fish and wildlife. This amendment will increase residential use of resource lands and will degrade forest, agricultural, and fisheries resources. In addition, the plan amendment allows a redivision every 5 years, instead of the 10 years in the current plan. This will greatly increase the rate of development. The plan amendment also deletes Section II, policies 10 – 15, which, in general, protected resource lands and the White Salmon River.

Second, the County also proposes to modify the text of the Resource Lands. This text amendment also weakens protection of natural resources. The current purpose of Resource Lands is to "provide land for present and future commercial farm and forest operations in areas...." The amended purpose is "to provide for *residential use* within present and future

commercial farm and forest operations” This changes the primary purpose from resource use to residential use. In addition, the Site Plan requirements (2.26:6) of the current plan state: “All proposed land divisions will be required to file a Resource Lands application with the planning County, to include . . . [a list of requirements]” The proposed text says, “Any division in land that would result in a lot(s) that is less than 20 acres in size, shall require submittal of a resource lands application to the planning Department. . . . Land divisions which would not result in any parcel less than (20) acres are *exempt* from the requirements of a resource lands evaluation” This is a critical difference because it exempts from review thousands of acres of land divisions. Further, the current evaluation process requires that the County conduct site evaluation and complete a lengthy checklist describing erosion hazard, soil type, water management, critical fish and wildlife habitat, slope, and other features. In the proposed Resource Lands text, the site evaluation is not required. Together, these changes are arbitrary and capricious because the County provides no reason for the change. In addition, the changes violate best available science and do not protect critical areas as required by the CAO.

Third, the plan amendment is arbitrary because the County failed to explain how the amendment would impact surface and ground water quality and quantity and fisheries. As discussed in Section II and throughout these comments, water quality and quantity are serious and intertwined problems in the planning area. The plan amendment proposes to dramatically increase the number of exempt wells and septic systems without analyzing the impacts to adjacent wells, aquifers, and surface water. The County also failed to provide any reason for removing the majority of the language from the Sub-Area Plan that requires planning or protection of water resources. For example, the plan amendment removed the requirement to “Evaluate project requiring discretionary permits that will impact water quality or fish habitat to determine the extent of the impacts.” Sub-Area Plan at 10. As described above, the County also removed all polices in the “Preserve and protect the natural environment” section without any explanation of why this is necessary. The County’s failure to evaluate the impact of these changes is arbitrary and capricious and violates best available science.

Fourth, the plan amendment removed all discussion and protection of fisheries and mineral resources from the natural resources section of the Sub-Area Plan. The County failed to provide an explanation for this decision.

Fifth, the plan amendment removed Forest Uses policies 1.4-1.6. These policies required appropriate set backs in resource lands, encouraged forest management activities to comply with state law, and discouraged non-resource based development proposal in forest lands. Sub-Area Plan at 9. The effect of removing these regulations is to allow less regulated use and development in the forest lands. The County failed to provide an explanation for this decision.

Sixth, the plan amendment removed several policies implementing Sensitive Areas Goal 3, “Preserve and protect significant historic and cultural resources.” The plan amendment removed policies 3.2, 3.5, and 3.6. These policies require the County to “work with appropriate Native American organizations to identify archeological or cultural sites that should be protected from development,” “require new development proposals to comply with state and federal laws governing protection,” and “advise applicants of known or suspected archeological or cultural sites during the planning process, and of possible mitigation measures.” The County failed to

provide an explanation of why this amendment is necessary and how these resources will be protected.

V. The plan amendment is inconsistent with County regulations

Klickitat County has violated the fundamental principle of land use planning: comprehensive plans, regulations, and ordinances must be consistent with each other. The PEA states, “the development regulations . . . shall not be inconsistent with the county’s comprehensive plan.” RCW 36.70.545. By aggressively deleting all protections for natural resources and modifying the zoning to promote intense development, the plan amendment is inconsistent with the Shorelines Master Plan and Critical Areas Ordinances.

a. The plan amendment creates inconsistencies with the Shorelines Master Plan

The Shorelines Management Act contains broad protections that apply to Klickitat County. These protections are implemented through the Klickitat County Shorelines Master Plan (KCSMP), the comprehensive plan, and other County land use regulations. The plan amendment’s focus on increased development, including development within designated shorelines, creates inconsistencies with the KCSMP, and therefore violates the Shorelines Management Act and the KCSMP.

Comprehensive plan designations and zoning are critical components to shoreline protections. While the KCSMP is one regulatory tool to protect shorelines, the comprehensive plan, zoning, and the CAO are also critical. An independent report on the effectiveness of Klickitat County shorelines regulations notes the importance of multiple regulations, stating, “there are several local, state, and federal . . . policies that play a *regulatory role in the shoreline permitting process.*” Klickitat County Shorelines Master Plan Analysis, Community Planning Workshop at 11 (emphasis added) (excerpt attached as Exhibit 9). The report recognized that County zoning affects the protection of shorelines by promoting or prohibiting development in specified areas. The report stated, “County zoning regulations establish a foundation for the location, type, and intensity of development.” *Id.*

The plan amendment drastically shifts this foundation to promote intensive development within the Shorelines area. The plan amendment would increase the R-2 development along a broad swath of the White Salmon River and tributaries. Large portions of areas designated as Conservancy Environment by the KCSMP would be designated as R-2. This creates a great inconsistency with the KCSMP, which is designed to protect these lands from development. Because plan amendment specifically converts protected land to development land, it is inconsistent with the KCSMP. In other words, the same area of land is simultaneously designed for intensive development and protection.

The County’s response to this inconsistency is not convincing. The County states that “all of the plans, regulations and studies are more or less ‘stand alone’ documents that do not necessarily negate each other upon lack of cross-incorporating.” Findings at 3. With this statement, the County scoffs at the very purpose of comprehensive planning. The County’s position that the comprehensive plan can be inconsistent with all regulations is incorrect.

The County worsens the inconsistency by removing key shoreline protections from the text of the Sub-Area Plan. For example, the plan amendment would remove all of Sensitive Areas Goal 2, which states "Preserve and protect the natural environment." Sub-Area Plan at 6. The plan amendment specifically deletes the policy to "require all proposed development within 200 feet of the ordinary high water mark of shorelines of statewide or county significance to comply with requirements of [KCSMP]." *Id.* The plan amendment also deletes the requirement to "prohibit on-site sewage disposal systems within 100-feet of perennial streams, springs, or well-heads" and the requirement that "onsite sewage disposal systems to comply with the applicable requirements of the [KCSMP]." *Id.* As such, the plan amendment does two things: 1) it explicitly removes shoreline protections, and 2) it zones these areas as R-2 to promote intense development. The plan amendment, therefore, creates fatal inconsistencies between the KCSMP and the comprehensive plan.

Further, the plan amendment removes important language that protects sensitive areas. Without providing any reason, the County deleted the statement that development may be inappropriate in "the areas adjacent to the White Salmon River, Rattlesnake Creek, Buck Creek, and Gilmer Creek that are under the jurisdiction of the Shorelines Management Plan. *Id.* These resources are no longer protected by the comprehensive plan. This creates more confusion and inconsistency among the regulations and the overarching comprehensive plan.

b. The plan amendment is inconsistent with the Critical Areas Ordinance

The plan amendment fails to protect critical areas because it zones multiple sections of critical areas for residential development. As discussed above in the shorelines section, this zoning creates inconsistencies among the regulations and the Sub-Area Plan. The County's proposal to evaluate each development on a case-by-case basis also creates inconsistencies about how the CAO will be applied. The plan amendment's inconsistency with the CAO is discussed in detail in the May 7, 2007 letter submitted by Keith Hirokawa on behalf of Friends of the White Salmon.

c. The County's regulations are not 'stand-alone' documents

The Planning Commission's findings exemplify the County's inappropriate rationale. The Planning Commission explained the inconsistencies in the following way. "All of the plans, regulations and studies are more or less 'stand alone' documents that do not necessarily negate each other upon lack of cross-incorporation of each. . . . it is not uncommon for regulations to conflict with each other." Findings at 3. This statement is the antithesis of planning. The comprehensive plan and regulations are not "stand alone" documents; each regulation must be carefully crafted to comply with the comprehensive plan and be consistent with other regulations. Likewise, a plan amendment should not create inconsistent regulations. The County's decision that each planning document is "stand alone" is arbitrary and capricious and cannot be approved.

In addition, the County stated that review of environmental impacts, including impacts on parks, wild and scenic rivers, critical areas, wetlands, and floodplains will occur on a "case-by-

case" basis. Findings at 3. See also, SEPA environmental checklist at D4. This violates best available science and the fundamental principle of planning. The County does not have the staff resources or the scientific expertise to carefully assess the best course of action and apply best available science on a case-by-case basis. The County has not demonstrated that it has the ability to protect shorelines and critical areas without an adequate plan as the basis of enforcement. Case-by-case decisions without an overarching plan that contain approval criteria are by definition arbitrary. The purpose of planning is to evaluate the impacts as a whole to avoid case-specific, piecemeal review.

In addition, the County's history of granting shoreline and CAO variances and failing to enforce violations indicates that the County has trouble protecting critical resources even with a plan in place. For example, Exhibit 11 provides documents regarding the Michael Clement Shorelines and CAO variance. In granting the variance, the County stated, "Strict application of the Critical Areas buffer requirements would disallow establishment of a dwelling on the property, which is a reasonable use of other properties." The comments from the Forest Service, Yakama Nation, and the appeal by WDFW describe the County's practice of granting illegal variances. In addition, Exhibit 12 demonstrates the County's failure to enforce violations of the CAO and the Shorelines Master Plan. Removing the protections from the comprehensive plan will only make the situation worse as the staff will have complete discretion to approve projects.

VI. The plan amendment violates the best available science mandate for land use planning

Under RCWA 36.70A.170 of the GMA, cities and counties must designate critical areas, which RCW 36.70A.030 defines as including "the following areas and ecosystems: (a) Wetlands; (b) areas with a critical recharging effect on aquifers used for potable water; (c) fish and wildlife habitat conservation areas; (d) frequently flooded areas; and (e) geologically hazardous areas." Once a city or county designates critical areas, RCW 36.70A.172 mandates that "counties and cities shall include the best available science in developing policies and development regulations to protect the functions and values of critical areas."

Criteria designed to help in determining best available science for the purposes of the GMA have recently been codified in WAC 365-195-900 through WAC 365-195-925. Courts interpreted the test for best available science as whether local governments "produce[d] valid scientific information and consider[ed] competing scientific information and other factors through analysis constituting a reasoned process." *Ferry County v. Concerned Friends*, 123 P.3d 102, 107 (Wash. 2005). The use of best available science is required to be included in the record during a determination of critical area regulations and policy. In fulfilling the best available science requirement, an agency can not ignore valid scientific information and use its own dubious scientific methods to support the position it would like to take. *Id.* at 109.

Here, the County proposes significant changes to the comprehensive plan and Resource Land zoning text, as explained throughout this comment letter. Yet, the County does not support the changes with best available science. For example, the County deleted most of the protections for fish and wildlife critical protections in the plan amendment, but did not explain how this would continue to protect the critical area of fish and wildlife habitat. The expert opinion of

WDFW explained that the County's method of a case-by-case basis would not work. WDFW stated, "The county should reject the case-by-case process for dealing with proposals that may impact wildlife resources." Weiler, April 13, 2007 letter. WDFW stated that "both federal and state threatened and endangered species occur within the sub-area and these habitats should not only be identified, but the county should endeavor to protect these habitats as stipulated in the county's CAO." *Id.* The County ignored this scientific opinion. WDFW also stated that "we find it astonishing that our agency was not consulted as part of the . . . planning process." *Id.*

The County also ignored other expert agencies. Daniel T. Harkenrider, Area Manager for the Columbia River Gorge National Scenic Area office of the U.S. Forest Service, expressed concern that the Environmental Checklist failed to mention the White Salmon Wild and Scenic River and potential impacts to "its outstandingly remarkable values of resident fisheries, whitewater recreation, hydrology and geology of the canyon, and American Indian cultural sites."

When reviewing a similar plan amendment proposal in 1999, the Forest Service stated, "this change, as actual residential development occurs over time, will adversely impact the important river values to be protected by the Wild and Scenic designation." Arthur Carroll December 10, 1999 letter to Klickitat County (attached as Exhibit 8).

The Washington State County of Archaeology and Historic Preservation (DAHP) submitted comments expressing concern that the amended sub-area plan would address protection of cultural sites on a case-by-case basis. DAHP stated:

we would suggest a more comprehensive and streamlined process be developed in advance of those applications. If a detailed process and procedure were outlined either in county policy or in the sub-area plan itself, both county planning staff and applicants would be aware of the process involved in addressing a cultural resource issue.

DAHP continued to explain that it would assist in drafting a cultural resource protection policy or supply model language that has been used in other counties for this specific purpose.

Representatives from the Confederated Tribes and Bands of the Yakama Nation submitted two letters explaining that the Environmental Checklist and the draft plan lacked sufficient information. The letters detailed numerous inadequacies related to natural and cultural resources. The County did not address any of these issues and failed to explain why.

VII. The plan amendment is inconsistent with the Lower White Salmon National Wild and Scenic River Management Plan

The plan amendment's failure to protect water quality, quantity, shorelines, and critical areas will have an adverse affect on the White Salmon River, which is designated under the federal Wild and Scenic Rivers Act (WSRA). The County failed to determine whether the plan amendment is consistent with the WSRA. The United States Forest Service, which manages the White Salmon WSR, stated:

the Sub-Area Plan update proposes a marked change in allowable land use along approximately two miles of the east side of the river [The plan] provides little acknowledgement of the White Salmon WSR. . . . I am concerned about the potential affects of this proposed zoning change on the resource values of this National WSR. Klickitat County plays a *crucial role in river protection through its Shorelines Management and Zoning ordinances.*

Harkenrider April 13, 2007 letter (emphasis added). The County ignored the Forest Service's substantive concerns.

The management policies developed pursuant to the Wild and Scenic designation of the Lower White Salmon are explained in both the Final Environmental Impact Statement for the Lower White Salmon National Wild and Scenic River Management Plan and the Record of Decision for the Lower White Salmon National Wild and Scenic River Management Plan ("Management Plan"), both of which were published by the Forest Service in November 1991. The Forest Service selected Alternative 6 as the "preferred alternative."⁴ The primary goal of the Wild and Scenic designation is to "maintain the current character of the river area and provide long-term protection and enhancement of its Outstandingly Remarkable Values."⁵ In furtherance of this general goal, the Management Plan issued many guidelines for management direction, including several specific to land use:

- the establishment of a 200-foot buffer on each side of the river, except in Husum where the buffer will be 100 feet⁶
- no new residential or commercial development may occur within the buffer.⁷
- Outside of Husum, BZ Corner, the buffer, and federal lands, new housing development is to be clustered on the least productive 5% of the land.⁸

Despite the significant adverse affect that the plan amendment will have on the White Salmon's Outstandingly Remarkable Values (ORVs), the County failed to consult with the Forest Service on the plan amendment's impacts, even though the Forest Service is the managing agency for the White Salmon Wild and Scenic River and the County is a signatory to the management plan. Specifically, the County failed to analyze whether the proposed action would adversely impact the following protected resources:

1. Water Quality and Quantity

The Management Plan requires: "Existing Washington State processes will be used, if possible, to assure that instream flows are maintained at current levels and water quality is not degraded." Management Plan at 8. The County failed to ensure that instream flows are

⁴ *Final Environmental Impact Statement for the Lower White Salmon National Wild and Scenic River Management Plan*, S-7-8.

⁵ *Id.*

⁶ *Final Environmental Impact Statement for the Lower White Salmon National Wild and Scenic River Management Plan*, S-8. *Record of Decision for the Lower White Salmon National Wild and Scenic River Management Plan*, 12.

⁷ *Id.*

⁸ *Final Environmental Impact Statement for the Lower White Salmon National Wild and Scenic River Management Plan*, S-8.

maintained at current levels and that water quality is not degraded. Increased development that includes exempt wells close to the river will likely decrease water flow due to exempt well water withdrawal of up to 5000 gallons per day. Also, increased development will degrade water quality due to septic tanks, stormwater runoff, fertilizers and biocides, and household chemicals. The County failed to assess these impacts to the WSR area. Further, the amendment will adversely affect the Outstandingly Remarkable Value of whitewater boating, which must be protected. The Management Plan states: "if flows were to drop more than they presently do, it would be very difficult for boats, especially rafts, to float the river safely. Since Outstanding Remarkable Values must be protected and enhanced it is necessary to, at least, maintain the current level of instream flows." Management Plan at 8. The County failed to assess the impact of the amendment on whitewater boating.

Additionally, one of the specifically-identified ORVs of the White Salmon is its hydrology. As noted in the Management Plan, "The sustained and reliable flows throughout this river segment, resulting from glacial runoff augmented by many springs flowing into the river, *are rare in the region* and benefit fish, recreation and irrigation." (emphasis added). The County failed to analyze the amendment's potential effects on the White Salmon's unique hydrology, which is directly related to the White Salmon's outstanding fisheries, hydrology, and whitewater boating values.

The County also failed to address how the plan amendment will affect federal reserved water rights for the White Salmon WSR. The evidence demonstrates that addition water withdrawals from exempt wells will likely affect flow in the White Salmon River. This flow is protected by a federal reserved water right. The County cannot violated federal law.

2. Biological Diversity

The Management Plan requires: "The same level of biological diversity that presently exists within the boundary *will be maintained or enhanced by protecting habitats* for known populations of species on the Region 6 Sensitive Species List, maintaining and enhancing mature and overmature plant communities, and protecting specifically identified plant communities such as riparian habitat, canyon ecosystems, and wetlands." Management Plan at 8-9. The County failed to assess the plan amendment's impact on the maintenance or enhancement of biological diversity in the WSR area.

3. Landscape Character

The Management Plan established the following guideline to protect the White Salmon's Outstandingly Remarkable Values: "Outside of rural centers of BZ Corner and Husum, a 200-foot wide buffer of generally undisturbed natural vegetation will be established on each side of the river. . . In Husum, the buffer will be 100-foot wide . . . Existing used within the buffer may continue, but no new residential or commercial operations . . . can take place."

The Management Plan also provides the following rationale. "One of the main reasons for a buffer is to assure that the degree of naturalness intended in the Wild and Scenic Rivers Act is maintained. Field observations determined that where the vegetation along the river has been

undisturbed for many years, 200 feet is generally adequate to visually screen any activities beyond that distance..." (Record of Decision ("ROD") at 12, *emphasis added*). The County failed to consider the plan amendment's impact on the protective buffers. The amendment will put more pressure for variances and development within the buffers.

4. Land Use

The Management Plan contemplates that in order to protect the river, BZ Corner and Husum residential and commercial development could be about half what is allowed under current county zoning."⁹ In Husum and BZ Corner, "existing zoning regulation would allow up to 8.7 dwellings/acre while Alternative 6 [will] permit only 4/acre."¹⁰ The County failed to analyze how the plan amendment will affect the zoning in and adjacent to the WSRA area and if these changes will affect the Outstandingly Remarkable Values for which the river was designated.

The Management Plan also provides that: "existing patterns of land use and ownership should be maintained, provided they remain consistent with the purposes of the Act. Some of the conditions that many people in the White Salmon River valley value are the *rural lifestyle and the pastoral* scenery. These conditions are dependant on retaining lands suitable for agricultural and forestry uses. *A significant threat to these conditions in years to come will be the demand for residences and vacation homes.*" (ROD - 13, *emphasis added*). The County failed to analyze the impact of the plan amendment on the maintenance of existing patterns of land use, and failed to analyze how the plan amendment will affect the rural lifestyle and pastoral scenery. The Management Plan specifically identifies the very threat that the plan amendment invites: additional residences and vacation homes.

The Management Plan also recognizes "the *risk of ground water pollution from septic systems*, which could lead to pollution of the White Salmon River, and the concern that too many residences in the area outside the buffer could lead to a *loss of the existing feelings of solitude and naturalness along the river.*" (ROD - 13, *emphasis added*).

The County should refer to the management direction for Management Area 4 (Private Lands Outside the Buffer and Outside the Rural Centers), which establishes goals for the density of development within the Wild and Scenic River Area. LWS Plan at II-13. The County should also incorporate the general management direction that all new activities or development should not be evident as seen from the river. LWS Plan at II-3. Further, the *National Wild and Scenic River System: Final Revised Guidelines for Eligibility, Classification, and Management of River Areas* establishes a nondegradation and enhancement policy and requires that new land uses be evaluated for compatibility with the purposes of the Wild and Scenic Rivers Act, 16 USC §§ 1271-1282. LWS Plan at IV-3 (Wild and Scenic Rivers Guidelines Federal Register / Vol. 47, No. 173 / Tuesday, September 7, 1982, available at <http://www.rivers.gov/guidelines.html>). The LWS Plan also allows existing land uses to be maintained so long as they remain consistent with

⁹ *Id.*

¹⁰ *Final Environmental Impact Statement for the Lower White Salmon National Wild and Scenic River Management Plan*, IV-48

the Act or the managing agency must implement land-use controls necessary to protect the river area and values. LWS Plan at IV-4.

The Draft Update states that “[f]uture use of the planning area will be carefully monitored and to some extent restricted by federal regulations which are designed to minimize impact on natural resources while protecting the scenic character of the region.” Draft Husum/BZ Corner Sub-Area Plan Update at 10. It does not appear that the proposed update includes any substantive criteria that recognize or implement the requirements of the LWS Plan, the Columbia River Gorge National Scenic Area Act, 16 USC §§ 544–544p, which designated the Lower White Salmon a Wild and Scenic River, the Wild and Scenic River Act, and *The National Wild and Scenic River System: Final Revised Guidelines for Eligibility, Classification, and Management of River Areas*. The County must ensure that the proposed actions are consistent with these laws and guidelines.

Despite the clear language of the Management Plan protecting against overdevelopment, the County failed to ensure compliance with the Management Plan, or even analyze the Management Plan.

VIII. The County committed due process violations

The County failed to provide adequate public notice and an adequate opportunity to effectively comment on this proposal. The description of the proposal was inadequate to inform the public of the actual changes being proposed. The Findings chart on page 6 indicates a large reduction of “SR.” There is no discussion of this change. Also, the Findings state that the changes will accommodate 200 homes, but elsewhere the County says 323 homes. In addition, the County failed to inform the public about the effect of significant text modifications in the Sub-Area Plan, in addition to the map changes.

The County also failed to inform the public of the adverse impacts of this proposal through the SEPA checklist or any other mechanism. The County failed to provide any description of the resources harmed by the proposal. The County’s action precludes meaningful public participation.

IX. Conclusion

For the foregoing reasons, Columbia Riverkeeper, Friends of the White Salmon, American Rivers, American Whitewater, and Friends of the Columbia Gorge respectfully request that the Board deny the Sub-Area Plan amendment and zoning text amendment.

Sincerely,



Brett VandenHeuvel
Staff Attorney
Columbia Riverkeeper

