

## **ATTACHMENT 8**



BRICKLIN & NEWMAN LLP  
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Reply to: Seattle Office

October 19, 2018

VIA E-MAIL TO [lilith.vesprier@co.chelan.wa.us](mailto:lilith.vesprier@co.chelan.wa.us)

Chelan County Department of Community Development  
Attn: Lilith Vespier  
316 Washington St., Suite 301,  
Wenatchee, WA 98801

Re: Comments on the Mission Ridge Ski Area Expansion Master Planned Resort  
(MPR 2018-128)

Dear Ms. Vespier:

I am submitting these comments on behalf of the Wenatchee Sportsman Association regarding the Mission Ridge Expansion Master Planned Resort ("Mission Ridge Expansion Proposal").

The scope and scale of the Mission Ridge Expansion Proposal is massive. The size of the proposal combined with its intensity and location virtually guarantee that the project will have probable significant adverse environmental impacts. The Mission Ridge Expansion Proposal will encroach into pristine forest habitat that the local community, Chelan County, and the State of Washington have endeavored to protect for over a decade. The intensity of the use as residential housing in a variety of densities, commercial retail, and high-intensity recreation indicate that the existing environment of the area will be highly impacted. Finally, this massive MPR proposal is not happening in isolation—the applicant is also proposing to simultaneously expand its ski area on approximately 155 acres of adjacent National Forest land.

The end result is a massive project that will bulldoze hundreds of acres of forests to make way for new ski lifts, buildings, and uses that will cause significant adverse environmental impacts in a variety of ways, including loss of forest land, loss of wildlife habitat, impacts to streams and wetlands, and a fundamental alteration of the character of the area. There can be no question that the proposal will result in significant adverse environmental impacts and an Environmental Impact Statement ("EIS") is necessary to fully evaluate the environmental consequences of the proposal.

## **A. Requirements of the State Environmental Policy Act**

The Washington State Environmental Policy Act (“SEPA”), Ch. 43.21C RCW, *et seq.*, and its implementing regulations, Ch. 197-11 WAC, dictates when a governmental agency must require an EIS for a proposal. If a proposal may have a probable significant adverse environmental impact, then the responsible official must prepare and issue a determination of significance and require an EIS. WAC 197-11-360(1). The Washington Supreme Court has said

In essence, what SEPA requires, is that that the “presently unquantified environmental amenities and values will be given appropriate consideration in decision making with economic and technical considerations.” RCW 43.21C.030(2)(b). It is an attempt by the people to shape their future environment by deliberation, not default.

*Stemple v. Dept. of Water Resources*, 82 Wn.2d 109, 118 (1973).

### **1. SEPA requires that the lead agency issue a threshold determination.**

The first step in the SEPA process is the preparation of environmental checklist. WAC 197-11-315. The checklist and other information are used to make a “threshold determination,” which is the formal decision as to whether the proposal is likely to cause significant adverse environmental impacts. WAC 197-11-330. The threshold decision will result in issuance of a Determination of Non-Significance (DNS), a Mitigated DNS (MDNS), or a Determination of Significance (DS). If a DS is issued, a full EIS must be prepared. WAC 197-11-340; -355; -360.

SEPA regulations specify when a proposal will cause significant adverse environmental impacts, and several regulations are relevant to Chelan County’s decision to require an EIS. The first determination is what qualifies as a “significant” impact. SEPA regulations define the term “significant”:

(1) "Significant" as used in SEPA means a reasonable likelihood of more than a moderate adverse impact on environmental quality.

(2) Significance involves context and intensity (WAC 197-11-330) and does not lend itself to a formula or quantifiable test. The context may vary with the physical setting. Intensity depends on the magnitude and duration of an impact.

The severity of an impact should be weighed along with the likelihood of its occurrence. An impact may be significant if its chance of occurrence is not great, but the resulting environmental impact would be severe if it occurred.

(3) WAC 197-11-330 specifies a process, including criteria and procedures, for determining whether a proposal is likely to have a significant adverse environmental impact.

WAC 197-11-794.

If the responsible official determines that a proposal “may” have a probable significant adverse environmental impact, the responsible official shall prepare and issue a DS. WAC 197-11-360. When a DS is issued for a proposal, that means that the proposal is a “major action significantly affecting the quality of the environment” and the requirements of RCW 43.21C.030 are triggered. RCW 43.21C.030; *See also Moss v. City of Bellingham*, 109 Wn. App. 6, 14 (2001).

The responsible official must place the DS in the lead agency's file and must provide notice of the DS to the public as prescribed by WAC 197-11-510.

**2. An EIS must analyze the affected environment, significant impacts, and mitigation measures of the preferred proposal and reasonable alternatives**

An EIS must analyze the affected environment, significant environmental impacts (including unavoidable impacts), and mitigation measures of a proposal and must be used by agency decision makers, along with other relevant considerations or documents, in making final decisions on a proposal. RCW 43.21C.030; WAC 197-11-444; WAC 197-11-448(1). Additionally, the EIS must inform decision makers and the public of the impacts of reasonable alternatives to the proposal. WAC 197-11-400(2).

An EIS is particularly important because it documents the extent to which Chelan County “has complied with other procedural and substantive provisions of SEPA; it reflects the administrative record; and it is the basis upon which the responsible agency and officials can make the balancing judgment mandated by SEPA between the benefits to be gained by the proposed ‘major action’ and its impact upon the environment.” *Juanita Bay Valley Cmty. Ass'n v. City of Kirkland*, 9 Wn. App. 59, 68 (1973).

Reasonable alternatives are actions that “could feasibly obtain or approximate a proposal’s objectives, but at a lower environmental cost or decreased level of environmental degradation.” WAC 197-11-440(5)(b). The lead agency must devote sufficiently detailed analysis to each reasonable alternative to permit a comparative evaluation of the alternatives including the proposed action, presenting a comparison of the environmental impacts of the reasonable alternatives, including the “no action” alternative. *Id.* It must discuss the benefits and disadvantages of reserving for some future time the implementation of the proposal, as compared with immediate at this time. *Id.* When a proposal is for a private project on a specific site, the lead agency shall be required to evaluate the no action alternative plus other reasonable alternatives for achieving the proposal's objective on the same site. *Id.*

**3. SEPA places clear limitations on an agency's authority to adopt prior documents to address SEPA's requirements**

When an agency decides to use an existing EIS in lieu of drafting a new one, the foregoing requirements still apply. The statute that authorizes re-use of an existing EIS expressly states that an existing EIS may be used only if it "adequately address[es] the environmental considerations set forth in RCW 43.21C.030." RCW 43.21C.034.

Lead agencies are authorized to use in whole or in part existing environmental documents for new project or nonproject actions, if the documents adequately address environmental considerations set forth in RCW 43.21C.030. The prior proposal or action and the new proposal or action need not be identical, but must have similar elements that provide a basis for comparing their environmental consequences such as timing, types of impacts, alternatives, or geography. The lead agency shall independently review the content of the existing documents and determine that the information and analysis to be used is relevant and adequate. If necessary, the lead agency may require additional documentation to ensure that all environmental impacts have been adequately addressed.

RCW 43.21C.034. This language sets clear limitations on the use of existing documents. A lead agency can rely on existing environmental documents only if the information and analysis in those documents remain "valid" and are relevant and adequate to meet SEPA's requirements. RCW 43.21C.034. In turn, WAC 197-11-600(4)(e) states that a proposal must be "substantially similar" to one covered in an existing EIS if that existing EIS is to be adopted with additional information provided in an addendum.

Even if a lead agency meets these requirements and is, therefore, allowed to rely on and adopt a prior FEIS for environmental review of a proposal, the agency is still required to prepare a supplemental EIS when substantial changes have been made since the previous proposal and there is new information about environmental impacts requiring additional analysis. WAC 197-11-405, WAC 197-11-600, and WAC 197-11-620.

**B. Chelan County's SEPA process is inconsistent with SEPA requirements**

**1. The failure to issue a threshold determination for the Mission Ridge Proposal is a clear violation of SEPA.**

As far as we can tell from the documents that are available to us, the County has not issued a threshold determination for the Mission Ridge Proposal as is required by WAC 197-11-310. The Notice of Application only notes that Chelan County has adopted the Final Environmental Impact Statement published in May 1986, and that "[t]he County is reviewing the proposal using existing

environmental documents.” Before the County adopts any documents for environmental review, it must make a threshold determination. The adoption of an EIS implies that the County intends to issue a Determination of Significance, but it must be done formally according to process that is set forth in the SEPA rules. A failure to issue a threshold determination for the Mission Ridge Proposal, followed by a public comment period, is a clear violation of SEPA rules.

**2. A Determination of Significance, and therefore an EIS, is required for the Mission Ridge Expansion Proposal.**

Under SEPA’s regulations, Chelan County should issue a Determination of Significance and require the applicant to complete an EIS for the proposed ski area expansion project because it will cause significant adverse environmental impacts.

This proposal will have significant adverse direct, indirect, and cumulative impacts associated with fish and wildlife and their habitat, traffic and transportation, steep slopes, stormwater, septic, groundwater, water resources, wetlands and streams, trees and vegetation, fire, noise, land use, recreation, and more. Please find enclosed a copy of a letter from Claudia Newman to District Ranger Jeffrey Rivera dated September 28, 2018 that summarizes all of the multitude of issues and impacts presented by this proposal.

The responsible official has to evaluate the location of the proposal, recognizing that the same proposal might have a significant adverse impact in one location but not in another. WAC 197-11-330(3)(a). The impacts of a proposal can vary depending on its location. As the regulations state, both the context and intensity of the impact must be considered in evaluating the significance of adverse environmental impacts. For example, if a new development were to occur in an already-developed urban core, that would be a far different—and less significant—context than if the new development were proposed for undeveloped forest land. Even if the intensity of the proposal is relatively low, if it occurs in a sensitive context, the proposal can still result in significant adverse environmental impacts. Of course, if the proposal is a high-intensity proposal within a sensitive context, significant adverse environmental impacts will certainly occur.

Here, the impacts from the Mission Ridge ski area expansion proposal are much more significant at the proposed location than they would be in other parts of Chelan County where residential and commercial development is already existing. The ski park expansion will turn undeveloped, forested land that provides valuable wildlife habitat and serves as a vital part of the forest ecosystem stretching across the adjacent Okanogan-Wenatchee National Forest into highly developed commercial and residential developments, complete with streets, dramatically increased traffic, and extensive loss of vegetation and wildlife habitat. This is precisely the type of location where a proposal can have a significant adverse impact.

The responsible official must also consider impacts that appear marginal in isolation, but when considered together may result in significant adverse impacts. WAC 197-11-330(3)(c). Traffic, impacts to wetlands, conversion of forest lands to developed impervious surfaces, aesthetics, stormwater runoff from construction and erosion into adjacent streams, destruction of wildlife

habitat, impacts to wildlife, and a host of other potential impacts must be considered together to determine whether or not the proposal will have a significant impact as a whole. Much like a potential homebuyer would consider small factors, such as the location of the home, floor layout, and backyard, all together make potential buyer want to pass on the house, the County must consider all of the potential impacts together to determine if they will have a significant impact. In this case, the forest ecosystem stretching over 700 acres will be fundamentally and permanently altered. When all impacts are considered together, the proposal will certainly have a significant impact on the surrounding environment.

The responsible official must also consider whether the proposal is hard to forecast because some variable cannot be predicted. WAC 197-11-330(3)(d). Forests and wetlands are an example of a complex ecosystem where it is difficult to forecast environmental impacts and requires further environmental analysis. Both ecosystems are dependent on a variety of different components, ranging from wildlife to vegetation to water quantity and quality.

Finally, the responsible official must consider whether the proposal may to a significant degree adversely affect sensitive areas such as wetlands and wilderness. WAC 197-11-330(3)(e)(i). As previously noted, there is no doubt that destruction of forested wilderness will occur, and the environmental checklist notes the presence of wetlands at the proposed site.

### **3. The 1986 FEIS does not meet SEPA requirements for environmental review of the current Mission Ridge Expansion Proposal**

The Final Environmental Impact Statement for the “Mission Ridge/Constellation Ridge Ski/Summer Resort Master Plan” and various addendum—the most recent of which was published 25 years ago—do not provide adequate environmental analysis of the proposal, and it certainly would not meet Chelan County’s current environmental review standards. Moreover, Chelan County has not followed the procedures specified in WAC 197-11-630 for adoption.

Because Chelan County has not issued a threshold determination on the project and has not followed the procedure for adoption of environmental documents contained in WAC 197-11-630, it is unclear if it is appropriate for us to comment upon the FEIS and addendum at this time. However, it is clear that the FEIS is not appropriate to be used for environmental review here.

There are so many obvious errors with the attempt to rely on the 1986 FEIS that it’s difficult to know where to start, but the following are some highlights:

- The FEIS is extremely out of date—it was published in 1986. Not only has scientific understanding and information changed dramatically over the course of thirty years, but so have the conditions within Chelan County that the FEIS purports to analyze, the laws that apply to the property at issue, the ownership and management of property surrounding the area, and much, much more.

- The FEIS does not analyze the proposal that is under consideration now. The proposal that was analyzed in 1986 was a completely different proposal with different impacts. Tellingly, the proposal under consideration in the 1986 FEIS was much smaller than the current proposal and involved several different components, such as a hotel and sewage lagoon—yet it was still deemed to have significant adverse environmental impacts that warranted an FEIS. The current proposal is much larger in scope and intensity, and it will disturb an even more sensitive area within the Okanogan-Wenatchee National Forest.
- The 1986 FEIS was not even an adequate EIS for the proposal that it reviewed at that time. The alternatives within the FEIS are briefly described, and there is absolutely no discussion of the potential environmental impacts of each alternative as required by WAC 197-11-440(5). The analysis within the FEIS is wholly inadequate by today's standards. For instance, the entire discussion of the impacts to "Flora and Fauna" consist of five short bullet point paragraphs, largely noting that there will be impacts from the development but providing no details of those impacts.
- The 1986 FEIS analysis is not relevant or adequate with respect to analyzing and disclosing the affected environment, significant environmental impacts (including unavoidable impacts), and mitigation measures of the current proposal that is currently under consideration.
- The 1986 FEIS does not include an analysis of reasonable alternatives to the current proposal under consideration.

The applicant's own project narrative is forced to acknowledge the shortcomings of such an outdated and irrelevant FEIS, noting that "some of the information originally assessed as part of that Final Environmental Impact Statement may not be relevant due to various statutory and wildlife changes . . ." Project Narrative at 22.

The applicant also points to environmental review occurring under the National Environmental Policy Act for the portion of the project that will occur on National Forest land, but that analysis will apparently not evaluate the significant adverse impacts upon the adjacent Chelan County land.

The County must not be fooled into thinking that the environmental consequences of the proposed action have been previously evaluated, as required by SEPA. The environmental analysis required by SEPA has not occurred, despite the significant adverse environmental impacts that are assured to result from the project.

The applicant's Project Narrative—while useful—does not relieve the agency of issuing a Determination of Significance and requiring an EIS if there are significant adverse environmental consequences. There is no question that is the case here.

**4. The information that has been submitted by the applicant does not adequately analyze the impacts of the Mission Ridge Expansion proposal**

While the applicant has submitted various studies attached as appendices to the Project Narrative, these studies provide little analysis of the specific impacts that will occur from the full build-out of the residential and commercial buildings, along with the clearing and operation of high-intensity ski resort. Instead, the studies merely document the existing conditions within the project area. Where the studies do discuss impacts, they are forced to acknowledge that impacts will result from the project. However, none of the studies document the conditions or consider the adjacent impact that will occur on National Forest land. In short, the provided information does not show that significant adverse impacts will not occur.

For instance, Appendix E to the SEPA Checklist (the Aquatics, Wildlife, and Botany Resources Report) only documents federally listed threatened and endangered species under the Endangered Species Act and Priority Habitat Species designated by the Washington Department of Fish and Wildlife, but it does not purport to even consider other wildlife species. Moreover, the report focuses on documenting the current status of the various species within the project area, and spends little time discussing the impacts that will result from the proposed action. Where the report does acknowledge that the project will impact wildlife, such as impacts to gray wolves or Rocky Mountain elk and mule deer, it points to unspecified mitigation measures that may offset the impacts.

Other impacts are simply glossed over. For instance, the report acknowledges that wetlands are documented within the project area and will be impacted, but no further discussion of the significance of this impact is discussed. *See* Appendix E at page 38.

Among the impacts that are largely ignored are the impacts to Stemilt-Squilchuck watershed. Development within the upper Stemilt-Squilchuck watershed (where the project area is located) will cause adverse impacts to water resources throughout the entire watershed through the removal of forests and vegetation that are vital to preventing erosion and runoff while maintaining healthy stream flows. Preserving the upper watershed in a natural state, including the project area, is vital to the continued health of the Stemilt-Squilchuck watershed. In 2007, Chelan County established the Stemilt Partnership to protect upper watershed lands. The Stemilt Partnership and Chelan County created a community vision and landscape strategy for the entire Stemilt-Squilchuck watershed, and one of the main conclusions of the community strategy is that resource lands in the upper watershed cannot support urban-level development like the development proposed here. Please find attached to this letter the Stemilt-Squilchuck Community Vision that provides further detail of Chelan County and the Stemilt Partnership's vision of the future of the Stemilt-Squilchuck watershed.

Ultimately, the studies do not adequately analyze the impacts and do not dispel what is obvious: the proposed ski area expansion will have significant adverse environmental impacts. Simply

providing studies that largely document the project area as it currently exists without fully analyzing the impacts that will result from the proposal does not alleviate the need for an EIS, as required by SEPA. Even if those studies had analyzed impacts, that approach to the analysis would be inappropriate because it has not been presented in a Draft EIS, has not been subjected to a 30-45-day comment period, and has not been presented in a Final EIS following that public comment period.

**5. Chelan County must disclose and analyze the environmental impacts that will occur on USFS and WDFW owned property**

Chelan County must consider the adverse environmental consequences that will result from the applicant's plans to expand ski runs and clear-cut trees on lands owned by the United States Forest Service and the Washington State Department of Fish and Wildlife. The applicant's project narrative presents the permit area expansion from the Forest Service and the MPR approval from Chelan County as two separate processes, but there can be no dispute that both are part of the same connected project.

The SEPA regulations are clear that Chelan County cannot limit its consideration of environmental impacts solely to areas where it has jurisdiction over the approval. "In assessing the significance of an impact, a lead agency shall not limit its consideration of a proposal's impacts only to those aspects within its jurisdiction, including local or state boundaries." WAC 197-11-060(4)(b).

Therefore, Chelan County must consider the effect of clear-cutting ski runs and installing ski lifts and the associated infrastructure on approximately 155 acres of National Forest land when evaluating the significance of the proposal. The large-scale ski area expansion on National Forest land will likely cause significant adverse environmental impacts by itself, but when combined with the large-scale development on Chelan County land, there can be no doubt that significant adverse environmental consequences will occur.

**C. The Master Planned Resort and Development Agreement**

At the outset, we must point out that it is premature and improper for Chelan County to request comments upon the Master Planned Resort application and development agreement because the County has not yet issued a threshold determination for the application or produced an adequate EIS. *See* WAC 197-11-070; WAC 197-11-055; CCC 13.04.060(1). If the County intends to issue a Determination of Significance, then environmental review would still be lacking because the 1986 FEIS is wholly inadequate, as detailed above, and a new EIS must be produced.

While it is premature to discuss specifics about the Proposal itself at this early stage of the process, one particular item does stand out even now. It is evident from the start that the application for the Master Planned Resort does not meet the requirements for master planned resorts overlay districts contained within CCC Ch. 11.89 because the applicant cannot meet the burden of proof to show that the project complies with the requirements contained within CCC 11.89.090. Notably, the application does not contain provide for secondary access to the proposed development, despite

the large number of projected daily trips for recreational, commercial, and residential use. CCC 15.30.230(4); CCC 11.89.090(2).

In addition, the applicant has not met its burden to meet the other requirements in CCC 11.89.090. As described above, the applicant cannot show that SEPA has been complied with. CCC 11.89.090(3). On-site infrastructure impacts have not been fully considered, as evidenced by the applicant's failure to fully disclose and analyze the environmental impacts of additional ski lifts, roads, and buildings within the project area and within National Forest lands. CCC 11.89.090(6). Finally, the application does not address how the operation will not cause adjacent urban growth or sprawl. CCC 11.89.060(4).

**D. Conclusion**

Ultimately, the Mission Ridge proposal will cause significant adverse environmental impacts on the surrounding community and environment and an EIS must be prepared. The EIS that was prepared over 30 years ago for a smaller and unrelated ski area expansion is not an adequate substitute. The Wenatchee Sportsmen Association respectfully requests that Chelan County issue a Determination of Significance and prepare an EIS for the Mission Ridge Expansion proposal.

Very truly yours,

BRICKLIN & NEWMAN, LLP



Claudia M. Newman