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7 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**  
8 **IN AND FOR OKANOGAN COUNTY**  
9

10 METHOW VALLEY CITIZENS'  
11 COUNCIL and FUTUREWISE,

12 Petitioners/Plaintiffs,

13 v.

14 OKANOGAN COUNTY

15 Respondent/Defendant.  
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19  
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21

No.:

**COMPLAINT AND PETITION FOR  
JUDICIAL REVIEW UNDER RCW  
36.70C; PETITION FOR  
DECLARATORY JUDGMENT UNDER  
RCW 7.24; PETITION FOR  
DECLARATORY JUDGMENT UNDER  
ARTICLE IV, SECTION 6 OF THE  
WASHINGTON STATE  
CONSTITUTION; PETITION FOR  
WRIT OF CERTIORARI UNDER RCW  
7.16; PETITION FOR WRIT OF  
CERTIORARI UNDER WASHINGTON  
CONSTITUTION, ARTICLE IV,  
SECTION 6; PETITION FOR WRIT OF  
REVIEW UNDER WASHINGTON  
CONSTITUTION, ARTICLE IV,  
SECTION 6 OR THE COMMON-LAW**

22 Plaintiffs/Petitioners Methow Valley Citizens' Council and Futurewise plead as follows:

23 **I. NATURE OF THE ACTION**

24 1.1 This action includes a complaint and petition for declaratory judgment filed under  
25 the Uniform Declaratory Judgments Act, chapter 7.24 RCW; a complaint and petition for  
26 declaratory judgment filed under the constitutional writ provisions of Article IV, Section 6 of the

**Complaint and Petition**

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206-343-0681 Ext. 118  
tim@futurewise.org

1 Washington State Constitution; a complaint and petition for review filed under the Land Use  
2 Petition Act, chapter 36.70C RCW; a complaint and petition for a writ of certiorari under chapter  
3 7.16 RCW; a complaint and petition for a writ of certiorari under Article IV, Section 6 of the  
4 Washington State Constitution; or a complaint and petition for a writ of review under Article IV,  
5 Section 6 of the Washington State Constitution or the common-law.  
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7 1.2 Plaintiffs/Petitioners Methow Valley Citizens' Council and Futurewise  
8 (hereinafter referred to as MVCC) seek a determination that the zoning code, Title 17A  
9 Okanogan County Code, and the Okanogan County Zoning Map adopted by Okanogan County  
10 Ordinance 2016 – 4 are invalid and in violation of the requirements of the Planning Enabling Act  
11 (chapter 36.70 RCW), the Growth Management Act (chapter 36.70A RCW), the State  
12 Environmental Policy Act (chapter 43.21C RCW) and its implementing regulations, and other  
13 applicable provisions of state law. Okanogan County Ordinance 2016 – 4 and its attachments are  
14 attached as Exhibit A to this Complaint and Petition. The zoning code, Title 17A Okanogan  
15 County Code, is Attachment A to Okanogan County Ordinance 2016 – 4. The Okanogan County  
16 Zoning Map is Attachment B to Okanogan County Ordinance 2016 – 4. The County's adopted  
17 findings of fact are Attachment C to Okanogan County Ordinance 2016 – 4. The County's  
18 adopted conclusions of law are Attachment D to Okanogan County Ordinance 2016 – 4.  
19

20 1.3 Okanogan County also adopted Ordinance 2016 – 3 repealing Okanogan County  
21 Ordinance 2014 - 16 which adopted an interim zone code for Okanogan County on December  
22 22, 2014. Okanogan County Ordinance 2016 – 3 is attached as Exhibit B to this Complaint and  
23 Petition.  
24

25 1.4 MVCC seeks a determination that the *Environmental Impact Statement (Draft) for*  
26 *Code Amendment 2015-1, OCC 17A Zone Code, the Proposed Revision to the Okanogan County*

1 *Zone Code* (March 2, 2016), hereinafter the Draft EIS, and the *Environmental Impact Statement*  
2 *(Final)* for Code Amendment 2015-1, *OCC 17A Zone Code, Proposed Revision to the Okanogan*  
3 *County Zone Code* (June 30, 2016), hereinafter the Final EIS, violated Chapter 14.04 Okanogan  
4 County Code (OCC), Environmental Policy; the State Environmental Policy Act (chapter 43.21C  
5 RCW); and chapter 197-11 WAC. A copy of the Draft EIS is attached as Exhibit C to this  
6 Complaint and Petition. A copy of the Final EIS is attached as Exhibit D to this Complaint and  
7 Petition.

9 1.6 The zoning code, Title 17A Okanogan County Code (OCC), and the Okanogan  
10 County Zoning Map adopted by Okanogan County Ordinance 2016 – 4 do not comply with the  
11 Planning Enabling Act (chapter 36.70 RCW), the Growth Management Act (chapter 36.70A  
12 RCW), the State Environmental Policy Act (chapter 43.21C RCW), and its implementing  
13 regulations, the Shoreline Management Act (chapter 90.58 RCW) and threaten surface and  
14 ground water resources in Okanogan County to the detriment and prejudice of MVCC and the  
15 people of the State of Washington. Any designation of natural resource lands of long-term  
16 commercial significance does not comply with the Growth Management Act and threatens these  
17 important natural resource industries as well as surface and ground waters in Okanogan County,  
18 to the detriment and prejudice of MVCC and the people of the State of Washington.

20 1.7 There is an actual, present, and existing dispute with respect to MVCC’s claims  
21 and the parties have genuine and opposing interests. The interests of the parties are direct and  
22 substantial, and a judicial determination of those interests will be final and conclusive.

24 1.8 A decision by this Court that the County must revise its zoning code and zoning  
25 map to achieve compliance with the requirements of the Planning Enabling Act, Growth  
26 Management Act, and State Environmental Policy Act would eliminate or redress the

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1 noncompliance identified herein and the likely loss and damage to surface and ground waters  
2 that would result if Okanogan County's zoning regulations were not reviewed by this Court.

## 3 **II. JURISDICTION AND VENUE**

4 2.1 This Court has jurisdiction to hear this complaint and petition under article IV,  
5 section 6 of the Washington State Constitution, the common law, and under Chapters 7.16, 7.24,  
6 and 36.70C RCW.

7 2.2 The Washington Supreme Court held the jurisdiction of the growth management  
8 hearings boards is limited to those counties that are required or choose to plan under RCW  
9 36.70A.040. *Moore v. Whitman County*, 143 Wn.2d 96, 18 P.3d 566 (2001). Okanogan County is  
10 not required to plan under RCW 36.70A.040 and has not "opted in" under RCW 36.70A.040.  
11 Petitioners therefore have no administrative appeal to the Growth Management Hearings Board  
12 under the Growth Management Act.

13 2.3 If a growth management hearings board does not have jurisdiction to review a  
14 land use decision, appeal of that decision may be filed in superior court under the Land Use  
15 Petition Act, RCW 36.70C. *Wenatchee Sportsmen Association v. Chelan County*, 141 Wn.2d  
16 169, 178, 4 P.3d 123 (2000).

17 2.4 Because the Okanogan County the zoning code, Title 17A OCC, and the  
18 Okanogan County Zoning Map adopted by Okanogan County Ordinance 2016 – 4 and the Draft  
19 EIS and Final EIS are not subject to review by a growth management hearings board, or any  
20 other quasi-judicial body created by state law, a petition for judicial review may lie under RCW  
21 36.70C, the Land Use Petition Act (LUPA).

22 2.5 Alternatively, if the Court lacks jurisdiction to review the zoning code, Title 17A  
23 OCC, the zoning map, the Draft EIS, and the Final EIS under RCW 36.70C, the Court has  
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1 jurisdiction to review the resolutions and ordinance pursuant to RCW 7.24, RCW 7.16, the  
2 common law, or the inherent power of this Court under article 4, section 6 of the Washington  
3 State Constitution.

4 2.6 Venue properly lies in the Okanogan County Superior Court pursuant to RCW  
5 36.01.050.

### 7 III. PARTIES, STANDING, AND VIOLATIONS

8 3.1 Plaintiff/Petitioner Methow Valley Citizens' Council is a 501(c)(3) nonprofit  
9 corporation incorporated in the State of Washington. The mission of the Methow Valley  
10 Citizens' Council is to raise a strong community voice for protection of the Methow Valley's  
11 natural environment and rural character.

12 3.2 The Methow Valley Citizens' Council has participation and representative  
13 standing. The Methow Valley Citizens' Council has members who are landowners and residents  
14 of Okanogan County and who are affected and aggrieved by the failure of the new zoning code  
15 and the new zoning map to protect the quality and quantity of groundwater used for public water  
16 supplies as required by RCW 36.70.330 and RCW 36.70.545, the failure of the zoning code and  
17 the zoning map to address wildfire hazards and landslide hazards aggravated by wildfires, the  
18 County's failure to consider other environmental impacts as required by the State Environmental  
19 Policy Act (SEPA), and to adequately designate natural resource lands as required by the Growth  
20 Management Act. The Methow Valley Citizens' Council's members are prejudiced because their  
21 properties are covered by the new zoning code and the zoning map and so have standing under  
22 RCW 36.70C.060(1). The Methow Valley Citizens' Council's members are prejudiced in that  
23 their properties depend on wells and surface withdrawals for domestic water supply, irrigation,  
24 and stock watering and are adversely affected by the County's failure to adopt a zoning code and  
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1 a zoning map that protects surface and ground water as the Planning Enabling Act (PEA)  
2 requires. Methow Valley Citizens' Council's members are prejudiced in that their properties may  
3 be adversely impacted by wildfires, a lack of fire and emergency services, landslides, surface and  
4 ground water impacts, and other environmental impacts that were not adequately considered by  
5 the county in analyzing the environmental impacts of the zoning code and the zoning map as  
6 SEPA requires. Methow Valley Citizens' Council's members are prejudiced in that their  
7 properties may be adversely impacted ~~by~~ because their farm and ranch land was not properly  
8 designated as the Growth Management Act (GMA) requires. In adopting the zoning code and the  
9 zoning map, the Planning Enabling Act (PEA), the GMA, and SEPA require Okanogan County  
10 to consider the following interests: the protection of the quality and quantity of groundwater,  
11 surface water quality and quantity, the impacts of wildfires, the availability of fire response  
12 services, the designation of farm, ranch, and forest land, and other environmental impacts. A  
13 judgment in Methow Valley Citizens' Council's favor directing the County to adopt a zoning  
14 code and zoning map that complies with the PEA and GMA and analyzes the environmental  
15 impacts as required by SEPA would redress the prejudice. The Methow Valley Citizens' Council  
16 and its members have requested orally and in writing that the County adopt an updated zoning  
17 code and zoning map that complies with the PEA, GMA, and SEPA and since this is a legislative  
18 act there is no administrative remedy available to The Methow Valley Citizens' Council and its  
19 members. The Methow Valley Citizens' Council and its members wrote letters to County  
20 officials concerning all matters at issue in this petition. The Methow Valley Citizens' Council  
21 therefore has participation standing, standing under the Land Use Petition Act, injury-in-fact  
22 standing, and other forms of standing to challenge the actions at issue pursuant to RCW  
23 36.70A.280, RCW 36.70C.060, the PEA, and SEPA.  
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1 3.3 Plaintiff/Petitioner Methow Valley Citizens' Council's mailing address is:

2 Methow Valley Citizens' Council  
3 P.O. Box 774  
4 Twisp, Washington 98856  
5 Office phone: 509-997-0888  
6 Email: [mvcc@mvcitizens.org](mailto:mvcc@mvcitizens.org)

7 3.4 Plaintiff/Petitioner Futurewise is a 501(c)(3) nonprofit corporation incorporated in  
8 the State of Washington. Futurewise is a statewide public interest group working to promote  
9 healthy communities while protecting farmland, forests, and shorelines today and for future  
10 generations.

11 3.5 Futurewise has participation and representative standing. Futurewise has members  
12 who are landowners and residents of Okanogan County and who are affected and aggrieved by  
13 the failure of the County's new zoning code and the zoning map to protect the quality and  
14 quantity of groundwater used for public water supplies as required by RCW 36.70.330 and RCW  
15 36.70.545, the failure of the new zoning code and the zoning map to address wildfire hazards and  
16 landslide hazards aggravated by wildfires, to address fire response services, the County's failure  
17 to consider other environmental impacts as required by the SEPA, and to adequately designate  
18 natural resource lands as required by the GMA. Futurewise's members are prejudiced in that  
19 their property is covered by the new zoning code and the zoning map and so have standing under  
20 RCW 36.70C.060(1). Futurewise's members are prejudiced in that their properties depend on  
21 wells and surface withdrawals for domestic water supply, irrigation, and stock watering and are  
22 adversely affected by the County's failure to adopt a new zoning code and zoning map that  
23 protects surface and ground water as the Planning Enabling Act (PEA) requires. Futurewise's  
24 members are prejudiced in that their properties may be adversely impacted by wildfires,  
25 landslides, surface and ground water impacts, and other environmental impacts that were not  
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1 adequately considered by the County in analyzing the environmental impacts of the new zoning  
2 code and the new zoning map as SEPA requires. Futurewise's members are prejudiced in that  
3 their properties may be adversely impacted by because their farm and ranch land was not  
4 properly designated as the GMA requires. In adopting a new zoning code and new zoning map,  
5 the PEA, the GMA, and SEPA require Okanogan County to consider the following interests: the  
6 protection of the quality and quantity of groundwater, surface water quality and quantity, the  
7 impacts of wildfires, the designation of farm, ranch, and forest land, and other environmental  
8 impacts. A judgment in Futurewise's favor directing the County to adopt a new zoning code and  
9 a new zoning map that complies with the PEA and GMA and analyzes the environmental  
10 impacts as required by SEPA would redress the prejudice. Futurewise and its members have  
11 requested orally and in writing that the County adopt an updated zoning code and the zoning map  
12 that complies with these laws and since this is a legislative act there is no administrative remedy  
13 available to Futurewise and its members. Futurewise and its members wrote letters to County  
14 officials concerning matters at issue in this petition. Futurewise therefore has participation  
15 standing, standing under the Land Use Petition Act, injury-in-fact standing, and other forms of  
16 standing to challenge the actions at issue pursuant to RCW 36.70A.280, RCW 36.70C.060, the  
17 PEA, and SEPA.

20 3.6 Plaintiff/Petitioner Futurewise's mailing address is:

21 Futurewise  
22 816 Second Avenue, Suite 200  
23 Seattle, Washington 98104  
24 Telephone: 206-343-0681 Ext. 118  
25 Email: [tim@futurewise.org](mailto:tim@futurewise.org)

26 3.7 Attorney for the Plaintiffs/Petitioners:

Tim Trohimovich, WSBA No. 22367



1 Futurewise  
2 816 Second Avenue, Suite 200  
3 Seattle, Washington 98104  
4 Telephone: 206-343-0681 Ext. 118  
5 Email: [tim@futurewise.org](mailto:tim@futurewise.org)

6 3.8 Okanogan County is a Washington county governed by a three-member Board of  
7 County Commissioners. The Board of County Commissioners made the decisions to adopt the  
8 new zoning code and the new zoning map at issue in this appeal.

9 3.9 The mailing address for the Board of Commissioners for Okanogan County is:  
10 Board of County Commissioners  
11 Okanogan County  
12 123 Fifth Avenue North, Room 150  
13 Okanogan, Washington 98840

14 3.10 The Okanogan County Washington State Environmental Policy Act (SEPA)  
15 Responsible Official was responsible for the preparation of the Draft EIS and the Final EIS for  
16 the new zoning code and new zoning map.

17 3.11 The mailing address of the Okanogan County SEPA Responsible Official is:  
18 Mr. Perry Huston  
19 Director of Planning  
20 Okanogan County Office of Planning and Development  
21 123 5<sup>th</sup> Avenue, Suite 130  
22 Okanogan, Washington 98840

23 3.12 The MVCC Plaintiffs/Petitioners challenge the adoption of the new zoning code  
24 and the new zoning map and the Draft EIS and the Final EIS. Copies of the ordinances and the  
25 Draft EIS and the Final EIS are attached to this Complaint and Petition as Exhibits.  
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1 **IV. ALLEGED ERRORS IN THE NEW ZONING CODE, NEW ZONING MAP,**  
2 **THE DRAFT EIS, AND THE FINAL EIS**

3 The MVCC Plaintiffs/Petitioners allege the following errors in the adoption of the new  
4 zoning code and the new zoning map and the preparation of the Draft EIS and the Final EIS as  
5 issues to be decided upon appeal.

6 4.1 The zoning code, Title 17A OCC, and the Okanogan County Zoning Map adopted  
7 by Okanogan County Ordinance 2016 – 4 fail to protect the quality and quantity of groundwater  
8 used for public water supplies as required by RCW 36.70.330(1), RCW 36.70.340, RCW  
9 36.70.410, and RCW 36.70.545.

10 4.2 The zoning code, Title 17A OCC, and the Okanogan County Zoning Map adopted  
11 by Okanogan County Ordinance 2016 – 4 do not properly designate agricultural lands and forest  
12 lands of long-term commercial significance as required by RCW 36.70A.170, RCW 36.70A.030,  
13 RCW 36.70A.050(4), RCW 36.70.330(1) and (3), RCW 36.70.340, RCW 36.70.410, and RCW  
14 36.70.545.

15 4.3 The zoning code, Title 17A OCC, and the Okanogan County Zoning Map adopted  
16 by Okanogan County Ordinance 2016 – 4 do not comply with RCW 19.27.097, RCW  
17 36.32.330,<sup>1</sup> RCW 36.70.020(7), RCW 36.70.330, RCW 36.70.340, RCW 36.70.350, RCW  
18 36.70.360, RCW 36.70.410, RCW 36.70.545, RCW 36.70.550, RCW 36.70A.050(4), RCW  
19 36.70A.060(1), RCW 36.70A.170, RCW 58.17.040(6), RCW 58.17.110, RCW 90.58.340, and  
20 the other applicable provisions of chapter 36.70 RCW, chapter 36.70A RCW, chapter 58.17  
21 RCW, and chapter 90.58 RCW.  
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<sup>1</sup> As interpreted by binding appellate authority such as *Cathcart-Maltby-Clearview Cmty. Council v. Snohomish City.*, 96 Wn. 2d 201, 205 – 06, 634 P.2d 853, 856 – 57 (1981).

1 4.4 The Draft EIS and Final EIS on the zoning code, Title 17A OCC, and the  
2 Okanogan County Zoning Map adopted by Okanogan County Ordinance 2016 – 4 do not comply  
3 with chapter 43.21C RCW and chapter 197-11 WAC.

4 **V. FACTS SUPPORTING THE STATEMENT OF ERRORS**

5 5.1. As a Washington county, Okanogan County is authorized to plan under the PEA  
6 (chapter 36.70 RCW).

7 5.2 RCW 36.70.330 (part of a section entitled “Comprehensive plan — Required  
8 elements”) provides in part that:

9 The comprehensive plan shall consist of a map or maps, and descriptive  
10 text covering objectives, principles and standards used to develop it, and shall  
11 include each of the following elements:

12 (1) A land use element which designates the proposed general distribution  
13 and general location and extent of the uses of land for agriculture, housing,  
14 commerce, industry, recreation, education, public buildings and lands, and other  
15 categories of public and private use of land, including a statement of the standards  
16 of population density and building intensity recommended for the various areas in  
17 the jurisdiction and estimates of future population growth in the area covered by  
18 the comprehensive plan, all correlated with the land use element of the  
19 comprehensive plan. The land use element shall also provide for protection of the  
20 quality and quantity of groundwater used for public water supplies and shall  
21 review drainage, flooding, and storm water run-off in the area and nearby  
22 jurisdictions and provide guidance for corrective actions to mitigate or cleanse  
23 those discharges that pollute Puget Sound or waters entering Puget Sound;

24 5.3 RCW 36.70.545 provides that “the development regulations of each county that  
25 does not plan under RCW 36.70A.040 shall not be inconsistent with the county’s comprehensive  
26 plan.” Development regulations include zoning regulations.<sup>2</sup>

5.4 Other provisions of the PEA apply to the zoning code, Title 17A OCC, and the  
Okanogan County Zoning Map adopted by Okanogan County Ordinance 2016 – 4.

<sup>2</sup> RCW 36.70.545; RCW 36.70A.030(7).

1 5.5 Within the Methow Watershed, Water Resource Inventory Area (WRIA) 48, and  
2 the Okanogan Watershed, WRIA 49, “most if not all of the available water has already been  
3 allocated.” Large parts of the water basins in the County are closed to new water appropriations.

4 Water is in such short supply that:

5 Ecology regularly sends out Administrative Orders under RCW 90.03 alerting  
6 water right holders they will be curtailed in favor of instream flows for the  
7 Methow and Okanogan Rivers. This has been a common occurrence in Okanogan  
8 County where users were curtailed or shut off four out of the last five years on the  
9 Methow and three out of the last five years on the Okanogan during times of low  
10 flow.

11 5.6 The zoning code, Title 17A OCC, and the Okanogan County Zoning Map adopted  
12 by Okanogan County Ordinance 2016 – 4 do not include any provisions to provide for protection  
13 of the quality and quantity of groundwater used for public water supplies. In fact,

14 Assuming future build-out with no new parcels and existing parcel size  
15 regulations, 6 reaches would have water remaining in their reserves. The Lower  
16 Methow would exceed its reserve, leaving 1,092 presently existing parcels out of  
17 a total of 2,913 presently existing parcels unable to be supplied by a well.

18 Assuming full build-out of all possible parcels under present zoning, 5 reaches  
19 would have water remaining in their reserve. The Upper Methow and Lower  
20 Methow would exceed their reserves. The Upper Methow would have 127 parcels  
21 unable to be supplied by permit-exempt wells out of a total of 1,948 possible  
22 parcels. The Lower Methow would have 24,313 parcels out of a total of 26,133  
23 possible parcels unable to be supplied by wells.

24 The zoning code, Title 17A OCC, and the Okanogan County Zoning Map adopted by Okanogan  
25 County Ordinance 2016 – 4 allow the creation of the same number of lots that will lack available  
26 water described above.

5.7 The zoning code, Title 17A OCC, and the Okanogan County Zoning Map adopted  
by Okanogan County Ordinance 2016 – 4 violate other provisions of the PEA.

1 5.8 As a Washington county, Okanogan County is obligated to comply with certain  
2 provisions of the GMA, Chapter 36.70A RCW. Okanogan County is known as a “CARL”  
3 (Critical Areas and Resource Lands) jurisdiction under the GMA because only certain provisions  
4 of the GMA—primarily the critical areas and resource lands provisions—apply to the County.

5 5.9 The GMA, in RCW 36.70A.170 (entitled “Natural resource lands and critical  
6 areas-Designations”), required every county in the state to designate, on or before September 1,  
7 1991, agricultural, forest, and mineral resource lands of long-term commercial significance,  
8 described as lands that are not already characterized by urban growth, are devoted to agricultural,  
9 forest, and mineral resource production, and that have long-term significance for the commercial  
10 production of these natural resources.

11 5.10 The zoning code, Title 17A OCC, and the Okanogan County Zoning Map adopted  
12 by Okanogan County Ordinance 2016 – 4 do not include a designation or zone for agricultural  
13 lands and forest lands of long-term commercial significance. The zoning code, Title 17A OCC,  
14 and the Okanogan County Zoning Map does not designate the valuable farm and ranch lands in  
15 Okanogan County as agricultural lands of long-term commercial significance in violation of the  
16 GMA.

17 5.11 Okanogan County issued a determination of significance (DS) and scoping notice  
18 for the zoning code, Title 17A OCC, and the Okanogan County Zoning Map adopted by  
19 Okanogan County Ordinance 2016 – 4 on October 16, 2015. This required the County to prepare  
20 an environmental impact statement (EIS) on the zoning map and zoning code consistent with the  
21 Washington State Environmental Policy Act (SEPA) and its implementing regulations.

22 5.12 The Methow Valley Citizens’ Council commented on the scoping notice. The  
23 Methow Valley Citizens’ Council and Futurewise (MVCC) commented on the Draft EIS.  
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1 5.13 The Draft EIS does not meet the requirements for a nonproject EIS. The term  
2 “nonproject” refers to “actions which are different or broader than a single site specific project,  
3 such as plans, policies, and programs ...” In addressing the adequacy of a nonproject EIS for a  
4 rezone, the Court of Appeals wrote that:

5  
6 In *Leschi v. Highway Comm'n*, 84 Wn.2d 271, 525 P.2d 774 (1974), a majority of  
7 the Supreme Court held that the adequacy question is one of law, subject to *de*  
8 *novo* review by the courts. The test to be applied is “whether the environmental  
9 effects of the proposed action and reasonable alternatives are sufficiently  
10 disclosed, discussed and that they are substantiated by supportive opinion and  
11 data.” *Leschi v. Highway Comm'n, supra* at 286, 525 P.2d at 785.<sup>3</sup>

12 5.13.1 WAC 197-11-440(6)(a) requires that for the elements of the environment  
13 significantly affected by the proposed action, “the EIS shall describe the existing environment  
14 that will be affected by the proposal, analyze significant impacts of alternatives including the  
15 proposed action, and discuss reasonable mitigation measures that would significantly mitigate  
16 these impacts.” In the *Ullock* decision, the Court of Appeals held “that an EIS is adequate in a  
17 nonproject zoning action where the environmental consequences are discussed in terms of the  
18 maximum potential development of the property under the various zoning classifications  
19 allowed.”<sup>4</sup>

20 5.13.2 The Draft EIS fails to comply with these requirements. The Draft EIS fails to  
21 disclose and discuss the allowed densities and allowed uses and their environmental impacts.  
22 Nowhere in the Draft EIS is it even mentioned that the Minimum Requirement, Rural 1, Rural 5,  
23 and Rural 20 zones allow apartments and manufactured home parks with densities of five  
24 dwelling units per acre. Nowhere in the Draft EIS is it even mentioned that this is an increase  
25  
26

<sup>3</sup> *Ullock v. City of Bremerton*, 17 Wn. App. 573, 580, 565 P.2d 1179, 1184 (1977).

<sup>4</sup> *Id.*

1 from the 4.5 dwelling units per acre allowed by the Minimum Requirement Zone in the no action  
2 alternative.

3 5.13.3 There is no description of the existing environment and the proposed zoning's  
4 impacts on the environment. For example, there is no disclosure and discussion of the impacts of  
5 the wildfires that have impacted the county in last two summers and the impacts of the allowed  
6 uses on wildfires despite the fact that wildfires were identified as an element of the environment  
7 to be analyzed in the Draft EIS. As the *Okanogan County, Washington Community Wildfire*

8 *Protection Plan* states:

9  
10 One challenge Okanogan County faces is the large number of houses in the  
11 urban/rural fringe compared to twenty years ago. Since the 1970s, a segment of  
12 Washington's growing population has expanded further into traditional forest or  
13 resource lands and other rural areas. The "interface" between urban and suburban  
14 areas and unmanaged forest and rangelands created by this expansion has  
15 produced a significant increase in threats to life and property from fires and has  
16 pushed existing fire protection systems beyond original or current design or  
17 capability. Many property owners in the interface are not aware of the problems  
18 and threats they face and owners have done very little to manage or offset fire  
19 hazards or risks on their own property. Furthermore, human activities increase the  
20 incidence of fire ignition and potential damage.<sup>5</sup>

21 None of this was mentioned in the Draft EIS.

22 5.13.4 The Draft EIS makes statements that are not substantiated by data or supportive  
23 opinion. For example, the Draft EIS on page 10 claims that that for subdivisions the county has  
24 undertaken the responsibility for assuring the new lots created by divisions have a legal source of  
25 water. However, the Draft EIS does not cite to any development regulation that includes this  
26 requirement. And MVCC has been unable to find any such regulation.

**Commented [B2]:** Clarify what we mean by "allowed uses on wildfires". Do we mean wildland urban interface or wildfire prone areas?

<sup>5</sup> *Okanogan County, Washington Community Wildfire Protection Plan* p. 88 (2013) underlining added.

1 5.14 The Final EIS fails to remedy these violations of SEPA and its implementing  
2 regulations and fails to comply with the SEPA requirements for a Final EIS.

3 5.15 Additional provisions of SEPA and its implementing regulations apply to this  
4 proposal and further show the County failed to comply with SEPA.  
5

6 **VI. FIRST CAUSE OF ACTION:  
PETITION FOR JUDICIAL REVIEW UNDER CHAPTER 36.70C RCW**

7 6.1 Petitioners incorporate by reference all prior paragraphs in this Petition as if they  
8 were completely restated here.

9 6.2 Because the zoning code, Title 17A OCC, and the Okanogan County Zoning Map  
10 adopted by Okanogan County Ordinance 2016 – 4 and the Draft EIS and Final EIS are not  
11 subject to review by a growth management hearings board, or any other quasi-judicial body  
12 created by state law, a petition for judicial review may lie under RCW 36.70C, the Land Use  
13 Petition Act (LUPA).  
14

15 6.3 Pursuant to RCW 36.70C.070(5), no person other than Okanogan County is  
16 required to be made a party.

17 6.4 Petitioners request relief consistent with RCW 36.70C and requested below.  
18

19 **VII. SECOND CAUSE OF ACTION:  
UNIFORM DECLARATORY JUDGMENTS ACT**

20 7.1 Petitioners incorporate by reference all prior paragraphs in this Complaint and  
21 Petition as if they were completely restated here.

22 7.2 This cause of action is pled in the alternative to the foregoing cause of action.  
23

24 7.3 If the Court finds the zoning code (Title 17A OCC), the Okanogan County Zoning  
25 Map, the Draft EIS, or the Final EIS are not subject to review under chapter 36.70C RCW or a  
26



1 statutory or constitutional writ of certiorari, this Court has authority under chapter 7.24 RCW to  
2 issue declaratory and injunctive relief in this matter.

3 7.4 Plaintiffs and the County have a genuine dispute over whether the County has  
4 complied with the mandates of the PEA, GMA, and SEPA.

5 7.5 Plaintiffs are entitled to a judgment declaring that the County has failed to comply  
6 with the provisions of the PEA, GMA, and SEPA as stated in the Prayer for Relief, below.  
7

8 **VIII. THIRD CAUSE OF ACTION:**  
9 **CONSTITUTIONAL DECLARATORY JUDGMENT UNDER**  
10 **ARTICLE IV, SECTION 6**

11 8.1 Petitioners incorporate by reference all prior paragraphs in this Complaint and  
12 Petition as if they were completely restated here.

13 8.2 This cause of action is pled in the alternative to the other causes of action in this  
14 Complaint and Petition.

15 8.3 If the Court finds the zoning code (Title 17A OCC), the Okanogan County Zoning  
16 Map, the Draft EIS, or the Final EIS are not subject to review under chapter 36.70C RCW,  
17 chapter 7.24 RCW, or a statutory or constitutional writ of certiorari, this Court has authority  
18 under the Washington State Constitution Article IV, Section 6 to issue declaratory and injunctive  
19 relief in this matter.

20 8.4 Plaintiffs and the County have a genuine dispute over whether the County has  
21 complied with the mandates of the PEA, GMA, and SEPA.

22 8.5 Plaintiffs are entitled to a judgment declaring that the County has failed to comply  
23 with the provisions of the PEA, GMA, and SEPA, and the accompanying injunctive relief, as  
24 stated in the Prayer for Relief, below.  
25  
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1 **IX. FOURTH CAUSE OF ACTION:**  
2 **WRIT OF CERTIORARI UNDER CHAPTER 7.16 RCW**

3 9.1 Petitioners incorporate by reference all prior paragraphs in this Complaint and  
4 Petition as if they were completely restated here.

5 9.2 This cause of action is pled in the alternative to the other causes of action in this  
6 Complaint and Petition.

7 9.3 If the Court finds the zoning code (Title 17A OCC), the Okanogan County Zoning  
8 Map, the Draft EIS, or the Final EIS are not subject to review under chapter 36.70C RCW,  
9 chapter 7.24 RCW, a Petition for Declaratory Judgment under Article IV, Section 6 of the  
10 Washington State Constitution, or a constitutional writ then no other avenue of appeal is  
11 available to Petitioners. The Court has jurisdiction to review the zoning code (Title 17A OCC),  
12 the Okanogan County Zoning Map, the Draft EIS, or the Final EIS pursuant to a writ of certiorari  
13 issued under RCW 7.16.030 *et seq.*

14 9.4 Petitioners ask the Court to grant their petition to issue a writ of certiorari under  
15 RCW 7.16.030 *et seq.* to Okanogan County; to review the zoning code (Title 17A OCC), the  
16 Okanogan County Zoning Map, the Draft EIS, and the Final EIS; and order the relief requested  
17 in the prayer for relief, below.  
18  
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20 **X. FIFTH CAUSE OF ACTION:**  
21 **WRIT OF CERTIORARI UNDER WASHINGTON STATE CONSTITUTION, ARTICLE**  
22 **IV, SECTION 6**

23 10.1 Petitioners incorporate by reference all prior paragraphs in this Complaint and  
24 Petition as if they were completely restated here.

25 10.2 This cause of action is pled in the alternative to the other causes of action in this  
26 Complaint and Petition.

1 10.3 If the Court finds the zoning code (Title 17A OCC), the Okanogan County Zoning  
2 Map, the Draft EIS, or the Final EIS are not subject to review under chapter 36.70C RCW,  
3 chapter 7.24 RCW, RCW 7.16.030 *et seq.*, or a constitutional declaratory judgment action, then  
4 no other avenue of appeal is available to Petitioners. The Court has jurisdiction to review the  
5 zoning code (Title 17A OCC), the Okanogan County Zoning Map, the Draft EIS, and the Final  
6 EIS pursuant to a writ of certiorari issued under Wash. Const., art. IV, § 6.  
7

8 10.4 Petitioners ask the Court to grant their petition to issue a writ of certiorari under  
9 Wash. Const., art. IV, § 6, to Okanogan County, to review the zoning code (Title 17A OCC); the  
10 Okanogan County Zoning Map; the Draft EIS; and the Final EIS; and order the relief requested  
11 in the prayer for relief, below.  
12

13 **XI. SIXTH CAUSE OF ACTION:**  
14 **WRIT OF REVIEW UNDER WASHINGTON STATE CONSTITUTION, ARTICLE IV,**  
15 **SECTION 6 OR THE COMMON-LAW**

16 11.1 MVCC incorporates by reference all prior paragraphs in this Complaint and  
17 Petition as if they were completely restated here.

18 11.2 This cause of action is pled in the alternative to the other causes of action in this  
19 Complaint and Petition.

20 11.3 If the Court finds the Okanogan County zoning ordinances and SEPA  
21 environmental impact statement (EIS) are not subject to review under RCW 36.70C and if the  
22 Court finds the Okanogan County zoning ordinances and SEPA EIS are not subject to review  
23 under chapter 7.24 RCW, RCW 7.16.030 *et seq.*, a constitutional declaratory judgment action, or  
24 a statutory or constitutional writ of certiorari then no other avenue of appeal is available to  
25 Petitioners. The Court has jurisdiction to review the Okanogan County zoning ordinances and  
26

1 SEPA EIS pursuant to a writ of review issued under Wash. Const., art. IV, § 6 or the common-  
2 law.

3 11.4 Petitioners ask the Court to grant their petition to issue a writ of review under  
4 Wash. Const., art. IV, § 6, or the common law to Okanogan County, review the Okanogan  
5 County zoning ordinances and SEPA EIS, and order the relief requested in the prayer for relief,  
6 below.

## 8 XII. RELIEF REQUESTED

9 Plaintiffs/Petitioners pray for this Court to issue a judgment, writ, and declaratory relief  
10 as follows:

11 12.1 That Okanogan County shall prepare a record of the adoption of Okanogan  
12 County Ordinance 2016 – 3 and Okanogan County Ordinance 2016 – 4 and the preparation of  
13 the Draft EIS and the Final EIS at issue in this case.

14 12.2 That the Court declare the Okanogan County zoning code, Title 17A OCC, and  
15 the Okanogan County Zoning Map adopted by Okanogan County Ordinance 2016 – 4 and the  
16 Draft EIS and Final EIS are not in compliance with the PEA, GMA, and SEPA for the reasons  
17 set forth herein.

18 12.3 The Court determine that as to the Okanogan County zoning code, Title 17A  
19 OCC, and the Okanogan County Zoning Map adopted by Okanogan County Ordinance 2016 – 4  
20 and the Draft EIS and Final EIS:  
21

22 (a) The body or officer that made the land use decision engaged in unlawful  
23 procedure or failed to follow a prescribed process, unless the error was harmless;  
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1 (b) The land use decision is an erroneous interpretation of the law, after allowing  
2 for such deference as is due the construction of a law by a local jurisdiction with  
3 expertise;

4 (c) The land use decision is not supported by evidence that is substantial when  
5 viewed in light of the whole record before the court; or

6 (d) The land use decision is a clearly erroneous application of the law to the facts.

7  
8 12.4 That the Court determine that the Okanogan County zoning code, Title 17A OCC,  
9 and the Okanogan County Zoning Map adopted by Okanogan County Ordinance 2016 – 4 and  
10 the Draft EIS and Final EIS were a clearly erroneous interpretation or application of the law,  
11 illegal, or arbitrary and capricious.

12 12.5 That the Court order Okanogan County to achieve compliance with the PEA,  
13 GMA, and SEPA within 180 days.

14 12.6 That the Court order Okanogan County to comply with all statutory and  
15 regulatory requirements for revising its zoning code, Title 17A OCC, and the Okanogan County  
16 Zoning Map adopted by Okanogan County Ordinance 2016 – 4 and the Draft EIS and Final EIS.

17 12.7 That the Court retain jurisdiction to ensure Okanogan County’s compliance with  
18 the Court’s order and with the PEA, GMA, and SEPA.

19 12.8 That the Court award Petitioners such costs and fees as the Court determines are  
20 equitable and just.

21 12.9 That the Court grant permission to amend the pleadings to add additional claims  
22 or parties to conform to the proof offered at the time of the hearing or trial.

23 12.10 That the Court grant any other relief the Court finds necessary and proper.  
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DECLARED, VERIFIED, and signed on this 15<sup>th</sup> day of August 2016,

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Tim Trohimovich, WSBA No. 22367  
Attorney for Futurewise and Methow Valley Citizens' Council

