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CHARLETT BIRDWELL
OKANOGAN COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF OKANOGAN

METHOW VALLEY CITIZENS' COUNCIL
and FUTUREWISE,

Petitioners/Plaintiffs,

vs.

OKANOGAN COUNTY,

Respondent/Defendant

NO. 15-2-00005-7, 16-2-00313-5

MEMORANDUM OPINION AND
ORDER STRIKING WRIT OF
REVIEW, DENYING SUMMARY
JUDGMENT AND/OR DISMISSAL,
REMANDING FOR FURTHER
PROCEEDINGS AND STAYING
MATTER

THIS MATTER is before the Court on Okanogan County's Motion for Summary Judgment and/or Motion to Dismiss, and at the same time to strike that part of the Petitioner's complaint that seeks a Writ of Review. That Writ was ordered in an earlier stipulation between the parties.

BACKGROUND

In March 2016, the Court denied the parties' cross motions for summary judgment in 15-2-00005-7, in part to see whether the county's subsequent adoption of a new zoning ordinance (as envisioned by the earlier adopted comprehensive plan and interim zoning ordinance) was sufficient, or not, under applicable law. The subsequent zoning ordinance

1 adoption, adopted in July last year, is the subject of the 16-2-00313-5 case. The county now
2 seeks to have both matters addressed.

3 The record reflects that Mr. Tim Trohimovich, Attorney at Law, represents
4 Petitioners/plaintiffs Methow Valley Citizens Council (hereafter MVCC) and Futurewise; Mr.
5 Alexander Mackie, Attorney at Law and Special Deputy Prosecutor, and Mr. Albert Lin, Civil
6 Deputy Prosecutor, represent Respondents/defendants Okanogan County. The record also
7 reflects that another case filed by the Yakama Nation, Okanogan County cause no. 16-2-00312-
8 7, similarly challenged county actions—though not exactly the same--as the two
9 MVCC/Futurewise cases before the Court. The three cases were consolidated by agreed order
10 on September 1, 2016. The Yakama case was dismissed in March pursuant to a formal
11 stipulation between the Tribe and Okanogan County. See Stipulation and Proposed Order of
12 Dismissal without Prejudice, dated March 21, 2017, attached hereto and incorporated herein as
13 Exhibit 1.

14 In the 15-2-00005-7 case, MVCC and Futurewise seek relief on multiple grounds: 1.
15 Judicial review under RCW 36.70C; 2. Declaratory Judgment under RCW 7.24; 3.
16 Declaratory Judgment under Article IV, Section 6 of the Washington State Constitution; 4.
17 Writ of Certiorari under RCW 7.16; and 5. Writ of Certiorari under Article IV, Section 6 of the
18 Washington State Constitution.

19 The 16-2-00313-5 case seeks near-identical grounds for relief. The only additional
20 basis alleged seeks a Writ of Review under Article IV, Section of the Washington Constitution
21 or common law.

22 For its part, the Respondent/defendant Okanogan County claims both
23 MVCC/Futurewise cases involve review of legislative decisions of the Board of County
24

1 Commissioners in adopting an area wide policy plan (Comprehensive Plan pursuant to RCW
2 36.70.330 and corresponding zoning ordinance and maps) and, as such, are not subject to the
3 writ of review process. The county claims the holdings of *Raynes vs. City of Leavenworth*, 118
4 Wn.2d 237 (1992) and *Snohomish County Property Rights vs. Snohomish County* 76 Wn.App.
5 44 (1994) leave this Court without jurisdiction. Those holdings are based in part on the
6 recognition that courts do not engage in the policy discussions and reasons that are part of the
7 planning and zoning adoption process. Since Petitioner/plaintiff's materials do not
8 persuasively argue otherwise, the Court assumes they have "abandoned any claim to relief
9 under the writ statute..." See Memorandum in Support of Okanogan County Motion to
10 Dismiss and/or Motion for Summary Judgment, page 3, line 14.
11
12

13 Similarly, the county argues judicial review is also not allowed under the so-called Land
14 Use Protection Act (LUPA), RCW 36.70C. It is unclear whether adoption of a comprehensive
15 plan and implementing zoning ordinance constitute an "area-wide rezone" as an excluded
16 decision barring judicial review as contended by the county; however, it stands to reason given
17 the policy discussions set forth in the cases cited previously. In other words, the Court should
18 refrain from looking behind the reasons why decisions were made one way or another, in the
19 context of LUPA, for the previously mentioned reasons.
20

21 Ultimately, the parties seem to agree the matter is before this Court pursuant to the
22 Declaratory Judgment Act, RCW 7.24, although they characterize the hearing differently:
23 Counsel for MVCC/Futurewise calls it a trial; counsel for the county request summary
24 judgment, and dismissal, pursuant to civil rules. Regardless, for purposes of declaratory relief,
25 the court must have before it a "justiciable controversy" to gain jurisdiction under the
26 declaratory judgment statute. See Petitioner/plaintiff's Opening Brief, page 14, citing *DiNino*
27

1 v. *State*, 102 Wn.2d 327, 330 (1984). Such a controversy includes, among other things, “an
2 actual, present and existing dispute, as distinguished from a possible...moot disagreement...
3 and a [situation where] judicial determination ... will be final and conclusive.” *Id.* citing
4 *Diversified Indus. Dev. Corp. v. Ripley*, 82 Wn.2d 811, 815 (1973). These requirements are the
5 basis of the Court’s decision and ruling later in this memorandum.
6

7 On June 5, 2017, the Court inquired of counsel whether a 2016 Court of Appeals
8 decision that vacated an Okanogan County ordinance related to ATV usage of county roads had
9 any relevance to the issues presented in these cases.

10 Mr. Lin, writing for the county, points out that the decision did not require any revision
11 or reconsideration of the county’s review of its zoning ordinance. Rather the decision
12 addressed a county determination of non-significance (DNS), meaning no environmental
13 impact statement was necessary, before adoption of the ATV ordinance in question. The court
14 ruled the DNS decision was clearly erroneous and vacated the ordinance. Despite the
15 conclusion, counsel contends the current cases are like the ATV case because the court’s
16 jurisdiction in both is limited to issues identified by the declarations of specific parties.
17

18 In MVCC/Futurewise’s response, Mr. Trohimovich disagrees with the county’s
19 contention about what this Court must consider. He claims the ATV case involved decisions
20 on SEPA and the substantive claim that were based on the county record, in addition to
21 individual declarations, as the Court must consider in this matter. And consistent with the ATV
22 case, Petitioner/plaintiffs ask the Court to rule on the record; that the Comprehensive Plan
23 checklist and DNS violate SEPA; and therefore the enactments are void.
24

25 One thing is clear from counsel’s responses to the June 5 request of the Court: these
26 parties disagree about what this Court can, or must, consider in ultimately deciding similar, but
27

1 different, issues. The ATV ruling by itself is somewhat helpful because it involved a specific
2 topic (ordinance), as opposed to an area-wide rezone, but the fact neither party addressed it
3 earlier suggests the case offers little guidance. It is unfortunate the Court forgot to ask the
4 question at the time of the May 1 hearing as it would have allowed a quicker and more efficient
5 means of response.
6

7 OPINION AND ORDER

8 Writ of Review Based on the rulings in the *Raynes* and *Snohomish County Property*
9 *Rights*, cited above, the Court hereby strikes the Writ of Review previously stipulated to
10 between the parties. Pursuant to the terms of the Stipulation and Pre-Hearing Order entered
11 September 1, 2016, Okanogan County reserved the right to object to any review of the
12 legislative decision-making process involved in adoption of the comprehensive plan and zoning
13 ordinance in question in the cases. *See* Stipulation and Pre-Hearing Order attached hereto and
14 incorporated herein as Exhibit 2. Case law is controlling and dispositive of the issue and the
15 Court rules accordingly in striking the Writ.
16

17 Declaratory Judgment Okanogan County seeks summary judgment and dismissal of the
18 MVCC and Futurewise complaint. Plaintiff/petitioners characterize the matter before the Court
19 as a trial. Both agree the Court should proceed under RCW 7.24 and consider relief under the
20 declaratory judgment act. The county argues that under the rules for summary judgment,
21 declarations submitted by Plaintiff/petitioners create no genuine issue of material fact, they are
22 speculative and insufficient to avoid the court ruling as a matter of law that their claims should
23 be dismissed; MVCC and Futurewise disagree. Unquestionably, the parties provide thorough
24 briefing of their respective positions regarding the merits of the cases. At this time though, and
25 for reasons set forth below, the Court declines to address summary judgment and dismissal;
26
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28 MEMORANDUM OPINION AND ORDER

Page 5

1 likewise, the Court does not reach the merits of the matter as no justiciable controversy exists
2 and declaratory judgment is not possible.

3 It is clear from the arguments presented that an actual dispute exists between the parties.
4 Although ultimately both parties probably have similar interests, how those interests are
5 addressed or protected is the source of controversy. Those interests (water, agriculture, fire
6 protection among others) are direct and substantial. Whether declarations of MVCC members
7 (and Futurewise where applicable) are sufficient or not is to be determined. A judicial
8 determination can and will be final and conclusive. As a legal proceeding, declaratory
9 judgment is appropriate; however, the workings of the county's stipulation with the Yakama
10 Nation, *see* Exhibit 1, precludes it right now.

11 The parties will recall the Court commenting at the end of the May 1 hearing that
12 indeed a ruling was necessary to resolve the issues now as opposed to later, i.e. staying the
13 matter. This was in spite of earlier questions about a newspaper article and quotes attributed to
14 a county commissioner, which are not part of the record in the cases, about an agreed review of
15 the comprehensive plan and zoning ordinance. The Court also inquired about staying
16 proceedings based on MVCC/Futurewise's requests. Counsel for the county declined for
17 multiple reasons, including the need for certainty with lenders and/or builders insofar as the
18 county's comprehensive plan and zoning and to avoid the appearance of giving
19 Petitioner/plaintiffs priority in terms of consideration of their complaints and/or interests over
20 others. This made sense given Petitioner/plaintiff's assertions about terms of any stay and
21 wanting a list of the issues the county will consider. *See* Petitioner/plaintiff's Reply Brief, page
22 10, lines 9-10. Now though, the Court finds the county's claims and concerns are directly
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1 contrary to the terms of the Stipulation in Exhibit 1 and, contrary to the Court’s indications
2 about ruling on May 1, dictate waiting for a court ruling.

3 Paragraph 2 of the Stipulation provides that Okanogan County “shall take all necessary
4 action(s) to initiate a review” of the comprehensive plan and zoning ordinance. The review
5 shall be “*ab initio*”... “meaning that any conclusions drawn in prior environmental review
6 documents shall be open to new review in any subsequent proceeding.”
7

8 Paragraph 3 is also relevant to the Court’s decision. In it, the county “affirms its
9 intention *to give serious consideration* to all issues raised by the Yakama Nation...” (Emphasis
10 added)

11 In paragraph, 4, the county agrees to promptly set up an online tracking system for all
12 land use applications received and related decisions or hearings on the applications.
13

14 Finally, in paragraph 5, the county agrees to (1) *repeal, in their entirety*, the current
15 comprehensive plan and zoning ordinance and (2) *adopt a new* plan and zoning ordinance.
16 (Emphasis added) While the county is not obligated to make any changes, the purpose in
17 adopting a new comprehensive plan and a new zoning ordinance is to avoid any and all
18 potential prejudice or limitation to the parties’ future claims and defenses. This action is to be
19 completed by December 31, 2018.
20

21 The specific stipulations cited directly contradict the stated reasons of the county for
22 opposing a stay. Certainty for lenders and/or builders is no different if the case is stayed for
23 MVCC/Futurewise than as it was agreed with the Yakama Nation. Further, the County
24 expressly agreed to give serious consideration to all issues raised by the Yakama Nation, thus
25 appearing to give them a front row seat in future discussions and clearly prioritizing their
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1 concerns over others. This Court sees no legitimate reason not to give equal consideration to
2 all issues, regardless of who raises them.

3 In conclusion, there are two reasons the Court today declines to enter a declaratory
4 judgment:

5 First, possible moot disagreement precludes the need for a judicial determination. In
6 other words, while the parties disagree at this time about county actions, they may agree later
7 given the county's commitment to review the entire comprehensive plan and zoning ordinance
8 process. Stated yet another way, given the first requirement of a justiciable controversy, the
9 case does not yet provide the "mature seeds" necessary; it is not yet ripe for consideration. It
10 may well be that after December 31, 2018 the matter comes back before the Court; however, it
11 is not appropriate at this time.
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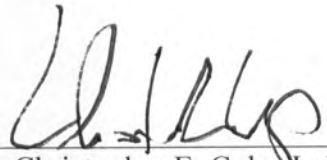
13 Second, focusing on the last finding required for a justiciable controversy, any judicial
14 determination today will not necessarily be final and conclusive. For example, if the Court
15 today ruled in favor of Petitioner/plaintiffs, struck down county actions and remanded the case
16 for changes, that ruling could be no different in effect than what the county has already agreed
17 to do in the referenced stipulation. Alternatively, a ruling favorable to the county would not
18 negate the county's obligation to still review the entire process and, potentially, end up with a
19 new plan and ordinance—which could result in additional litigation. Either way, this Court's
20 ruling will not necessarily result in an end to the matter. Without finality, declaratory judgment
21 is not appropriate.
22

23
24 Finally, the Court rules under the provisions of RCW 7.24.060 and 190. In a situation
25 where, as here, declaratory judgment would not terminate the controversy, the court may refuse
26 to rule. And in its discretion, the Court may stay any court proceedings prior to final judgment
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in order to secure the benefits and preserve and protect the rights of all parties. To their credit, the parties' stipulation secures the benefits and rights contemplated by the allowances in sections 060 and 190. Consequently, in order to allow the entire process to play out and to avoid the need for what is potentially an unnecessary ruling, the Court stays this matter until the new comprehensive plan and zoning ordinance as contemplated by the Stipulation in Exhibit 1 is adopted or January 1, 2019, whichever is sooner. At that time, if the parties still disagree it will then be appropriate to seek declaratory judgment.

SO ORDERED this 21st day of June, 2017



Christopher E. Culp, Judge

X

Exhibit 1

Record Certification: I certify that the electronic copy is a correct copy of the original, on the date filed in this office, and was taken under the Clerk's direction and control. Okanogan County Clerk, by CO\sspeiker Deputy - # pages 7 - 3/22/2017 8:50:51 AM

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR OKANOGAN COUNTY

CONFEDERATED TRIBES AND BANDS OF
THE YAKAMA NATION,
Plaintiff,
v.
OKANOGAN COUNTY,
Defendant.

No. 16-2-00312-7

**STIPULATION AND PROPOSED
ORDER OF DISMISSAL
WITHOUT PREJUDICE**

STIPULATION

Pursuant to Civil Rule 41(a)(1)(A), Plaintiff, the Confederated Tribes and Bands of the Yakama Nation ("Yakama Nation"), and Defendant Okanogan County ("County"), through their counsel, hereby stipulate that the above-entitled actions should be dismissed, without prejudice and without costs to either Party.

The Parties further stipulate as follows:

1. This Stipulation is made for the dismissal of the above-captioned action, which concerns Okanogan County Code ("OCC") Title 17A (the "Zoning Ordinance"). The dismissal is made without prejudice to any future claims or defenses by any Party in any subsequent proceeding that concerns the Zoning Ordinance (either in its present form, or as amended), or any associated environmental review. This includes, without limitation, any future claims based on Okanogan County's ("County") actions or failure(s) to act.

1 2. Within sixty (60) days from the date of the execution of this Stipulation and
2 associated Order, the County shall take all necessary action(s) to initiate a review of:

- 3 a. Okanogan County's Comprehensive Plan ("Comprehensive Plan"); and
4 b. Okanogan County's Title 17A ("Zoning Ordinance"); and
5 c. The environmental review of the Comprehensive Plan and the Zoning
6 Ordinance under Washington's State Environmental Policy Act and applicable County
7 ordinances. Such environmental review shall be "*ab initio*" to the commencement of the
8 environmental review processes leading to the adoption of the current Comprehensive Plan and
9 Zoning Ordinance, meaning that any conclusions drawn in prior environmental review documents
10 shall be open to new review in any subsequent proceeding.

11 3. In conducting its reviews of the Comprehensive Plan and Zoning Ordinance, the
12 County hereby affirms its intention to give serious consideration to all issues raised by the
13 Yakama Nation, along with any issues raised by the general public, other governments, or County
14 staff or officials.
15

16 4. During the County's review of its Comprehensive Plan and Zoning Ordinance, the
17 County will continue to process land use permits and other development applications under the
18 applicable County ordinances presently in place, and as amended. Plaintiff reserves any rights it
19 may have to appeal any land use permit or development application determinations made by the
20 County under such ordinances; and nothing in this Stipulation is intended or shall be interpreted
21 to prejudice or limit such claims or any defenses the County may have thereto. The County
22 agrees to promptly implement an online, public permit tracking system identifying all land use
23 applications as received, and any associated decisions or scheduled hearings.
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1 • 5. No later than December 31, 2018, the County shall take final legislative action(s)
2 to (a) repeal, in their entirety, the current Comprehensive Plan (as adopted by Okanogan County
3 Resolution 119-2014 and reaffirmed by Okanogan County Resolution 31-2015) and current
4 Zoning Ordinance (as adopted by Okanogan County Ordinance 2016-4, and including all
5 associated zoning maps), and (b) adopt a new Comprehensive Plan and new Zoning Ordinance
6 (including new zoning maps). The County's obligation to repeal in full the current
7 Comprehensive Plan and Zoning Ordinance, and to take final legislative action to adopt a new
8 Comprehensive Plan and a new Zoning Ordinance, is intended by the Parties to avoid any and all
9 potential prejudice or limitation to the Parties' future claims and defenses; and shall not be
10 interpreted to obligate the County to make any specific changes or updates to the Comprehensive
11 Plan or Zoning Ordinance.
12

13 6. The Yakama Nation and the County are working to enhance the government-to-
14 government relationship between their respective governing agencies and to work together on
15 issues where interests of their constituents intersect. The Yakama Nation and the County will
16 each designate appropriate representatives for the receipt of these government-to-government
17 communications. Any legal notice to the Yakama Nation pursuant to this agreement shall be via
18 US Mail as follows:
19

20 Yakama Nation Tribal Council
21 Attn: Tribal Council Chairman
22 P.O. Box 151 / 401 Fort Road
23 Toppenish, WA 98948

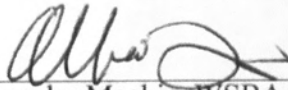
24 With a courtesy copy to:

25 Yakama Nation Office of Legal Counsel
Attn: Lead Attorney
P.O. Box 150 / 401 Fort Road
Toppenish, WA 98948

1 Stipulated and agreed to this 20th day of March, 2017.

2 

3 R. Joseph Sexton, WSBA No. 38063
4 Amber Penn-Roco, WSBA No. 44403
5 Kathryn E. Marckworth, WSBA No. 46964
6 Attorneys for the Plaintiff, Yakama Nation

7 

8 Alexander Mackie, WSBA No. 6404
9 Albert H. Lin, WSBA No. 28066
10 Attorneys for the Defendant, Okanogan County

ORDER OF DISMISSAL

1 Pursuant to the foregoing Stipulation and under the authority of Civil Rule 41(a)(1)(A),
2
3 the Court hereby:

4 ORDERS that the above-entitled action is DISMISSED in its entirety, without prejudice,
5 and without costs as to any party; and

6 ORDERS that the forgoing Stipulation preserves certain rights to the Parties, which shall
7 be protected for all Parties for all purposes; and

8
9 ORDERS that within sixty (60) days from the date of the execution of this Order of
10 Dismissal, the County shall take all necessary action(s) to initiate a review of:

11 (1) Okanogan County’s Comprehensive Plan; and

12 (2) Okanogan County Code Title 17A; and

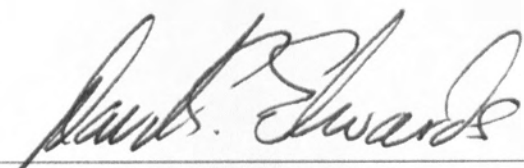
13 (3) An “*ab initio*” environmental review of each under Washington’s State Environmental
14 Policy Act and applicable County ordinances; and

15
16 ORDERS that, no later than December 31, 2018, the County shall take final legislative
17 action(s) to (a) repeal, in their entirety, the current Comprehensive Plan (as adopted by Okanogan
18 County Resolution 119-2014 and reaffirmed by Okanogan County Resolution 31-2015) and
19 Zoning Ordinance (as adopted by Okanogan County Ordinance 2016-4, and including all
20 associated zoning maps), and (b) adopt a new Comprehensive Plan and new Zoning Ordinance
21 (including new zoning maps).; and

22 ORDERS that the County may continue to process land use permits and development
23 applications under applicable County ordinances, as presently in place or as may be amended
24 through the legislative process, without prejudice to any associated claims of any Party.
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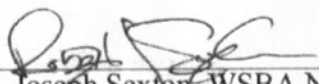
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Dated this 21 day of March, 2017.



JUDGE CHRISTOPHER CULP
OKANOGAN COUNTY SUPERIOR COURT

Presented by:



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Amber Penn-Roco, WSBA No. 44403
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Attorneys for the Plaintiff, Yakama Nation

Exhibit 2.

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FILED

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CHARLEEN GROOMES
OKANOGAN COUNTY CLERK

Record Certification - I certify that the electronic copy is a correct copy of the original, on the date filed in this office, and was taken under the Clerk's direction and control.
Okanogan County Clerk,
by Charleen Groomes - # pages 12

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF OKANOGAN

Methow Valley Citizens Council and Futurewise
Plaintiffs

v.

Okanogan County

Defendant

No. 16-2-00313-5

No. 16-2-00312-7

Confederated Tribes and Bands of Yakama Nation
Plaintiffs,

v.

Okanogan County

Defendant

No. 15-2-00005-7

Stipulation and Pre-Hearing Order

and

Methow Valley Citizens Council and Futurewise
Plaintiffs

v.

Okanogan County

Defendant.

This matter comes before the Court on the stipulation of the parties to these proceedings, including:

Alexander Mackie and Albert Lin, Counsel for Okanogan County;

Stipulation and Pre-Hearing Order - 1

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Okanogan, WA 98840
(509) 422-7280 FAX: (509) 422-7290

1 Tim Trohimovich, Counsel for Methow Valley Citizens Council and Futurewise;
2 and
3
4 R. Joseph Sexton, Amber Penn-Roco, and Kathryn E. Marckworth, Counsel for
5 the Confederated Tribes and Bands of the Yakama Nation.
6

7 The parties do stipulate and agree as follows:

8 Consolidation of Claims Concerning Okanogan County Zone Code Updates & EIS:
9

- 10 1. The Methow Valley Citizens Council, Futurewise, and the Confederated Tribes
11 and Bands of the Yakama Nation ("Yakama Nation") have appealed the adoption
12 of Okanogan County Ordinance 2016-4 (hereafter "Zoning Ordinance"), which
13 adopted updates to the Okanogan County Zone Code, and its associated State
14 Environmental Policy Act ("SEPA") environmental impact statement. See
15 *Methow Valley Citizens Council and Futurewise v. Okanogan County*, Cause No.
16 16-2-00313-5 (hereafter "Futurewise II"); *Confederated Tribes and Bands of the*
17 *Yakama Nation v. Okanogan County*, Cause No. 16-2-00312-7 (hereafter
18 "Yakama Nation I").
19
20 2. Futurewise II and Yakama Nation I contain similar and differing legal issues with
21 the Zoning Ordinance. The resolution of these issues will require the
22 examination of the same record associated with the Zoning Ordinance. The
23 record will be brought forward to this Court under a Writ of Review, Chapter 7.16
24 RCW; and Declaratory Judgment Request, Chapter 7.24 RCW, and/or other
25 proper claims under applicable law.
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1 3. To promote judicial efficiency, the parties agree that the proceedings of
2 Futurewise II and Yakama Nation I shall be consolidated for all claims, issues,
3 and purposes relating to the Zoning Ordinance and its associated SEPA
4 environmental review.
5

6 Consolidation of Claims Concerning Okanogan County Comprehensive Plan Updates:

7 4. Futurewise II, which concerns Methow Valley Citizens Council and Futurewise's
8 appeal of the Zoning Ordinance, shall also be consolidated with their earlier
9 appeal of Okanogan County's updates to its Comprehensive Plan, in the matter
10 of *Methow Valley Citizens Council and Futurewise v. Okanogan County*, Cause
11 No. 15-2-00005-7 (hereafter "Futurewise I") for all purposes identified in the trial
12 court's decision in that case, dated March 11, 2016 (Culp J), which denied
13 motions for summary judgment, and for all such other matters as may be
14 appropriate under the pleadings and Civil Rules in that case.
15

16 5. The consolidation of Futurewise I and Futurewise II, and of Futurewise II and
17 Yakama Nation I, shall not confer on the Yakama Nation any right to speak on
18 claims related to the Okanogan County Comprehensive Plan update. The
19 Yakama Nation only appealed the Zoning Ordinance and its associated SEPA
20 environmental review, and did not appeal the Comprehensive Plan updates.
21 Therefore, the Yakama Nation may only speak on issues regarding the claims
22 associated with the Zoning Ordinance and its associated SEPA environmental
23 review, despite the administrative consolidation of the various proceedings.
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1 Scheduling & Record Production:

2 6. Okanogan County's Answers in Futurewise II and Yakama Nation I shall be filed
3 on or before September 12, 2016.
4

5 7. To facilitate proceedings, the parties stipulate to the issuance of a Writ of
6 Review, under Chapter 7.16 RCW, to effect the production of the record related
7 to the Zoning Ordinance and its associated SEPA environmental review. The
8 parties stipulation regarding this Writ of Review is conditioned upon all of the
9 following conditions:
10

11 a. The Writ of Review shall be issued by the Court on or after September 1,
12 2016.

13 b. The Writ of Review shall not contain any stay on the proceedings or the
14 effective date of the Zoning Ordinance, except such stays as may be
15 agreed to by express stipulation of the parties herein.
16

17 c. The Writ of Review shall require Okanogan County to produce the
18 complete record to the Court on or before October 15, 2016.

19 d. However, Okanogan County, for good cause shown, may request an
20 extension of the delivery date beyond October 15, 2016, if some materials
21 are not completely available; provided that Okanogan County will share
22 the portion of the record available on October 15, 2016, if such request is
23 made by the Court or by any party.
24

25 e. Only the Court shall receive a paper copy of the record; all other parties
26 shall receive electronic copies. Any party ordering paper transcripts of the
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1 record, or any portion thereof, shall pay Okanogan County's applicable
2 copying fees.

3
4 8. Plaintiffs and Defendants shall have 15 days following the receipt of the final
5 Zoning Ordinance record to submit any identified omissions to the Court.
6 Omissions must be identified with sufficient specificity, and include information
7 about when and how the documents or materials were submitted to Okanogan
8 County, to be entered into the record. All parties reserve the right to object to the
9 inclusion of any documents or materials proposed if they believe the materials
10 are outside the record of review for the Zoning Ordinance.
11

12 9. Plaintiffs shall have 45 days following their receipt of the record, or 30 days after
13 all omitted materials are provided, whichever is later, to file their opening brief(s)
14 with the Court.
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16 10. Any motions to include matters outside the record, or for summary judgment
17 materials on matters outside the record, will be contained in the Plaintiffs' brief(s).
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19 11. Okanogan County shall have 45 days following their receipt of all Plaintiffs'
20 brief(s) to submit its response brief to the Court, and to respond to any motions
21 or make any motions of its own. Provided, however, that if Plaintiffs' brief(s)
22 collectively exceed 100 pages, Okanogan County shall have 60 days to respond.
23 The Plaintiffs shall have 20 days to file replies to Okanogan County's brief and
24 any motions.
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26 12. The parties will seek to identify a date (or dates) for argument on the record.
27 Argument may include: (1) arguments based on the record, produced under the
28 Writ of Review, Chapter 7.16 RCW (concerning the Zoning Ordinance and its

1 SEPA environmental review); (2) arguments based on the record, under the
2 Uniform Declaratory Judgments Act, Chapter 7.24 RCW (concerning the
3 Comprehensive Plan); and (3) arguments outside of these processes, only if
4 those arguments are included in the original briefs.
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6 13. There shall be no page limit on the brief(s) due to the size and complexity of the
7 issues raised. Each section of the brief(s) shall be identified as pertaining to
8 either the Futurewise I, or the Futurewise II and Yakama Nation I matter. This
9 will serve to keep the issues in those two matters and records separate for
10 purposes of the Court's decisions on both matters.
11

12 14. All matters not justiciable under either (1) the Writ of Review, Chapter 7.16 RCW
13 (concerning the Zoning Ordinance and its SEPA environmental review) or (2) the
14 Uniform Declaratory Judgments Act, Chapter 7.24 RCW (concerning the
15 Comprehensive Plan), shall be stayed until a decision is issued by the Court on
16 these matters. The stay shall include all motions, discovery, and proceedings
17 addressing legislative decisions of Okanogan County that cannot be considered
18 under a Writ of Review or under the Uniform Declaratory Judgments Act. See
19 *John Raynes v. City of Leavenworth*, 118 Wn.2d 237, 821 P.2d 1204 (1992) and
20 *City of Fed. Way v. King Cty.*, 62 W. App. 530, 534-35, 815 P.2d 790, 793
21 (1991). Regardless of the stay, the Yakama Nation reserves the right to petition
22 the Court for emergency relief with respect to the enforcement of the Zoning
23 Ordinance.
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27 15. Okanogan County stipulates that the consolidated pleadings referenced above
28 challenge both the SEPA proceedings under Chapter 43.21C RCW as well as

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the governmental action (Zoning Ordinance) as required by RCW 43.21C.075, but reserves the right to object to any review of the legislative decision, adoption of the Zoning Ordinance, under the Writ of Review standards of Chapter 7.16 RCW rather than the declaratory judgment standards of Chapter 7.24 and the Court's decision in *Raynes v. City of Leavenworth supra*.

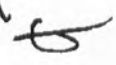
16. The stipulation is without prejudice to any claim or defense any party may wish to make in any of the proceedings.

17. Because Mr. Alexander Mackie, Counsel for Okanogan County, will be out of the country from September 10, 2016 to the end of October, 2016, the parties agree to bring no matters before the Court which require Counsel for Okanogan County's attention until November 15, 2016, or later without the written consent of Co-Counsel, Mr. Albert Lin, whose consent may be refused for any reason. Notwithstanding the foregoing, this section shall not operate to limit the right of any party to petition the Court for emergency relief in any matter concerning the enforcement of the Zoning Ordinance.

Approved



Tim Trohimovich WSBA# 22367

Counsel for Methow Valley Citizens ^{Council} Counsel 

Amber Penn-Roco WSBA# 44403

Kathryn E. Marckworth, WSBA# 46964

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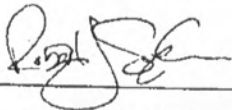
Approved

Tim Trohimovich WSBA# 22367
Counsel for Methow Valley Citizens Council

Amber Penn-Roco WSBA# 44403

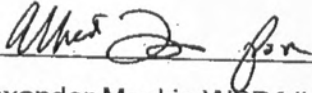
Kathryn E. Marckworth, WSBA# 46964

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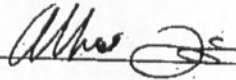
R. Joseph Sexton WSBA# 38063

Counsel for Confederated Tribes and Bands of the Yakama Nation



Alexander Mackie WSBA# 6404

Counsel for Okanogan County

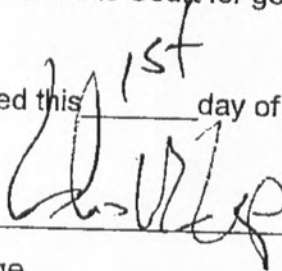


Albert Lin WSBA# 28066

ORDER ON STIPULATION

This matter having come before the Court on 9/11/16 at the stipulation of all parties, it is therefore ordered that the dates, terms and agreements of the stipulation set forth above shall be the Prehearing Order of this Court for all purposes and may be amended only with the consent of the parties and this Court for good cause shown.

Dated this 11th day of September, 2016



Judge