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

METHOW VALLEY CITIZENS'
COUNCIL and FUTUREWISE,

Petitioners/Plaintiffs,

v.

OKANOGAN COUNTY

Respondent/Defendant.

No. **15-2-00005-7**

**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**

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

I. NATURE OF THE ACTION

1.1 This action includes a complaint and petition for declaratory judgment filed under the Uniform Declaratory Judgments Act, chapter 7.24 RCW; a complaint and petition for

1 declaratory judgment filed under the constitutional writ provisions of Article IV, Section 6 of the
2 Washington State Constitution; a complaint and petition for review filed under the Land Use
3 Petition Act, chapter 36.70C RCW; a complaint and petition for a writ of certiorari under chapter
4 7.16 RCW; and a complaint and petition for a writ of certiorari under Article IV, Section 6 of the
5 Washington State Constitution.

6
7 1.2 Plaintiffs/Petitioners seek a determination that the revised Okanogan County
8 Comprehensive Plan of 2014, the Land Use Designation Map, and the Essential Facilities Map
9 adopted by Okanogan County Resolution 119-2014 are invalid and in violation of the
10 requirements of the Planning Enabling Act (chapter 36.70 RCW), the Growth Management Act
11 (chapter 36.70A RCW), the State Environmental Policy Act (chapter 43.21C RCW) and its
12 implementing regulations, and other applicable provisions of state law. Okanogan County
13 Resolution 119-2014 is attached as Exhibit A to this Complaint and Petition.
14

15 1.3 Plaintiffs/Petitioners seek a determination that Methow Valley More Completely
16 Planned Area Sub-Unit A adopted by Okanogan County Resolution 120-2014 is invalid and in
17 violation of the requirements of the Planning Enabling Act (chapter 36.70 RCW), the Growth
18 Management Act (chapter 36.70A RCW), the State Environmental Policy Act (chapter 43.21C
19 RCW) and its implementing regulations, and other applicable provisions of state law. Okanogan
20 County Resolution 120-2014 is attached as Exhibit B to this Complaint and Petition.
21

22 1.4 Plaintiffs/Petitioners seek a determination that the Methow Valley More
23 Completely Planned Area subarea plan adopted by Resolution 121-2014 is invalid and in
24 violation of the requirements of the Planning Enabling Act (chapter 36.70 RCW), the Growth
25 Management Act (chapter 36.70A RCW), the State Environmental Policy Act (chapter 43.21C
26

1 RCW) and its implementing regulations, and other applicable provisions of state law. Okanogan
2 County Resolution 121-2014 is attached as Exhibit C to this Complaint and Petition.

3 1.5 Plaintiffs/Petitioners seek a determination that the Interim Zone Code and Interim
4 Zone Map adopted by Okanogan County Ordinance 2014-16 are invalid and in violation of the
5 requirements of the Planning Enabling Act (chapter 36.70 RCW), the Growth Management Act
6 (chapter 36.70A RCW), the State Environmental Policy Act (chapter 43.21C RCW) and its
7 implementing regulations, and other applicable provisions of state law. Okanogan County
8 Ordinance 2014-16 is attached as Exhibit D to this Complaint and Petition.

10 1.6 Plaintiffs/Petitioners seek a determination that the Okanogan County Hearing
11 Examiner Decision of November 16, 2014, which upheld the withdrawal of the determination of
12 significance and the issuance of a determination of nonsignificance for the comprehensive plan,
13 subarea plans, and Interim Zone Code and Interim Zone Map violated Okanogan County Code
14 (OCC) 14.04.220, the State Environmental Policy Act (chapter 43.21C RCW), and chapter 197-
15 11 WAC. A copy of the withdrawal of the determination of significance and the determination of
16 nonsignificance is attached as Exhibit E to this Complaint and Petition. A copy of the Hearing
17 Examiner's Decision is attached as Exhibit F to this Complaint and Petition.

19 1.6 The County's comprehensive plan, subarea plans, and interim zoning regulations
20 do not comply with the Planning Enabling Act (chapter 36.70 RCW), the Growth Management
21 Act (chapter 36.70A RCW), the State Environmental Policy Act (chapter 43.21C RCW) and its
22 implementing regulations, the Shoreline Management Act (chapter 90.58 RCW) and threaten
23 surface and ground water resources in Okanogan County to the detriment and prejudice of
24 Petitioners and the people of the State of Washington. The designation of natural resource lands
25 of long-term commercial significance does not comply with the Growth Management Act and
26

1 2.3 If a growth management hearings board does not have jurisdiction to review a
2 land use decision, appeal of that decision may be filed in superior court under the Land Use
3 Petition Act, RCW 36.70C. *Wenatchee Sportsmen Association v. Chelan County*, 141 Wn.2d
4 169, 178, 4 P.3d 123 (2000).

5 2.4 Because the Okanogan County comprehensive plan, interim zoning, and the
6 SEPA decisions on those actions is not subject to review by a growth management hearings
7 board, or any other quasi-judicial body created by state law, a petition for judicial review may lie
8 under RCW 36.70C, the Land Use Petition Act (LUPA).

9 2.5 Alternatively, if the Court lacks jurisdiction to review the Okanogan County
10 comprehensive plan, interim zoning, and the SEPA decisions on those actions under RCW
11 36.70C, the Court has jurisdiction to review the resolutions and ordinance pursuant to RCW
12 7.24, RCW 7.16, or the inherent power of this Court under article 4, section 6 of the Washington
13 State Constitution.

14 2.6 Venue properly lies in the Okanogan County Superior Court pursuant to RCW
15 36.01.050.

16 III. PARTIES, STANDING, AND VIOLATIONS

17 3.1 Plaintiff/Petitioner Methow Valley Citizens' Council (MVCC) is a 501(c)(3)
18 nonprofit corporation incorporated in the State of Washington. The mission of the Methow
19 Valley Citizens' Council is to raise a strong community voice for protection of the Methow
20 Valley's natural environment and rural character.

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

10 3.3 Plaintiff/Petitioner Methow Valley Citizens' Council's mailing address is:

11 Methow Valley Citizens' Council
12 P.O. Box 774
13 Twisp, Washington 98856
14 Office phone (generally Tues, Wed, Thurs): 509-997-0888
15 Email: mvcc@mvcitizens.org

16 3.4 Plaintiff/Petitioner Futurewise is a 501(c)(3) nonprofit corporation incorporated in
17 the State of Washington. Futurewise is a statewide public interest group working to promote
18 healthy communities while protecting farmland, forests, and shorelines today and for future
19 generations.

20 3.5 Futurewise has participation and representative standing. Futurewise has members
21 who are landowners and residents of Okanogan County and who are affected and aggrieved by
22 the County comprehensive plan land use element's failure to protect the quality and quantity of
23 groundwater used for public water supplies as required by RCW 36.70.330, the failure of the
24 comprehensive plan and interim zoning to address wildfire hazards and landslide hazards
25 aggravated by wildfires, the County's failure to consider other environmental impacts as required
26 by the SEPA, and to adequately designate natural resource lands as required by the GMA.

1 Futurewise’s members are prejudiced in that their property is covered by the revised
2 comprehensive plan and interim zoning and so have standing under RCW 36.70C.060(1).
3 Futurewise’s members are prejudiced in that their properties depend on wells and surface
4 withdrawals for domestic water supply, irrigation, and stock watering and are adversely affected
5 by the County’s failure to adopt a comprehensive plan and interim zoning that protects surface
6 and ground water as the Planning Enabling Act (PEA) requires. Futurewise’s members are
7 prejudiced in that their properties may be adversely impacted by wildfires, landslides, surface and
8 ground water impacts, and other environmental impacts that were not adequately considered by
9 the County in analyzing the environmental impacts of the comprehensive plan and interim
10 zoning as SEPA requires. Futurewise’s members are prejudiced in that their properties may be
11 adversely impacted by because their farm and ranch land was not properly designated as the
12 GMA requires. In adopting a comprehensive plan and interim zoning, the PEA, the GMA, and
13 SEPA require Okanogan County to consider the following interests: the protection of the quality
14 and quantity of groundwater, surface water quality and quantity, the impacts of wildfires, the
15 designation of farm, ranch, and forest land, and other environmental impacts. A judgment in
16 Futurewise’s favor directing the County to adopt a comprehensive plan and zoning that complies
17 with the PEA and GMA and analyzes the environmental impacts as required by SEPA would
18 redress the prejudice. Futurewise and its members have requested orally and in writing that the
19 County adopt an updated comprehensive plan and zoning regulations and since this is a
20 legislative act there is no administrative remedy available to Futurewise and its members.
21 Futurewise exhausted its administrative remedies under SEPA by appealing the County’s SEPA
22 determination. Futurewise and its members wrote letters to County officials concerning matters
23 at issue in this petition. Futurewise therefore has participation standing, standing under the Land
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1 Use Petition Act, injury-in-fact standing, and other forms of standing to challenge the actions at
2 issue pursuant to RCW 36.70A.280, RCW 36.70C.060, the PEA, and SEPA.

3 3.6 Plaintiff/Petitioner Futurewise's mailing address is:

4 Futurewise
5 816 Second Avenue, Suite 200
6 Seattle, Washington 98104
7 Telephone: 206-343-0681 Ext. 118
8 Email: tim@futurewise.org

9 3.7 Attorney for the Plaintiffs/Petitioners:

10 Tim Trohimovich, WSBA No. 22367
11 Futurewise
12 816 Second Avenue, Suite 200
13 Seattle, Washington 98104
14 Telephone: 206-343-0681 Ext. 118
15 Email: tim@futurewise.org

16 3.8 Okanogan County is a Washington county governed by a three-member Board of
17 County Commissioners. The Board of County Commissioners made the decisions to adopt the
18 comprehensive plan, subarea plans, and development regulations at issue in this appeal.

19 3.9 The mailing address for the Board of Commissioners for Okanogan County is:

20 Board of County Commissioners
21 Okanogan County
22 123 Fifth Avenue North, Room 150
23 Okanogan, Washington 98840

24 3.10 The Okanogan County Washington State Environmental Policy Act (SEPA)
25 Responsible Official withdrew the determination of significance and issued a determination of
26 nonsignificance for the comprehensive plan, subarea plans, and development regulations.

3.11 The mailing address of the Okanogan County SEPA Responsible Official is:

Mr. Perry Huston
Director of Planning
123 5th Avenue, Suite 130



1 Okanogan, Washington 98840

2 3.12 The Okanogan County Hearings Examiner made the final decision on the
3 County's withdrawal of the SEPA determination of significance and the County's decision to
4 issue a determination of nonsignificance for the comprehensive plan, subarea plans, and
5 development regulations.
6

7 3.13 The mailing address of the Okanogan County Hearings Examiner is:
8 Okanogan County Hearings Examiner
9 c/o Mr. Perry Huston
10 Director of Planning
11 123 5th Avenue, Suite 130
12 Okanogan, Washington 98840

13 3.14 The Plaintiffs/Petitioners challenge the adoption of the comprehensive plan,
14 subarea plans, interim zoning, and the SEPA decisions to withdraw the determination of
15 significance and issue a determination of non-significance for these actions. Copies of the
16 resolutions, ordinance, and decision are attached to this Complaint and Petition as Exhibits.

17 **IV. ALLEGED ERRORS IN THE COMPREHENSIVE PLAN, SUBAREA PLANS,
18 INTERIM ZONING REGULATIONS, AND SEPA DETERMINATIONS**

19 Plaintiffs/Petitioners allege the following errors in adoption of the comprehensive plan,
20 subarea plans, development regulations including the interim zoning regulations and map, and
21 SEPA decisions as issues to be decided upon appeal.

22 4.1 The comprehensive plan and subarea area plans adopted by Resolution 119-2014,
23 Resolution 120-2014, and Resolution 121-2014 do not include a land use element that provides
24 for protection of the quality and quantity of groundwater used for public water supplies as
25 required by RCW 36.70.330(1), RCW 36.70.340, and RCW 36.70.410.
26

1 4.2 The comprehensive plan and subarea area plans adopted by Resolution 119-2014,
2 Resolution 120-2014, and Resolution 121-2014 do not include a land use element that includes a
3 statement of the standards of population density and building intensity recommended for the
4 various areas in the jurisdiction as required by RCW 36.70.330(1), RCW 36.70.340, and RCW
5 36.70.410.
6

7 4.3 The comprehensive plan, subarea plans, and development regulations adopted by
8 Resolution 119-2014, Resolution 120-2014, Resolution 121-2014, and Ordinance 2014-16 do not
9 properly designate agricultural lands and forest lands of long-term commercial significance as
10 required by RCW 36.70A.170, RCW 36.70A.030, RCW 36.70.330(1) and (3), RCW 36.70.340,
11 and RCW 36.70.410.
12

13 4.4 The comprehensive plan and subarea area plans adopted by Resolution 119-2014,
14 Resolution 120-2014, and Resolution 121-2014 do not comply with RCW 36.70.330, RCW
15 36.70.340, RCW 36.70.350, RCW 36.70.410, RCW 36.70.547, RCW 90.58.340, and the other
16 applicable provisions of chapter 36.70 RCW.
17

18 4.5 The comprehensive plan adopted by Resolution 119-2014 and the subarea plans
19 adopted by Resolution 120-2014 and Resolution 121-2014 do not comply with chapter 36.70
20 RCW where Resolution 119-2014, Resolution 120-2014, and Resolution 121-2014 state that the
21 BOCC conducted a hearing on December 22, 2014, to consider a resolution adopting the
22 Okanogan County Comprehensive Plan of 2014 and the subarea plans including findings of fact
23 and conclusions of law, but public comments on the comprehensive plan and subarea plans were
24 not permitted at the public hearing and public notices for the December 22, 2014, public hearing
25 state that verbal testimony will be taken on the proposed interim zone code and interim zone
26

1 map, but not the comprehensive plan and subarea plans, and due to other public participation
2 deficiencies.

3 4.6 Okanogan County did not establish, broadly disseminate to the public, and
4 comply with a public participation program consistent with RCW 36.70A.035 and 36.70A.140
5 for the updates to the designation agricultural, forest, and mineral resource lands of long-term
6 commercial significance as required by RCW 36.70A.130(2)(a).
7

8 4.7 The development regulations adopted by Ordinance 2014-16 do not comply with
9 RCW 36.70.545, RCW 36.70.547, RCW 36.70.550, RCW 36.70.790, RCW 90.58.340, and the
10 other applicable provisions of chapter 36.70 RCW.

11 4.8 The decisions to withdraw the SEPA determination of significance and issue a
12 determination of non-significance for the adoption of the comprehensive plan adopted by
13 Resolution 119-2014, the subarea plans adopted by Resolution 120-2014 and Resolution 121-
14 2014, and the development regulations adopted by Ordinance 2014-16 do not comply with
15 chapter 43.21C RCW and chapter 197-11 WAC.
16

17 4.9 The Okanogan County Hearing Examiner's decision to uphold the withdrawal of
18 the SEPA determination of significance and the determination of non-significance for the
19 adoption of the comprehensive plan adopted by Resolution 119-2014, the subarea plans adopted
20 by Resolution 120-2014 and Resolution 121-2014, and the development regulations adopted by
21 Ordinance 2014-16 do not comply with chapter 43.21C RCW, chapter 197-11 WAC, and OCC
22 14.04.220.
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1 **V. FACTS SUPPORTING THE STATEMENT OF ERRORS**

2 5.1. As a Washington county, Okanogan County is authorized to plan under the PEA
3 (chapter 36.70 RCW).

4 5.2 RCW 36.70.330 (part of a section entitled “Comprehensive plan — Required
5 elements”) provides in part that:

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

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

21 5.3 Other provisions of the PEA apply to the comprehensive plan, subarea plans, and
22 the interim zoning regulations.

23 5.4 Within the Methow Watershed, Water Resource Inventory Area (WRIA) 48, and
24 the Okanogan Watershed, WRIA 49, “most if not all of the available water has already been
25 allocated.” Large parts of the water basins in the County are closed to new water appropriations.
26 Water is in such short supply that:

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

1 5.5 The comprehensive plan and interim zoning do not include any provisions to
2 provide for protection of the quality and quantity of groundwater used for public water supplies.
3

4 In fact,

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

9 Assuming full build-out of all possible parcels under present zoning, 5 reaches
10 would have water remaining in their reserve. The Upper Methow and Lower
11 Methow would exceed their reserves. The Upper Methow would have 127 parcels
12 unable to be supplied by permit-exempt wells out of a total of 1,948 possible
13 parcels. The Lower Methow would have 24,313 parcels out of a total of 26,133
14 possible parcels unable to be supplied by wells.

15 The adopted comprehensive plan, subarea plans, and interim zoning allow the creation of the
16 same number of lots that will lack available water described above.

17 5.6 The adopted comprehensive plan, subarea plans, and interim zoning violate other
18 provisions of the PEA.

19 5.7 As a Washington county, Okanogan County is obligated to comply with certain
20 provisions of the GMA, Chapter 36.70A RCW. Okanogan County is known as a “CARL”
21 (Critical Areas and Resource Lands) jurisdiction under the GMA because only certain provisions
22 of the GMA—primarily the critical areas and resource lands provisions—apply to the County.

23 5.8 The GMA, in RCW 36.70A.170 (entitled “Natural resource lands and critical
24 areas-Designations”), required every county in the state to designate, on or before September 1,
25 1991, agricultural, forest, and mineral resource lands of long-term commercial significance,
26 described as lands that are not already characterized by urban growth, are devoted to agricultural,

1 forest, and mineral resource production, and that have long-term significance for the commercial
2 production of these natural resources.

3 5.9 The Okanogan County Comprehensive Plan Future Land Use Map does not
4 include a designation for agricultural lands and forest lands of long-term commercial
5 significance. The Okanogan County Comprehensive Plan Future Land Use Map does not
6 designate the valuable farm and ranch lands in Okanogan County as agricultural lands of long-
7 term commercial significance in violation of the GMA.
8

9 5.10 Okanogan County issued a determination of significance (DS) for the revisions to
10 the comprehensive plan, shoreline master program, critical areas ordinance, zoning code, and
11 subdivision regulations on January 14, 2009. This required the County to prepare an
12 environmental impact statement (EIS) on these proposals including the comprehensive plan,
13 subarea plans, and interim zoning challenged in this complaint and petition. The County issued
14 several versions of the draft EIS, but never completed the EIS.
15

16 5.11 On May 9, 2014, Okanogan County's SEPA responsible official withdrew the
17 Determination of Significance (DS) for the proposed revisions to the Comprehensive Plan,
18 Shoreline Master Program, Critical Areas Ordinance, Zoning Code, and Subdivision Regulations
19 and issued a SEPA Checklist and Determination of Nonsignificance (DNS) on the Okanogan
20 County Comprehensive Plan Update, the subarea plans, and Interim Zoning.
21

22 5.12 MVCC and Futurewise timely appealed the withdrawal of the DS and the
23 issuance of the DNS.

24 5.13 On November 16, 2014, the Okanogan County Hearing Examiner denied this
25 appeal.
26

1 5.14 The SEPA regulations, in WAC 197-11-330(3), require, in part, that in
2 “determining an impact’s significance (WAC 197-11-794), the responsible official shall take into
3 account the ... absolute quantitative effects of a proposal are also important, and may result in a
4 significant adverse impact regardless of the nature of the existing environment”

5
6 5.15 However, the SEPA checklist and determination of nonsignificance for the
7 comprehensive plan and interim zoning shows the responsible official compared the relative
8 impact of the proposed comprehensive plan with the existing fifty-year-old comprehensive plan.
9 The Checklist did not analyze or disclose the absolute impact of the proposed comprehensive
10 plan and the interim zoning regulations.

11 5.16 Additional provisions of SEPA and its implementing regulations apply to this
12 proposal and further show the County failed to comply with SEPA.

13
14 5.17 Resolution 119-2014, Resolution 120-2014, and Resolution 121-2014 state that
15 the Board of County Commissioners (BOCC) conducted a hearing on December 22, 2014, to
16 consider a resolution adopting the Okanogan County Comprehensive Plan of 2014 and the
17 subarea plans including findings of fact and conclusions of law, but public comments on the
18 comprehensive plan and subarea plans were not permitted at the public hearing and public
19 notices for the December 22, 2014, public hearing state that verbal testimony will be taken on the
20 proposed interim zone code and interim zone map, but not the comprehensive plan and subarea
21 plans.
22

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

25 6.1 Petitioners incorporate by reference all prior paragraphs in this Petition as if they
26 were completely restated here.

1 6.2 Because the Okanogan County comprehensive plan, subarea plans, and interim
2 zoning resolutions and ordinance and SEPA determinations are not subject to review by a growth
3 management hearings board, or any other quasi-judicial body created by state law, a petition for
4 judicial review may lie under RCW 36.70C, the Land Use Petition Act (LUPA).

5 6.3 Pursuant to RCW 36.70C.070(5), no person other than Okanogan County is
6 required to be made a party.
7

8 6.4 Petitioners request relief consistent with RCW 36.70C and requested below.
9

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

12 7.1 Petitioners incorporate by reference all prior paragraphs in this Complaint and
13 Petition as if they were completely restated here.

14 7.2 This cause of action is pled in the alternative to the foregoing cause of action.

15 7.3 If the Court finds the Okanogan County comprehensive plan, subarea plan, and
16 interim zoning resolutions and ordinance and SEPA determinations are not subject to review
17 under chapter 36.70C RCW or a statutory or constitutional writ of certiorari, this Court has
18 authority under chapter 7.24 RCW to issue declaratory and injunctive relief in this matter.

19 7.4 Plaintiffs and the County have a genuine dispute over whether the County has
20 complied with the mandates of the PEA, GMA, and SEPA.

21 7.5 Plaintiffs are entitled to a judgment declaring that the County has failed to comply
22 with the provisions of the PEA, GMA, and SEPA as stated in the Prayer for Relief, below.
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**VIII. THIRD CAUSE OF ACTION:
CONSTITUTIONAL DECLARATORY JUDGMENT UNDER
ARTICLE IV, SECTION 6**

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

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

8.3 If the Court finds the Okanogan County comprehensive plan, subarea plan, and interim zoning resolutions and ordinance and SEPA determinations are not subject to review under chapter 36.70C RCW, chapter 7.24 RCW, or a statutory or constitutional writ of certiorari, this Court has authority under the Washington State Constitution Article IV, Section 6 to issue declaratory and injunctive relief in this matter.

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

8.5 Plaintiffs are entitled to a judgment declaring that the County has failed to comply with the provisions of the PEA, GMA, and SEPA, and the accompanying injunctive relief, as stated in the Prayer for Relief, below.

**IX. FOURTH CAUSE OF ACTION:
WRIT OF CERTIORARI UNDER RCW 7.16**

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

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

1 9.3 If the Court finds the Okanogon County comprehensive plan, subarea plans, and
2 interim zoning resolutions and ordinance and SEPA determinations are not subject to review
3 under chapter 36.70C RCW and if the Court finds the Okanogon County comprehensive plan,
4 subarea plans, and interim zoning resolutions and ordinance and SEPA determinations Ordinance
5 are not subject to review under chapter 7.24 RCW, a Petition for Declaratory Judgment under
6 Article IV, Section 6 of the Washington State Constitution, or a constitutional writ then no other
7 avenue of appeal is available to Petitioners. The Court has jurisdiction to review the Okanogon
8 County comprehensive plan, subarea plans, and interim zoning resolutions and ordinance and
9 SEPA determinations pursuant to a writ of certiorari issued under RCW 7.16.030 *et seq.*

10
11 9.4 Petitioners ask the Court to grant their petition to issue a writ of certiorari under
12 RCW 7.16.030 *et seq.* to Okanogon County, review the Okanogon County comprehensive plan,
13 subarea plans, and interim zoning resolutions and ordinance, and SEPA determinations pursuant,
14 and order the relief requested in the prayer for relief, below.
15

16 **X. FIFTH CAUSE OF ACTION:
17 WRIT OF CERTIORARI UNDER WASHINGTON STATE CONSTITUTION,
18 ARTICLE IV, SECTION 6**

19 10.1 Petitioners incorporate by reference all prior paragraphs in this Complaint and
20 Petition as if they were completely restated here.

21 10.2 This cause of action is pled in the alternative to the other causes of action in this
22 Complaint and Petition.

23 10.3 If the Court finds the Okanogon County comprehensive plan, subarea plans, and
24 interim zoning resolutions and ordinance and SEPA determinations are not subject to review
25 under RCW 36.70C and if the Court finds the Okanogon County comprehensive plan, subarea
26

1 plans, and interim zoning resolutions and ordinance and SEPA determinations are not subject to
2 review under chapter 7.24 RCW, RCW 7.16.030 *et seq.*, or a constitutional declaratory judgment
3 action, then no other avenue of appeal is available to Petitioners. The Court has jurisdiction to
4 review the Okanogan County comprehensive plan, subarea plans, and interim zoning resolutions
5 and ordinance pursuant to a writ of certiorari issued under Wash. Const., art. IV, § 6.
6

7 10.4 Petitioners ask the Court to grant their petition to issue a writ of certiorari under
8 Wash. Const., art. IV, § 6, to Okanogan County, review the Okanogan County comprehensive
9 plan, subarea plans, interim zoning resolutions and ordinance, and SEPA determinations, and
10 order the relief requested in the prayer for relief, below.

11 **XI. RELIEF REQUESTED**

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

14 11.1 That Okanogan County shall prepare a record of the adoption of the resolutions,
15 ordinance, and decision for the comprehensive plan, subarea plan, interim zoning regulations,
16 and SEPA determinations at issue in this case.

17 11.2 That the Court declare the Okanogan County comprehensive plan, subarea plans,
18 and interim zoning resolutions and ordinance and SEPA determinations are not in compliance
19 with the PEA, GMA, and SEPA for the reasons set forth herein.
20

21 11.3 The Court determine that as to the Okanogan County comprehensive plan,
22 subarea plan, and interim zoning resolutions and ordinance, and SEPA determinations:
23

24 (a) The body or officer that made the land use decision engaged in unlawful
25 procedure or failed to follow a prescribed process, unless the error was harmless;
26

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 11.4 That the Court determine that the Okanogan County comprehensive plan, subarea
9 plans, and interim zoning resolutions and ordinance, and SEPA determinations were a clearly
10 erroneous interpretation or application of the law, illegal, or arbitrary and capricious.

11 11.5 That the Court order Okanogan County to achieve compliance with the PEA.
12 GMA, and SEPA within 180 days.

13 11.6 That the Court order Okanogan County to comply with all statutory requirements
14 for revising its comprehensive plan, subarea plans, interim zoning, and SEPA determinations.

15 11.7 That the Court retain jurisdiction to ensure Okanogan County's compliance with
16 the Court's order and with the PEA, GMA, and SEPA.

17 11.8 That the Court award Petitioners such costs and fees as the Court determines are
18 equitable and just.

19 11.9 Any other relief the Court finds necessary and proper.

20
21 DECLARED, VERIFIED, and signed on this 8th day of January 2015,

22
23
24
25 _____
26 Tim Trohimovich, WSBA No. 22367
Attorney for Futurewise and Methow Valley Citizens' Council