

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

RECEIVED
MAR 01 2022
By *Carol Hall, Auditor*

FILED
2022 MAR -1 AM 11:22
CHARLEEN GROOMES
OKANOGAN COUNTY CLERK

**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. **22-2 0007724**

**COMPLAINT AND 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 declaratory judgment filed under the constitutional writ provisions of Article IV, Section 6 of the Washington State Constitution; a complaint and petition for a writ of certiorari under chapter 7.16 RCW; and a complaint and petition for a writ of certiorari under Article IV, Section 6 of the Washington State Constitution.

1 1.2 Plaintiffs/Petitioners seek a determination that the Okanogan County
2 Comprehensive Plan, the Land Use Designation Map (labeled Okanogan County
3 Comprehensive Plan Alternative 3), the Transportation and Essential Facilities Map, the County
4 Transportation System map, and the Okanogan County Forest/Agriculture Mineral/Rural map
5 adopted on December 29, 2021, by Okanogan County Ordinance 2021-13 are invalid and
6 violate the requirements of the Planning Enabling Act (chapter 36.70 RCW), the Growth
7 Management Act (chapter 36.70A RCW), the State Environmental Policy Act (chapter 43.21C
8 RCW) and its implementing regulations, and other applicable provisions of state law. A copy of
9 Okanogan County Ordinance 2021-13 and the plan and maps are attached to this Complaint and
10 Petition as Exhibit A.

12 1.3 The Plaintiffs/Petitioners seek a determination that the *Okanogan County Draft*
13 *Environmental Impact Statement for Okanogan County Comprehensive Plan (November 3,*
14 *2021)*, and earlier draft EISs, and the *Final Environmental Impact Statement for Okanogan*
15 *County Comprehensive Plan (December 22, 2021)* violated Chapter 14.04 Okanogan County
16 Code (OCC), Environmental Policy; the State Environmental Policy Act (chapter 43.21C
17 RCW); and chapter 197-11 WAC. A copy of the Final EIS, which includes the Draft EIS in
18 revision mark form, is attached as Exhibit B to this Complaint and Petition. The Draft and Final
19 EISs are collectively referred to as the EIS or the Draft and Final EIS.

21 1.4 The County's comprehensive plan does not comply with the Planning Enabling
22 Act (chapter 36.70 RCW), the Growth Management Act (chapter 36.70A RCW), the State
23 Environmental Policy Act (chapter 43.21C RCW) and its implementing regulations and threaten
24 surface and ground water resources in Okanogan County to the detriment and prejudice of
25 Petitioners and the people of the State of Washington. The designation of natural resource lands
26

1 of long-term commercial significance and provisions providing for site specific dedesignations
2 do not comply with the Growth Management Act and threaten these important natural resource
3 industries as well as surface and ground waters in Okanogan County, to the detriment and
4 prejudice of Petitioners and the people of the State of Washington.

5 1.5 There is an actual, present, and existing dispute with respect to
6 Plaintiffs'/Petitioners' claims and the parties have genuine and opposing interests. The interests
7 of the parties are direct and substantial, and a judicial determination of those interests will be
8 final and conclusive.
9

10 1.6 A decision by this Court that the County must revise its comprehensive plan and
11 EIS to achieve compliance with the requirements of the Planning Enabling Act, Growth
12 Management Act, and State Environmental Policy Act would eliminate or redress the
13 noncompliance identified herein and the loss and damage to surface and ground waters that
14 would result if Okanogan County's comprehensive plan and SEPA EIS were not reviewed by
15 this Court.
16

17 II. JURISDICTION AND VENUE

18 2.1 This Court has jurisdiction to hear this complaint and petition under article IV,
19 section 6 of the Washington State Constitution and under Chapters 7.16 and 7.24 RCW.
20

21 2.2 The Washington Supreme Court held the jurisdiction of the growth management
22 hearings boards is limited to those counties that are required or choose to plan under RCW
23 36.70A.040. *Moore v. Whitman County*, 143 Wn.2d 96, 18 P.3d 566 (2001). Okanogan County
24 is not required to plan under RCW 36.70A.040 and has not "opted in" under RCW 36.70A.040.
25 Petitioners therefore have no administrative appeal to the Growth Management Hearings Board
26 under the Growth Management Act.

1 2.3 If the 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.

3 2.4 The Court has jurisdiction to review ordinance pursuant to RCW 7.24, RCW 7.16,
4 or the inherent power of this Court under article 4, section 6 of the Washington State
5 Constitution.

6 2.5 Venue properly lies in the Okanogan County Superior Court pursuant to RCW
7 36.01.050.
8

9 **III. PARTIES, STANDING, AND VIOLATIONS**

10 3.1 Plaintiff/Petitioner Methow Valley Citizens Council (MVCC) is a 501(c)(3)
11 nonprofit corporation incorporated in the State of Washington. The mission of the MVCC is to
12 raise a strong community voice for protection of the Methow Valley’s natural environment and
13 rural character.
14

15 3.2 MVCC has participation and representative standing. MVCC has members who
16 are landowners and residents of Okanogan County and who are affected and aggrieved by the
17 county comprehensive plan land use element’s failure to protect the quality and quantity of
18 groundwater used for public water supplies as required by RCW 36.70.330, the failure of the
19 comprehensive plan to address wildfire hazards and landslide hazards aggravated by wildfires,
20 the County’s failure to consider other environmental impacts as required by the State
21 Environmental Policy Act (SEPA), and to adequately designate natural resource lands as
22 required by the Growth Management Act (GMA). MVCC’s members are prejudiced because
23 their properties are covered by the revised comprehensive plan and so have standing. MVCC’s
24 members are prejudiced in that their properties depend on wells and surface withdrawals for
25 domestic water supply, irrigation, and stock watering and are adversely affected by the
26

1 County's failure to adopt a comprehensive plan that protects surface and ground water as the
2 Planning Enabling Act (PEA) requires. MVCC's members are prejudiced in that their properties
3 may be adversely impacted by wildfires, landslides, surface and ground water impacts, and other
4 environmental impacts that were not adequately considered by the county in analyzing the
5 environmental impacts of the comprehensive plan as SEPA requires. MVCC's members are
6 prejudiced in that their properties may be adversely impacted by because their farm and ranch
7 land was not properly designated as the GMA requires. In adopting a comprehensive plan, the
8 Planning Enabling Act (PEA), the GMA, and SEPA require Okanogan County to consider the
9 following interests: the protection of the quality and quantity of groundwater, surface water
10 quality and quantity, the impacts of wildfires, the designation of farm, ranch, and forest land,
11 impacts on affordable housing, and other environmental impacts. A judgment in MVCC's favor
12 directing the County to adopt a comprehensive plan and zoning that complies with the PEA and
13 GMA and analyzes the environmental impacts as required by SEPA would redress the
14 prejudice. MVCC and its members have requested orally and in writing that the County adopt
15 an updated comprehensive plan and since this is a legislative act there is no administrative
16 remedy available to MVCC and its members. There also is no administrative remedy under
17 SEPA to address adequacy of the EIS. MVCC and its members wrote letters and emails to
18 County officials concerning all matters at issue in this petition. MVCC therefore has
19 participation standing, injury-in-fact standing, and other forms of standing to challenge the
20 actions at issue pursuant to RCW 36.70A.280, the PEA, and SEPA.
21
22
23

24 3.3 Plaintiff/Petitioner MVCC's mailing address is:

25 MVCC
26 P.O. Box 774
Twisp, Washington 98856
Office phone (generally Tues, Wed, Thurs): 509-997-0888

1 Email: mvcc@mvccitizens.org

2 3.4 Plaintiff/Petitioner Futurewise is a 501(c)(3) nonprofit corporation incorporated in
3 the State of Washington. Futurewise is a statewide public interest group working to promote
4 healthy communities while protecting farmland, forests, and shorelines today and for future
5 generations.

6 3.5 Futurewise has participation and representative standing. Futurewise has members
7 who are landowners and residents of Okanogan County and who are affected and aggrieved by
8 the County comprehensive plan land use element's failure to protect the quality and quantity of
9 groundwater used for public water supplies as required by RCW 36.70.330, the failure of the
10 comprehensive plan to address wildfire hazards and landslide hazards aggravated by wildfires,
11 the County's failure to consider other environmental impacts as required by the SEPA, and to
12 adequately designate natural resource lands as required by the GMA. Futurewise's members are
13 prejudiced in that their property is covered by the revised comprehensive plan. Futurewise's
14 members are prejudiced in that their properties depend on wells and surface withdrawals for
15 domestic water supply, irrigation, and stock watering and are adversely affected by the
16 County's failure to adopt a comprehensive plan and zoning that protects surface and ground
17 water as the Planning Enabling Act (PEA) requires. Futurewise's members are prejudiced in
18 that their properties may be adversely impacted by wildfires, landslides, surface and ground
19 water impacts, a lack of planning for affordable housing, and other environmental impacts that
20 were not adequately considered by the County in analyzing the environmental impacts of the
21 comprehensive plan as SEPA requires. Futurewise's members are prejudiced in that their
22 properties may be adversely impacted by because their farm and ranch land was not properly
23 designated as the GMA requires. In adopting a comprehensive plan, the PEA, the GMA, and
24
25
26

1 SEPA require Okanogan County to consider the following interests: the protection of the
2 quality and quantity of groundwater, surface water quality and quantity, the impacts of
3 wildfires, the designation of farm, ranch, and forest land, housing and affordable housing, and
4 other environmental impacts. A judgment in Futurewise’s favor directing the County to adopt a
5 comprehensive plan that complies with the PEA and GMA and analyzes the environmental
6 impacts as required by SEPA would redress the prejudice. Futurewise and its members have
7 requested orally and in writing that the County adopt an updated comprehensive plan and
8 zoning regulations and since this is a legislative act there is no administrative remedy available
9 to Futurewise and its members. There also is no administrative remedy under SEPA to address
10 adequacy of the EIS. Futurewise and its members wrote letters and emails to County officials
11 concerning matters at issue in this petition. Futurewise therefore has participation standing,
12 injury-in-fact standing, and other forms of standing to challenge the actions at issue pursuant to
13 RCW 36.70A.280, the PEA, and SEPA.
14

15 3.6 Plaintiff/Petitioner Futurewise’s mailing address is:

16 Futurewise
17 816 Second Avenue, Suite 200
18 Seattle, Washington 98104
19 Telephone: 206-343-0681 Ext. 118
20 Email: tim@futurewise.org

21 3.7 Attorney for the Plaintiffs/Petitioners:

22 Tim Trohimovich, WSBA No. 22367
23 Futurewise
24 816 Second Avenue, Suite 200
25 Seattle, Washington 98104
26 Telephone: 206-343-0681 Ext. 118/Mobile 206-853-6077
Email: tim@futurewise.org

1 3.8 Okanogan County is a Washington county governed by a three-member Board of
2 County Commissioners. The Board of County Commissioners made the decisions to adopt the
3 comprehensive plan at issue in this appeal.

4 3.9 The mailing address for the Board of Commissioners for Okanogan County is:
5 Board of County Commissioners
6 Okanogan County
7 123 5th Avenue North, Room 150
8 Okanogan, Washington 98840
9 509-422-7100

10 3.10 The Okanogan County SEPA Responsible Official approved the EIS for the
11 comprehensive plan.

12 3.11 The mailing address of the Okanogan County SEPA Responsible Official is:
13 Stephanie “Pete” Palmer
14 Director of Planning
15 Okanogan County
16 Office of Planning and Development
17 123 5th Ave N. Suite 130
18 Okanogan, WA 98840
19 509-422-7160
20 email: planning@co.okanogan.wa.us

21 3.12 The Plaintiffs/Petitioners challenge the adoption of the comprehensive plan and
22 EIS. Copies of the ordinance, comprehensive plan, and Draft and Final EISs are attached to this
23 Complaint and Petition as Exhibits.

24 **IV. ALLEGED ERRORS IN THE COMPREHENSIVE PLAN AND SEPA EIS**

25 Plaintiffs/Petitioners allege the following errors in adoption of the comprehensive plan
26 and EIS as issues to be decided upon appeal.

 4.1 The comprehensive plan adopted by Ordinance 2021-13 does not include a land
use element that adequately provides for protection of the quality and quantity of groundwater

1 used for public water supplies as required by RCW 36.70.330(1), RCW 36.70.340, and RCW
2 36.70.410.

3 4.2 The comprehensive plan adopted by Ordinance 2021-13 does not include a land
4 use element that includes a statement of the standards of population density and building
5 intensity recommended for the various areas in the jurisdiction as required by RCW
6 36.70.330(1), RCW 36.70.340, and RCW 36.70.410.

7 4.3 The comprehensive plan adopted by Ordinance 2021-13 does not properly
8 designate agricultural lands and forest lands of long-term commercial significance as required
9 by RCW 36.70A.170, RCW 36.70A.030, RCW 36.70.330(1) and (3), RCW 36.70.340, and
10 RCW 36.70.410 and allows site specific dedesignations and the use of criteria that violate WAC
11 365-190-040 and WAC 365-190-050 and the previously cited statutes.

12 4.4 The comprehensive plan adopted by Ordinance 2021-13 does not comply with
13 RCW 36.70.330, RCW 36.70.340, RCW 36.70.350, RCW 36.70.410, RCW 36.70.547, RCW
14 90.58.340, and the other applicable provisions of chapter 36.70 RCW.

15 4.5 The comprehensive plan adopted by Ordinance 2021-13 violates the requirements
16 to designate and protect critical areas including fish and wildlife habitats in the GMA. “The
17 GMA directs counties to determine what lands are primarily associated with listed species, and
18 then to adopt regulations protecting those lands. RCW 36.70A.020(9), .030(5), .060(2),
19 .170(1)(d). The Board properly concluded that the GMA requires the county to designate and
20 protect all critical areas within its boundaries.”¹ The comprehensive plan also violates RCW
21 36.70A.020(10), RCW 36.70A.060(2), RCW 36.70A.170, and RCW 36.70A.172 with respect
22 to designating and conserving critical areas.
23
24
25
26

¹ *Stevens Cty. v. Futurewise*, 146 Wn. App. 493, 511, 192 P.3d 1, 10 (2008).

1 4.6 The comprehensive plan’s circulation element violates RCW 36.70.330(2)
2 because the element does not include the general location, alignment and extent of major
3 thoroughfares, major transportation routes, trunk utility lines, and major terminal facilities, all
4 of which shall be correlated with the land use element of the comprehensive plan.

5 4.7 The comprehensive plan does not discourage the siting of incompatible uses
6 adjacent to general aviation airports as RCW 36.70.547 requires.

7 4.8 Okanogan County did not establish, broadly disseminate to the public, and
8 comply with a public participation program consistent with RCW 36.70A.035 and 36.70A.140
9 for the updates to the designation of agricultural, forest, and mineral resource lands of long-term
10 commercial significance and critical areas as required by RCW 36.70A.130(2)(a).

11 4.9 Okanogan County did not make some comprehensive plan maps and appendices
12 available for public review and comment before they were adopted violating RCW 36.70.380,
13 RCW 36.70.390, RCW 36.70.430, and RCW 36.70.440.

14 4.10 Okanogan County’s direction to the Planning Commission that it could not
15 recommend changes to the comprehensive plan violated RCW 36.70.040, RCW 36.70.320,
16 RCW 36.70.380, 36.70.400, 36.70.410, 36.70.580, and 36.70.600.

17 4.11 The Draft EIS and Final EIS on the comprehensive plan adopted by Okanogan
18 County Ordinance 2021-13 do not comply with chapter 43.21C RCW and chapter 197-11
19 WAC.

20
21
22
23 **V. FACTS SUPPORTING THE STATEMENT OF ERRORS**

24 5.1. As a Washington county, Okanogan County is authorized to plan under the PEA
25 (chapter 36.70 RCW).

1 5.2 RCW 36.70.330 (part of a section entitled “Comprehensive plan — Required
2 elements”) provides in part that:

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

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

16 (2) A circulation element consisting of the general location, alignment and
17 extent of major thoroughfares, major transportation routes, trunk utility lines, and
18 major terminal facilities, all of which shall be correlated with the land use element
19 of the comprehensive plan;

20 (3) Any supporting maps, diagrams, charts, descriptive material and
21 reports necessary to explain and supplement the above elements.

22 5.3 Other provisions of the PEA apply to the comprehensive plan.

23 5.4 The comprehensive plan adopted by Ordinance 2021-13 does not include a land
24 use element that includes a statement of the standards of population density and building
25 intensity recommended for the various areas in the jurisdiction as required by RCW
26 36.70.330(1), RCW 36.70.340, and RCW 36.70.410.

 5.5 The comprehensive plan does not adequately protect of the quality and quantity of
groundwater used for public water supplies. In fact, within the Methow Watershed, Water
Resource Inventory Area (WRIA) 48, and the Okanogan Watershed, WRIA 49, “most if not all

1 of the available water has already been allocated.”² Large parts of the water basins in the
2 County are closed to new water appropriations.³ Water is in such short supply that:

3 Ecology regularly sends out Administrative Orders under RCW 90.03 alerting
4 water right holders they will be curtailed in favor of instream flows for the
5 Methow and Okanogan Rivers. This has been a common occurrence in Okanogan
6 County where users were curtailed or shut off four out of the last five years on the
7 Methow and three out of the last five years on the Okanogan during times of low
8 flow.⁴

9 5.6 In addition,

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

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

20 The adopted comprehensive plan allows the creation of more lots than can be supplied with
21 potable water.

22 5.7 The adopted comprehensive plan violates other provisions of the PEA.

23 5.8 As a Washington county, Okanogan County is obligated to comply with certain
24 provisions of the GMA, Chapter 36.70A RCW. Okanogan County is known as a “CARL”
25 (Critical Areas and Resource Lands) jurisdiction under the GMA because only certain
26

27 ² State of Washington Department of Ecology Water Resources Program, *Focus on Water Availability for*
28 *the Methow Watershed, WRIA 48* p. 2 (Publication Number: 11-11-052, Revised August 2012); State of
29 Washington Department of Ecology Water Resources Program, *Focus on Water Availability for the Okanogan*
30 *Watershed, WRIA 49* p. 2 (Publication Number: 11-11-053, Revised August 2012).

31 ³ *Id.*

32 ⁴ Letter from Washington State Department of Ecology to Perry Huston Okanogan County Planning p. 3
33 of 5 (April 7, 2011).

34 ⁵ Methow Watershed Council Letter to the Okanogan County Commission Re: Okanogan Comprehensive
35 Plan and watershed planning p. 2 (June 14, 2011).

1 provisions of the GMA—primarily the critical areas and resource lands provisions—apply to the
2 County.

3 5.9 The GMA, in RCW 36.70A.170 (entitled “Natural resource lands and critical
4 areas-Designations”), required every county in the state to designate, on or before September 1,
5 1991, agricultural, forest, and mineral resource lands of long-term commercial significance,
6 described as lands that are not already characterized by urban growth, are devoted to
7 agricultural, forest, and mineral resource production, and that have long-term significance for
8 the commercial production of these natural resources.
9

10 5.10 The Okanogan County Comprehensive Plan Future Land Use Map does not
11 designate all of the valuable farm and ranch lands in Okanogan County that qualify as
12 agricultural lands of long-term commercial significance in violation of the GMA. The
13 Okanogan County Comprehensive Plan allows the dedesignation of agricultural lands based on
14 a site-specific review rather taking a countywide approach as state regulations require.
15

16 5.11 “The GMA directs counties to determine what lands are primarily associated with
17 listed species, and then to adopt regulations protecting those lands. RCW 36.70A.020(9),
18 .030(5), .060(2), .170(1)(d). The Board properly concluded that the GMA requires the county to
19 designate and protect all critical areas within its boundaries.”⁶ The comprehensive plan violates
20 this holding and RCW 36.70A.020(10), RCW 36.70A.060(2), RCW 36.70A.170, and RCW
21 36.70A.172 with respect to conserving critical areas because it allows the balancing of the
22 protection of fish and wildlife habitat, a type of critical area, with other land uses.
23

24 5.12 The Comprehensive Plan Transportation Element references Map 2 and Appendix
25 A-1 and A-2, but they were not included with the draft comprehensive plan. The element also
26

⁶ *Stevens Cty. v. Futurewise*, 146 Wn. App. 493, 511, 192 P.3d 1, 10 (2008).

1 refers to Transportation and Essential Public Facilities Map, Map 3, but again Map 3 was not
2 included with the draft plan. So, the public could not review and comment on these parts of the
3 comprehensive plan violating RCW 36.70.380, RCW 36.70.390, RCW 36.70.430, and RCW
4 36.70.440.

5 5.13 RCW 36.70.545 provides that “the development regulations of each county that
6 does not plan under RCW 36.70A.040 shall not be inconsistent with the county’s
7 comprehensive plan.” Development regulations include zoning regulations.⁷ However the
8 County has not updated its zoning and subdivision regulations so they are consistent with the
9 comprehensive plan.
10

11 5.14 The comprehensive plan violates other provisions of the PEA.

12 5.15 The MVCC and Futurewise commented on the SEPA draft EIS scoping notice.
13 The MVCC and Futurewise commented on the Draft EISs.

14 5.16 The Draft and Final EIS is a nonproject EIS but fails to include the environmental
15 analysis required in a nonproject EIS. The term “nonproject” refers to “actions which are
16 different or broader than a single site-specific project, such as plans, policies, and programs
17 ...”⁸ In addressing the adequacy of a nonproject EIS for a rezone, the Court of Appeals wrote
18 that:
19

20 In *Leschi v. Highway Comm'n*, 84 Wn.2d 271, 525 P.2d 774 (1974), a majority of
21 the Supreme Court held that the adequacy question is one of law, subject to *de*
22 *novo* review by the courts. The test to be applied is “whether the environmental
23 effects of the proposed action and reasonable alternatives are sufficiently
24 disclosed, discussed and that they are substantiated by supportive opinion and
25 data.” *Leschi v. Highway Comm'n, supra* at 286, 525 P.2d at 785.⁹

26 ⁷ RCW 36.70.545; RCW 36.70A.030(7).

⁸ WAC 197-11-774.

⁹ *Ullock v. City of Bremerton*, 17 Wn. App. 573, 580, 565 P.2d 1179, 1184 (1977).

1 5.17 WAC 197-11-440(6)(a) requires that for the elements of the environment
2 significantly affected by the proposed action, “the EIS shall describe the existing environment
3 that will be affected by the proposal, analyze significant impacts of alternatives including the
4 proposed action, and discuss reasonable mitigation measures that would significantly mitigate
5 these impacts.” In the *Ullock* decision, the Court of Appeals held “that an EIS is adequate in a
6 nonproject zoning action where the environmental consequences are discussed in terms of the
7 maximum potential development of the property under the various zoning classifications
8 allowed.”¹⁰
9

10 5.18 The Draft and Final EIS fails to comply with these requirements. The Draft and
11 Final EIS fails to disclose and discuss the allowed densities and allowed uses and their
12 environmental impacts. Nowhere in the Draft or Final EIS is it even mentioned that the
13 Minimum Requirement, Rural 1, Rural 5, or Rural 20 zones allow apartments and manufactured
14 home parks with densities of five dwelling units per acre. Nowhere in the Draft or Final EIS is
15 it even mentioned that this is an increase from the 4.5 dwelling units per acre previously
16 allowed by the Minimum Requirement Zone in these areas. For a ten-acre lot in the Minimum
17 Requirement, Rural 1, Rural 5, and Rural 20 zones, this change increased the number of
18 apartments permitted from 45 to 50.
19

20 5.19 The *Okanogan County, Washington Community Wildfire Protection Plan* states:
21

22 One challenge Okanogan County faces is the large number of
23 houses in the urban/rural fringe compared to twenty years ago.
24 Since the 1970s, a segment of Washington's growing population
25 has expanded further into traditional forest or resource lands and
26 other rural areas. The “interface” between urban and suburban
areas and unmanaged forest and rangelands created by this
expansion has produced a significant increase in threats to life and
property from fires and has pushed existing fire protection systems
beyond original or current design or capability. Many property

¹⁰ *Id.*

1 owners in the interface are not aware of the problems and threats
2 they face and owners have done very little to manage or offset fire
3 hazards or risks on their own property. Furthermore, human
4 activities increase the incidence of fire ignition and potential
5 damage.¹¹

6 None of this was mentioned in the Draft or Final EIS.

7 5.20 The Draft and Final EIS makes statements that are not substantiated by data or
8 supportive opinion.

9 5.21 Additional provisions of SEPA and its implementing regulations apply to this
10 proposal and further show the County failed to comply with SEPA.

11 **VI. FIRST CAUSE OF ACTION:
12 UNIFORM DECLARATORY JUDGMENTS ACT**

13 6.1 Plaintiffs incorporate by reference all prior paragraphs in this Complaint and
14 Petition as if they were completely restated here.

15 6.2 This cause of action is pled in the alternative to the foregoing cause of action.

16 6.3 If the Court finds the Okanogan County comprehensive plan and SEPA EIS are
17 not subject to review under 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 6.4 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 6.5 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.

23 **VII. SECOND CAUSE OF ACTION:
24 CONSTITUTIONAL DECLARATORY JUDGMENT UNDER
25 ARTICLE IV, SECTION 6**

26 ¹¹ *Okanogan County, Washington Community Wildfire Protection Plan* p. 88 (2013) (emphasis added).

1 7.1 Petitioners incorporate by reference all prior paragraphs in this Complaint and
2 Petition as if they were completely restated here.

3 7.2 This cause of action is pled in the alternative to the other causes of action in this
4 Complaint and Petition.

5 7.3 If the Court finds the Okanogan County comprehensive plan and SEPA EIS are
6 not subject to review under chapter 7.24 RCW, or a statutory or constitutional writ of certiorari,
7 this Court has authority under the Washington State Constitution Article IV, Section 6 to issue
8 declaratory and injunctive relief in this matter.

9 7.4 Plaintiffs and the County have a genuine dispute over whether the County has
10 complied with the mandates of the PEA, GMA, and SEPA.

11 7.5 Plaintiffs are entitled to a judgment declaring that the County has failed to comply
12 with the provisions of the PEA, GMA, and SEPA, and any accompanying injunctive relief, as
13 stated in the Prayer for Relief, below.

14
15
16 **VIII. THIRD CAUSE OF ACTION:
17 WRIT OF CERTIORARI UNDER RCW 7.16**

18 8.1 Petitioners incorporate by reference all prior paragraphs in this Complaint and
19 Petition as if they were completely restated here.

20 8.2 This cause of action is pled in the alternative to the other causes of action in this
21 Complaint and Petition.

22 8.3 If the Court finds the Okanogan County comprehensive plan and SEPA EIS are
23 not subject to review under chapter 7.24 RCW, a Petition for Declaratory Judgment under
24 Article IV, Section 6 of the Washington State Constitution, or a constitutional writ then no other
25 avenue of appeal is available to Petitioners. The Court has jurisdiction to review the Okanogan
26

1 County comprehensive plan and SEPA EIS pursuant to a writ of certiorari issued under RCW
2 7.16.030 *et seq.*

3 8.4 Petitioners ask the Court to grant their petition to issue a writ of certiorari under
4 RCW 7.16.030 *et seq.* to Okanogan County, review the Okanogan County comprehensive plan
5 and SEPA EIS pursuant, and order the relief requested in the prayer for relief, below.
6

7 **IX. FOURTH CAUSE OF ACTION:**
8 **WRIT OF CERTIORARI UNDER WASHINGTON STATE CONSTITUTION,**
9 **ARTICLE IV, SECTION 6**

10 9.1 Petitioners incorporate by reference all prior paragraphs in this Complaint and
11 Petition as if they were completely restated here.

12 9.2 This cause of action is pled in the alternative to the other causes of action in this
13 Complaint and Petition.

14 9.3 If the Court finds the Okanogan County comprehensive plan and SEPA EIS are
15 not subject to review under chapter 7.24 RCW, RCW 7.16.030 *et seq.*, or a constitutional
16 declaratory judgment action, then no other avenue of appeal is available to Petitioners. The
17 Court has jurisdiction to review the Okanogan County comprehensive plan and SEPA EIS
18 pursuant to a writ of certiorari issued under Wash. Const., art. IV, § 6.

19 9.4 Petitioners ask the Court to grant their petition to issue a writ of certiorari under
20 Wash. Const., art. IV, § 6, to Okanogan County, review the Okanogan County comprehensive
21 plan and SEPA EIS, and order the relief requested in the prayer for relief, below.
22

23 **X. RELIEF REQUESTED**

24 Plaintiffs/Petitioners pray for this Court to issue a judgment, writ, and a declaratory relief
25 as follows:
26

1 10.1 That Okanogan County shall prepare a record of the adoption of the ordinance
2 and decision for the comprehensive plan and SEPA EIS at issue in this case.

3 10.2 That the Court declare the Okanogan County comprehensive plan and SEPA EIS
4 are not in compliance with the PEA, GMA, and SEPA for the reasons set forth herein.

5 11.3 The Court determine that as to the Okanogan County comprehensive plan and the
6 SEPA EIS the body or officer that made the land use decision engaged in unlawful procedure or
7 failed to follow a prescribed process.
8

9 11.4 That the Court determine that the Okanogan County comprehensive plan and
10 SEPA EIS were a clearly erroneous interpretation or application of the law, illegal, or arbitrary
11 and capricious.

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

14 11.6 That the Court order Okanogan County to comply with all statutory requirements
15 for revising its comprehensive plan and SEPA EIS.
16

17 11.7 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 11.8 That the Court award Petitioners such costs and fees as the Court determines are
20 equitable and just.

21 11.9 Any other relief the Court finds necessary and proper.

22 DECLARED, VERIFIED, and signed on this 1st day of March 2022,
23

24 *Tim Trohimovich*

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