FILED
2021 APR 16 11:00 AM
KING COUNTY
SUPERIOR COURT CLERK
E-FILED
CASE #: 20-2-10245-8 SEA

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

KING COUNTY, a political subdivision of the State of Washington,

Petitioner,

v.

FRIENDS OF SAMMAMISH VALLEY, a Washington nonprofit corporation, A Farm in the Sammamish Valley LLC, Marshall Leroy d/b/a Alki Market Garden, Eunomia Farms LLC, Olympic Nursery Inc., C-T Corp., Roots of Our Times Cooperative, Regeneration Farm LLC, Hollywood Hill Association, Terry and David R. Orkiolla, Judith Allen, and FUTUREWISE,

Respondents.

No. 20-2-10245-8 SEA

ORDER GRANTING KING COUNTY'S APPEAL FROM AN ORDER OF THE CENTRAL PUGET SOUND REGION GROWTH MANAGEMENT HEARINGS BOARD

The Court considered the following:

1. King County's Opening Brief and appendices.

2. Responsive Brief of Friends Of Sammamish Valley, A Farm In The Sammamish Valley LLC, Marshall Leroy D/B/A Alki Market Garden, Eunomia Farms LLC, Olympic Nursery Inc., C-T Corp., Roots Of Our Times Cooperative, Regeneration

King County Superior Court
516 Third Avenue
Courtroom E-863
Seattle, Washington 98104
(206)477-1339

Farm LLC, Hollywood Hill Association, Terry and David R. Orkiolla, and Judith Allen and appendices.

3. Futurewise's Responsive Brief and Appendices.

4. Petitioner King County's Consolidated Reply Brief on APA Appeal and Appendices.

5. The Growth Management Hearings Board record, particularly the portions drawn to the Court's attention by the parties.

6. The arguments of the parties at oral argument.

1. PROCEDURAL HISTORY

On May 18, 2019, the King County SEPA Responsible Official issued a determination of nonsignificance (DNS) concerning Proposed Ordinance 2018-0241.2 – Regulations for Wineries, Breweries and Distilleries (later designated as Ordinance 19030). Almost 7 months later, on December 4, 2019, the Metropolitan King County Council adopted King County Ordinance 19030 (the Ordinance) amending specific King County (the County) development regulations. The Ordinance was deemed adopted without the Executive's signature on December 19, 2021.

The Friends of the Sammamish Valley (the FOSV), Futurewise and the other named Respondents herein (the Petitioners), petitioned the Central Puget Sound Region Growth Management Hearings Board (the Board), challenging Ordinance 19030. The case was captioned *FOSV, et al. v. King County*, Case No. 20-3-0004c.

King County Superior Court
516 Third Avenue
Courtroom E-863
Seattle, Washington 98104
(206)477-1339

On May 26, 2020, the Board issued its Order on Dispositive Motions, finding that Ordinance 19030 violated the State Environmental Policy Act (SEPA) and substantially interfered with the fulfillment of Growth Management Act (GMA) Planning Goals 8 and 10 and, therefore, made a determination of invalidity regarding the Ordinance pursuant to RCW 36.70A.302. The County timely appealed that decision.

2. THE BATTLE OF THE BURDENS

Courts review orders of the Board under the authority of the Administrative Procedure Act (APA). RCW 34.05.570. See also, RCW 36.70A.300(5). "An appeal from an administrative tribunal invokes the appellate, rather than the general, jurisdiction of the superior court." Skagit Surveyors and Engineers, LLC v. Friends of Skagit County, 135 Wash.2d 542, 555 (1998).

The GMA seeks to provide a statewide framework for Washington State goals and requirements. Spokane County v. Eastern Washington Growth Management Hearings Board, 173 Wn.App. 310, 324 (2013). Succinctly stated, under the GMA, the Board must grant deference to the County in the way the County plans for growth. The formulation of that deference is complex, but its overall structure is found in a recent Division I opinion:

> Under the GMA, comprehensive plans and development regulations are presumed valid when adopted, and thus the Board must grant deference to counties and cities in how they plan for growth, consistent with the requirements and goals of the GMA. But deference to counties remains bounded by the goals and requirements of the GMA. Therefore, the Board shall find compliance unless it determines that a county action is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of the GMA. To find an action clearly erroneous, the Board must have a firm and definite conviction that a mistake has been committed. A board's ruling that fails to apply this more deferential standard of review to a county's action is not entitled to deference from an appellate court.

King County Superior Court
516 Third Avenue
Courtroom E-863
Seattle, Washington 98104
(206)477-1339

Heritage Baptist Church v. Central Puget Sound Growth Management Hearings Board, 2 Wash.App.2d 737, 746-747 (2018). (Citations, some punctuation and quotation marks, omitted.) The "burden of demonstrating the invalidity of agency action is on the party asserting invalidity." RCW 34.05.570(1)(a). Here, therefore, the County bears the burden of demonstrating the invalidity of the Board's decisions. But as further highlighted by Division I:

> Deference to county planning actions, that are consistent with the goals and requirements of the GMA, supersedes deference granted by the APA and courts to administrative bodies in general. But this deference ends when it is shown that a county's action are (sic) in fact a clearly erroneous application of the GMA.

Heritage Baptist Church, Supra, at 748. (Citations, some punctuation and quotation marks, omitted.)

The Spokane County court further stated that while the legislature has dictated the framework in the GMA, the act nonetheless "contains numerous provisions which tend to show that local jurisdictions have broad discretion in adapting the requirements of the GMA to local realities." Supra, at 324; quoting Quadrant Corp. v. Cent. Puget Sound Growth Mgmt. Hearings Bd., 154 Wash.2d 224, 236 (2005). The broad discretion given to local jurisdictions is stated clearly in RCW 36.70A.320(1) and (3):

> …comprehensive plans and development regulations, and amendments thereto, adopted under this chapter are presumed valid upon adoption….The board shall find compliance unless it determines that the action by the state agency, county, or city is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of this chapter.

RCW 36.70A.320(1), (3).

King County Superior Court
516 Third Avenue
Courtroom E-863
Seattle, Washington 98104
(206)477-1339

These standards articulate the competing power of local governments and the Board. The adaptation of the GMA to local realities, therefore, is achieved through "a unique standard of review that requires that the growth board defer to the decisions of local governments on matters governed by the GMA, except where the local government has clearly erred." Spokane County v. Eastern Washington Growth Management Hearings Board, Supra, at 321. The provisions granting local governments broad discretion:

> …include imposing a presumption that comprehensive plans and development regulations are valid upon adoption, requiring a challenger of county action under the GMA to carry the burden of demonstrating that the action is not in compliance with the act, and requiring that the growth board broadly defer to local planning determinations and find compliance with the GMA unless it determines that an action is " 'clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [chapter 36.70A RCW].'

Spokane County v. Eastern Washington Growth Management Hearings Board, 173 Wn.App. 310, 325-326 (2013); RCW 36.70A.320(1)-(2).

SEPA Threshold Decisions are reviewed under the clearly erroneous standard. Norway Hill Pres. & Prot. Ass'n v. King Cty. Council, 87 Wash. 2d 267, 274 (1976). A finding is "clearly erroneous" when, although there is evidence to support it, the reviewing court on the record is left with the definite and firm conviction that a mistake has been committed. Id., at 274. Pursuant to RCW 43.21C.090, "(i)n any action involving an attack on a determination by a governmental agency relative to the requirement or the absence of the requirement, or the adequacy of a "detailed statement", the decision of the governmental agency shall be accorded substantial weight." RCW 43.21C.090. See also, Anderson v. Pierce County, 86 Wn.App. 290, 302 (1997). Nonetheless, pursuant to RCW 43.21C.030(2)(c):

King County Superior Court
516 Third Avenue
Courtroom E-863
Seattle, Washington 98104
(206)477-1339

> The agency's threshold determination is entitled to judicial deference, but the agency must make a showing that "environmental factors were considered in a manner sufficient to amount to prima facie compliance with the procedural requirements of SEPA."

Chuckanut Conservancy v. Washington State Dept. of Natural Resources, 156 Wash.App. 274, 286-287 (2010); quoting Juanita Bay Valley Community Ass'n v. City of Kirkland, 9 Wash.App. 59, 73 (1973). Prima facie compliance with the procedural requirements of SEPA means the County must show that it considered environmental factors in making that decision:

> Thus, SEPA requires that a decision Not to prepare an Environmental Impact Statement must be based upon a determination that the proposed project is Not a major action significantly affecting the quality of the environment.

Juanita Bay Valley Community Ass'n v. City of Kirkland, 9 Wash.App. 59, 73 (1973). (Emphasis in original.) See also, RCW 43.21C.030(c). The question is not whether the major action will have a significant impact on the quality of the environment, but whether the major action will have a probable significant impact:

> An environmental impact statement … shall be prepared on proposals for legislation and other major actions having a *probable* significant, adverse environmental impact….
>
> An environmental impact statement is required to analyze only those *probable* adverse environmental impacts which are significant. Beneficial environmental impacts may be discussed.

RCW 43.21C.031(1) and (2). (Emphasis supplied.) Thus, the County was required to complete an Environmental Impact Statement (EIS) if the action it was taking was a major action that would have probable significant, adverse environmental impacts. Id.

King County Superior Court
516 Third Avenue
Courtroom E-863
Seattle, Washington 98104
(206)477-1339

3. SUMMARY JUDGMENT

When an agency considers a summary judgment motion the reviewing court considers the APA standard of review together with the summary judgment standard of review. Alpine Lakes Society v. Washington State Department of Natural Resources, 102 Wn.App. 1 (1999).

The Board has the authority to grant motions for summary judgment pursuant to the authority of WAC 242-03-555. Motions for summary judgment filed in superior courts are controlled by the Superior Court Civil Rules; specifically CR 56. The Board followed CR 56 when it consider the burden of the moving party:

> Under Washington Superior Court Civil Rule 56 a motion for summary judgment may be granted when the moving party shows that there is no genuine dispute as to any material fact and that, construing the facts and inferences in the light most favorable to the nonmoving party, the movant is entitled to judgment as a matter of law.

CR 008537, Order on Dispositive Motions, Page 3. The Board, however, must abide by its own rules, which were adopted pursuant to RCW 36.70A.270(7). WAC 242-03-010. Pursuant to the Board's own rules, the ability for a party to bring and for the Board to hear a motion for summary judgment is limited:

> Dispositive motions on a limited record to determine the board's jurisdiction, the standing of a petitioner, or the timeliness of the petition are permitted. The board rarely entertains a motion for summary judgment except in a case of failure to act by a statutory deadline.

WAC 242-03-555(1). This limitation is understandable in light of the potentially voluminous amount of evidence the Board is required to consider in any motion for summary judgment. Pursuant to WAC 242-03-565, the Board must consider "the record

King County Superior Court
516 Third Avenue
Courtroom E-863
Seattle, Washington 98104
(206)477-1339

developed by the city, county, or state in taking the action that is the subject of review by the board…." WAC 242-03-565. Therefore, the Board's own rules allow hearsay evidence:

> All relevant evidence, including hearsay evidence, is admissible if, in the opinion of the presiding officer, the offered evidence is the kind of evidence upon which reasonably prudent persons are accustomed to rely in the conduct of their affairs. The presiding officer shall exclude evidence that is irrelevant, immaterial, or unduly repetitious.

WAC 242-03-620(1). In comparison, the rules relating to summary judgments in superior courts limit the admission of evidence to affidavits made on personal knowledge which set forth only such facts as would be admissible in evidence, and show affirmatively that the affiant is competent to testify to the matters stated. CR 56(e).

In summary, the following rules apply when the Board entertains motions for summary judgment:

- Hearsay evidence is generally allowed.
- Summary judgment motions are heard only when:
  1. The record before the Board is a limited record;
  2. The record does not involve disputed facts; and
  3. The matter before the Board consists of issues that turn primarily on questions of law, such as the determination of the board's jurisdiction; the standing of a petitioner, the timeliness of a petition, or the failure to act by a statutory deadline.

Thus, in a motion for summary judgment before the Board concerning an action by the County, the County is necessarily afforded deference in two ways.

1. The Board must find compliance unless it determines that the action by the County is clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of the GMA. RCW 36.70A.320(3).

King County Superior Court
516 Third Avenue
Courtroom E-863
Seattle, Washington 98104
(206)477-1339

2. A motion for summary judgment may only be granted when the moving party shows that there is no genuine dispute as to any material fact and that, construing the facts and inferences in the light most favorable to the nonmoving party, the moving party is entitled to judgment as a matter of law. CR 56.

4. SUMMARY JUDGMENT BEFORE THE BOARD

A Limited Record.

As previously noted, the rules applicable to dispositive motions heard by the Board limit those motions to the determination of the board's jurisdiction, the standing of a petitioner, the timeliness of a petition, or the failure to act by a statutory deadline. WAC 242-03-555(1). In conformance with WAC 242-03-555(1), therefore, it is likely that such motions would have a limited record.

In this matter, however, the 252 page record consists of a compilation of County reports and recommendations and comments made by, for the most part, opponents of the Ordinance. It is difficult to conceive of this record as a "limited record." Moreover, while the Board did allow hearsay evidence (the record fails to show that any evidence was disallowed), consideration of hearsay evidence when that evidence is a large part of the record is problematic and points to the basis for the rule that the record in summary judgment motions be limited.

A Record that does not Involve Disputed Facts and Issues that turn Primarily on Questions of Law.

These two factors are closely related and will be discussed together. These factors constitute the heart of the disagreement between the Petitioners and the County.

King County Superior Court
516 Third Avenue
Courtroom E-863
Seattle, Washington 98104
(206)477-1339

Despite the voluminous record before the Board, the Board concluded that there were no disputed facts when it determined that the SEPA Checklist was not prepared in a timely manner and that the Checklist was inadequate and inaccurate. CR 008539, Order on Dispositive Motions, Page 5. The Board's conclusions are discussed below.

The Board's Ability to Consider a Motion for Summary Judgment.

The County argues that the Board's own rules preclude the Board from hearing a motion for summary judgment in this matter. This issue, however, despite the County's argument otherwise, was not raised before the Board concerning the Petitioner's motion for summary judgment and, therefore, may not be raised on appeal. RCW 34.05.554.

Timing of the SEPA Checklist.

The timing of a threshold determination (SEPA Checklist) is controlled by WAC 197-11-055. The "clock" for SEPA compliance may only potentially begin to tick when a proposal exists. Pursuant to WAC 197-11-055(2)(a), a "proposal exists when an agency … has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the environmental effects can be meaningfully evaluated." WAC 197-11-055(2)(a). (Emphasis in original.) Once an agency has a goal, is actively preparing to make a decision and when the environmental effects of the proposal can be meaningfully evaluated, the agency must prepare a Checklist "at the earliest possible point in the planning and decision-making process, when the principal features of a proposal and its environmental impacts can be reasonably identified." WAC 197-11-055(2).

King County Superior Court
516 Third Avenue
Courtroom E-863
Seattle, Washington 98104
(206)477-1339

Under the facts presented to the Board, the County was not actively preparing to make a decision until the spring of 2019 when a draft was passed out of a subcommittee of the King County Council and the matter was forwarded to the full council for consideration. The Board implied that the County was actively preparing to make a decision two and a half years before it did when the Board stated that the County began to consider the proposal "two and a half years before the threshold determination was made," and the Board appears to state that the environmental aspects of the proposal should have been considered at that time. CR 008542, Order on Dispositive Motions, Page 8. The Board also concluded that the Checklist "unambiguously anticipated that an EIS would not be prepared. Id. Neither of these conclusions, however, are supported in the record.

Not only do the Board's conclusions not recognize the reality of the action taken by the King County Council, the Board's conclusion as to the appropriate timing of a SEPA Checklist does not comport with WAC 197-11-055 (discussed above).

If the County had taken an action earlier in the process, which would have pushed the County in a particular direction, then arguably the SEPA threshold determination should have been made at an earlier date. For instance, in King County v. Washington State Boundary Review Bd. for King County, 122 Wash.2d 648 (1993), the court found that a SEPA threshold decision was appropriate when an annexation action was taken. A SEPA threshold delay until future development was proposed would not have been appropriate because the annexation itself would invite future development. The King County court stated that "an EIS is required if, based on the totality of the circumstances, future development is probable following the action and if that development will have a

King County Superior Court
516 Third Avenue
Courtroom E-863
Seattle, Washington 98104
(206)477-1339

significant adverse effect upon the environment." Id., at 655-657. Here, however, no action was taken until the County adopted the Ordinance. Therefore, the SEPA Checklist was timely completed prior to an action.

Moreover, there are sufficient material factual disputes relating to the timing of the SEPA checklist to find that the Board, when all of the facts are viewed in a light most favorable to the County (especially in light of RCW 43.21C.090, requiring the board to accord "the decision of the governmental agency … substantial weight), to find that the Board erroneously interpreted or applied the law regarding the timing of the SEPA Checklist.

Legal Sufficiency of the SEPA Checklist.

The County argues that, while the Ordinance will amend an existing zoning code, those amendments will not result in probable significant, adverse environmental impacts. Conversely, the Petitioners claim that the amendments will necessarily result in greater development, or in the very least, allow the continuance of nonconforming uses. Facts which might support either conclusion are found in the record presented to the Board.

The Board concluded, however, apparently as a matter of law, that the Ordinance was a major action that would have probable significant, adverse environmental impacts. The Board stated that "(i)t simply does not follow that removal of regulatory bans on previously illegal activities will not result in an expansion of these newly-allowable uses…." CR 008544, Order on Dispositive Motions, Page 10. The Board does not cite to any specific evidence in the record for this conclusion. It appears that the conclusion, therefore, arose from the Board's reading of the Ordinance and the Board's decision as to

King County Superior Court
516 Third Avenue
Courtroom E-863
Seattle, Washington 98104
(206)477-1339

it's likely affect. The County asserts, and there is evidence in the record which supports their assertion, that County enforcement actions do not necessarily result in compliance. (See Petitioner King County's Consolidated Reply Brief on APA Appeal, Pages 7-9.) The County also argued before the Board that the amendments contained in the Ordinance would make only minor changes to the code relative to the current baseline. (See Petitioner King County's Consolidated Reply Brief on APA Appeal, Pages 5-6.) While many of those who wrote in opposition to the County's determination to issue a DNS had the expertise to express their opinions concerning the likely effect of the Ordinance, the County also presented the opinions of individuals who qualified as experts, and these individuals reached the opposite conclusion. For instance, Ty Peterson, the King County SEPA Responsible Official, stated that he had 25 years of experience in that role. He opined that relatively minor amendments associated with the Ordinance made it impossible to determine that the Ordinance would result in probable significant, adverse environmental impacts. CR 008509-008510, Ty Peterson, Memorandum, Page 1-2. While Mr. Peterson may be incorrect, so may the experts who wrote letters in opposition to the County regarding the decision to issue a DNS. Further, the County argues that evidence in the SEPA Environmental Checklist, the King County Sammamish Valley Wine and Beverage Study and the King County Action Report supports their position.

The Board also appears to have concluded that the County believed it was somehow exempt from SEPA review because the Checklist stated several times in Section

King County Superior Court
516 Third Avenue
Courtroom E-863
Seattle, Washington 98104
(206)477-1339

B that many questions were "not applicable for this nonproject[1] action. The Board stated that:

> Nonproject actions are not exempt from adequate SEPA review and jurisdictions may not evade adequate SEPA review by deferring analysis until later stages of actual development when the principal features of a proposal and its environmental impacts can be reasonably identified.

CR 008543, Order on Dispositive Motions, Page 9. But the instructions for the SEPA Checklist state that "(t)he lead agency may exclude (for non-projects) questions in Part B – Environmental Elements – that do not contribute meaningfully to the analysis of the proposal." CR 008485, SEPA Environmental Checklist, Page 1. The Checklist instructions also state that the Supplemental Sheet for Nonproject Actions (Part D) should be completed for nonproject actions. This supplemental sheet was completed by the County SEPA Official and contains statements of fact indicating why the responsible official determined that a DNS was appropriate. While these factual statements and the County's ultimate conclusion that a DNS was appropriate are subject to reasonable debate, the SEPA Checklist submitted by the County was not a document which argued for a per se exemption from environmental review.

The Board also stated that the County failed to specifically contest any of the factual allegations of Petitioners. CR 008539, Order on Dispositive Motions, Page 5. Yet, the County's Response to Petitioners' Dispositive SEPA Motions took issue with the Petitioners' factual assertions and also highlighted their own factual assertions. CR

[1] "Nonproject actions involve decisions on policies, plans, or programs," including "[t]he adoption or amendment of comprehensive land use plans or zoning ordinances." WAC 197-11-704(2)(b)(ii); see also WAC 197-11-774.

King County Superior Court
516 Third Avenue
Courtroom E-863
Seattle, Washington 98104
(206)477-1339

008401-008404, King County's Response to Petitioners' Dispositive SEPA Motions, Pages 12-15.

As previously noted, the Board was required to deny Petitioners' motion for summary judgment unless the Petitioners were able to show that there was no genuine dispute as to any material fact and that, construing the facts and inferences in the light most favorable to the County, the Petitioners were entitled to judgment as a matter of law. This did not occur. In addition to the disputed material facts, the questions before the Board were complex and not conducive to a summary judgment motion. The Board's own rules recognize the need for a full hearing when presented with the record and issues presented by this case. WAC 242-03-555(1). Moreover, WAC 242-03-610(1) also states that:

> The purpose of any hearing is for the parties to present oral argument based on the record as presented in their briefs and exhibits and for the board to ask questions necessary for a thorough understanding of the issues for decision.

WAC 242-03-610(1). The Board erroneously interpreted or applied the law regarding the legal sufficiency of the SEPA Checklist.

These matters must be remanded to the Board for a full hearing pursuant to WAC 242-03-610(1).

3. DEMONSTRATION PROJECT A

The County asserts that the Board lacked jurisdiction over Demonstration Project Overlay A (Project A) because Project A is not a permanent amendment. The County states that, pursuant to RCW 36.70A.290(2), only permanent amendments are subject to

King County Superior Court
516 Third Avenue
Courtroom E-863
Seattle, Washington 98104
(206)477-1339

the Board's jurisdiction. But the section of RCW 36.70A.290 cited by the County merely states that:

> All petitions relating to whether or not an adopted comprehensive plan, development regulation, or permanent amendment thereto, is in compliance with the goals and requirements of this chapter or chapter 90.58 or 43.21C RCW must be filed within sixty days after publication as provided in (a) through (c) of this subsection.

RCW 36.70A.290(2). (Emphasis supplied.) The language cited clearly relates to the timing of the filing of a petition. The County argues that the highlighted language in some way limits the Board's jurisdiction. This statutory language, however, should be read only to relate to the issue specified in the statute: the timing of the filing of a petition. The Board had the jurisdiction to consider Project A.

4. FINDING AA

Section 1., Finding AA of the Ordinance, notes that some businesses may take several months to come into compliance with the Ordinance, and that:

> For businesses progressing toward compliance with the ordinance, the county does not intend to begin enforcement proceedings for a minimum of twelve months after the effective date of this ordinance.

CR 007763, Ordinance 19030, Page 14. The County argues that the Board erred when it denied the County's motion for summary judgment requesting the Board rule that the Board lacked jurisdiction over Finding AA. The County argues that Finding AA is not a development regulation and is, instead, a site-specific land use decision which, therefore, deprives the Board of jurisdiction pursuant to RCW 36.70A.280 and RCW 36.70C.030(1).

King County Superior Court
516 Third Avenue
Courtroom E-863
Seattle, Washington 98104
(206)477-1339

The County apparently argues in the alternative that Finding AA simply allows the executive to use the executive's discretion regarding enforcement of the Ordinance.

FOSV argues that, pursuant to RCW 36.70A.030(8), Finding AA is properly defined as a development regulation. This statute states in part:

> "Development regulations" or "regulation" means the controls placed on development or land use activities by a county or city, including, but not limited to, zoning ordinances, critical areas ordinances, shoreline master programs, official controls, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto.

RCW 36.70A.030(8). The language at issue in Finding AA states "the county does not intend to begin enforcement proceedings for a minimum of twelve months after the effective date of this ordinance." CR 007763, Ordinance 19030, Page 14. (Emphasis supplied.) When the County adopted Finding AA, it effectively amended a development regulation for a minimum of twelve months. While the amendment may have a life span of twelve months (or longer), it is nonetheless, a development regulation during that period of time.

ORDER

The Board's Order on Dispositive Motions in *FOSV, et al. v. King County*, Growth Management Hearings Board Case No. 20-3-0004c (May 26, 2020) is REVERSED and REMANDED. The Board's Order on Dispositive Motions exceeded its statutory authority, and was based on an improper application of the CR 56 standard.

The County's motions for summary judgment concerning Project A and Finding AA are denied.

King County Superior Court
516 Third Avenue
Courtroom E-863
Seattle, Washington 98104
(206)477-1339

This matter is hereby remanded with direction that the Board rescind its order of invalidity and conduct a full hearing on the issues of SEPA and GMA compliance.

In light of this resolution on the merits, the Stay previously entered by King County Superior Court shall remain in place for an additional thirty days from the date of entry of this Order, unless a further appeal is timely filed, in which case the Stay shall remain in place until such appeal is resolved.

IT IS SO ORDERED.

DATED April 16, 2021.

Judge David A. Steiner

King County Superior Court
516 Third Avenue
Courtroom E-863
Seattle, Washington 98104
(206)477-1339

King County Superior Court
Judicial Electronic Signature Page

Case Number:	20-2-10245-8
Case Title:	KING COUNTY vs FRIENDS OF SAMMAMISH VALLEY ET AL
Document Title:	ORDER RE ON APPEAL
Signed By:	David Steiner
Date:	April 16, 2021

Judge: David Steiner

This document is signed in accordance with the provisions in GR 30.

Certificate Hash:	0F37FC3BEA097CBE9C71026153A465BB387FC7F0
Certificate effective date:	4/15/2019 8:50:37 AM
Certificate expiry date:	4/15/2024 8:50:37 AM
Certificate Issued by:	C=US, E=kcscefiling@kingcounty.gov, OU=KCDJA, O=KCDJA, CN="David Steiner: 3JIqoAvS5hGl4WH3AFk6yQ=="