

HEARING EXAMINER DAVID SPOHR

BEFORE THE OFFICE OF THE
KING COUNTY HEARING EXAMINER

In re the matter of the Appeal by Cougar Hills
LLC, d/b/a Crest Estate Winery, and Stephen
and Sheri Lee,

and

Cave B LLC, d/b/a Cave B Estate Winery, and
Larry P. and Jane E Scrivanich,

Appellants

vs.

KING COUNTY,

Respondent

BUSINESS LICENSE APPEAL

NO. BUSL200009

CONSOLIDATED WITH

NO. BUSL200029

**PETITIONERS' REPLY IN SUPPORT
OF INTERVENTION**

I. INTRODUCTION

Appellants are businesses that have operated as scofflaws¹ in unincorporated King
County. Doing so avoids the increased expense, including land cost, of operating lawfully

¹ A scofflaw is "a person who flouts the law, especially by failing to comply with a law that is difficult to enforce effectively." <https://www.google.com/search?client=firefox-b-1-d&q=scofflaws>

1 within, *e.g.*, the City of Woodinville, where there is urban infrastructure that can bear and
2 mitigate the burdens and environmental impacts the businesses create. King County Ordinance
3 19030 would have facilitated Appellants' and their scofflaw colleagues' continuation down the
4 same path. Intervention Petitioners here challenged Ordinance 19030 before the Washington
5 Growth Management Hearings Board (GMHB) as in violation of the State Environmental
6 Policy Act (SEPA) and the Growth Management Act (GMA). In response to the FOSV Petition
7 for Review (PFR) to the GHMB, the GMHB has now (twice) imposed its strongest remedy,
8 invalidating Ordinance 19030. The invalidations foreclosed use of Ordinance 19030 as an
9 excuse for and facilitator of the Appellant businesses' harmful, noncompliant operations.
10

11 The Appeals here contain, depending how one counts them, eight or nine issues. To
12 name just a few, the claims assert preemption by a state liquor statute, incorrectly apply the
13 Growth Management Hearings Board's invalidation of Ordinance 19030, and even demand that
14 the Examiner restrain enforcement regardless of whether the Director's declination of approval
15 was legally sound.
16

17 As explained in the original Petition for Intervention and below, grant of the
18 Intervention Petition is vital to protection of Petitioners' interests and to ensure, in a way that
19 the King County Prosecuting Attorney's office cannot, that the public and community interest
20 is served.
21

22 **II. ARGUMENTS IN REPLY TO APPELLANTS' RESPONSE**

23 **A. The Appeal Claims Are Consequential and Potentially Precedential**

24
25
26

1 Appellants' pretense that their Appeals represent a private dispute with no implications
2 for proposed Intervenors' interests is disingenuous.² Appellants' appeal claims are of broad
3 public importance, highly consequential and potentially legally precedential. They depend on
4 various perverse and sometimes contradictory legal arguments that have direct implications for
5 the interests and impacts described by Intervention Petitioners.³
6

7 Some of the claims are akin to arguing that, because a party has a state driver's license
8 and its car has license plates, the party does not have to comply with local speed limits and
9 traffic codes. Or they are akin to arguing that because a party may be in compliance with a
10 health-related code, it does not have to comply with zoning or building codes.

11 Some Appeal claims rely, contradictorily, on provisions of Ordinance 19030 that were
12 invalidated through the efforts and arguments of FOSV and its supporters.

13
14 And some claims rely on correspondence about proposed arrangements with the County
15 that are no longer extant and that, in any event, Appellants did not actually accept or with which
16 they did not comply.
17
18
19
20

21 ² Appellants assert that they have a "right to adjudicate the specific issues relevant to their business licenses
22 without having the proceeding become a bullhorn for Petitioners' political agenda" Response at 7.

23 ³ See, e.g., Cougar Appeal Issue 4 at 6 and Cave Appeal Issue 4 at 6 (both suggesting that Appellants can continue
24 to operate pursuant to KCC 21A.55.110.F.3, a provision of Ordinance 19030 that has been invalidated pursuant to
25 the PFR filed with the GMHB by the Intervention Petitioners here); Cougar Appeal Issue 5 at 6 and Cave Appeal
26 Issue 5 at 6-7 (both again relying on an invalidated provision of Ordinance 19030 and also on the theory that a
County OK under one regulatory code establishes compliance with a separate and different one); Cougar Appeal
Issue 8 at 7 and Cave Appeal Issue 8 at 7 (premised on a purported "agreement" barring County enforcement of
regulations); Cougar Appeal Relief Requests at 7, Cave Appeal Relief Requests at 7-8 (the Examiner should "direct
the Department" not to issue an "outright denial" regardless of whether the denial decision is erroneous.); Cave
Appeal Issue 9 at 7 (questioning whether the invalidation of Ord. 19030 "rendered invalid or called into question
whether appellant was required to obtain a business license...").

1 None of the claims noted above (and cited in footnote 3) are minor, idiosyncratic
2 disputes with no external consequences, as Appellants pretends. Appellants' pretense is
3 particularly belied by their Issue 2:

4 2. Whether the County's authority to require the Business License
5 Application, Adult Beverage to King County is preempted by RCW
6 66.08.120,...⁴

7 Cougar Appeal Issue 2 at 5, Cave Appeal Issue 2 at 5. Appellants are proposing that, instead of
8 applying the King County Code, the King County Hearing Examiner should issue a ruling
9 declaring that the Code has been pre-empted by state law and cannot be enforced. Meanwhile,
10 Appellants are claiming that their appeal is just a cozy affair in which Intervention Petitioners
11 have no stake nor interest. This claim is patently incorrect.

12 **It bears repeating that Appellants' claims are themselves legally consequential and**
13 **potentially precedential. If accepted, they would have drastic consequences for**
14 **Intervention Petitioners' interests, for the public interest, and for enforcement of more**
15 **than just the business license requirement, *i.e.*, zoning, building, and environmental laws**
16 **including the GMA.**

17
18 **B. The Overwhelming Weight of Judicial Authority Supports Intervention Here**

19 Appellants' weak treatment of key authorities cited by proposed Intervenors is telling.
20 When Appellants offer an authority of their own or acknowledge an authority cited by
21 Intervention Petitioners, the offer or acknowledgement comes with an incorrect statement of
22 the authority's import.
23
24

25
26

⁴ See Request for Relief that "the Examiner conclude (a) that the County's authority to require the Adult Beverage License is preempted by RCW 66.08.120..." Cougar Appeal at 7, Cave Appeal at 7.

1 For example, Appellants are mistaken in their reliance on *Chelan Cnty. v. Nykreim*, 146
2 Wn.2d 904, 52 P.3d 1 (2002). Response at 7. First, the Washington Supreme Court in *Nykreim*
3 did not reject or reverse intervention. Nykreim’s outcome was based on the Land Use Petition
4 Act (LUPA) statute of limitations, not questions of intervention or standing. Nykreim gave an
5 “on the one hand, on the other hand” discussion of whether the intervenors in *Nykreim* had injury-
6 in-fact standing under the LUPA statutory standard.⁵ But the discussion was inconclusive, with
7 the Court then proceeding to the outcome-determinative issue: “The more definitive issue in this
8 case is whether a governmental entity, Chelan County, can be prejudiced or injured by the
9 erroneous interpretation and application of law of its own agent, its Director of Planning.” *Id.*
10 at 936.

11
12 Second, *Nykreim* discusses with approval⁶ *Suquamish Tribe v. Kitsap Cnty.*, 92 Wn.
13 App. 816, 831, 965 P.2d 636 (1998), a Court of Appeals decision that accepted LUPA standing
14 based, inter alia, on an allegation that a LUPA petitioner “lives along roads that will be affected
15 by the project ...”. This is comparable to the statements in support of intervention in the
16 Declaration of Michael Tanksley on behalf of himself and the Hollywood Hill Association:⁷

17
18 4. Members of the HHA live on Hollywood Hill, a residential area consisting
19 of various neighborhoods and approximately 1,350 households located adjacent
20 to and above the Sammamish Valley in the Rural Area (RA) of unincorporated
21 King County. Our primary street access onto and off of Hollywood Hill runs in
22 close proximity to the Appellants’ tasting rooms which are also located in the
23 Rural Area. The enjoyment of our rural community and surroundings has been
24 very negatively affected by the traffic, cars “parked” on narrow streets (because

25 ⁵ In any event, the issue here is intervention in a King County Hearing Examiner proceeding, not standing as a
26 LUPA petitioner such as in *Nykreim*. Neither the King County Hearing Examiner rule on intervention nor the
analogous Civil Rule depend on, *e.g.*, LUPA standing.

⁶ *Id.* at 934 n.127.

⁷ Per his Declaration, Mr. Tanksley is currently Vice-President of HHA.

1 of inadequate tasting room parking areas), signage, lighting and noise that are
2 all part of the Appellants' tasting rooms' retail sales enterprise and activity.

3 The Declaration of FOSV Executive Director Serena Glover also demonstrates that
4 FOSV has more than an academic interest in the legal status of Appellants' operations. Those
5 interests have been described in depth by FOSV, including its agricultural and neighboring
6 supporters, in their Petition for Review to the GMHB, which in response has twice issued
7 decisions invalidating King County Ordinance 19030 under SEPA and the GMA. The interests
8 include avoidance of the impacts on their properties caused by businesses such as Appellants',
9 including

10
11 ...traffic; unsafe conditions (for both drivers and pedestrians); usurpation of
12 rural and agricultural uses and buffers; polluted runoff harming farms,
13 watersheds, streams, and rivers; land compaction; inadequate septic facilities;
14 and inhibition of use of farmland for fresh food production.

15 *Friends of Sammamish Valley, et al. v. King County*, CPSRGMHB 20-3-0004c, Petition for
16 Review at 9-13.⁸

17 Appellants also do not accurately describe the Washington Supreme Court's decision in
18 *Loveless v. Yantis*, 82 Wn.2d 754, 513 P.2d 1023 (1973). Response at 5. The Court there
19 addressed intervention by three distinct entities, each with varying interests, described as
20 follows:

21 The intervenors are the Cooper Point Association, composed of Cooper Point
22 area owners and residents who seek to insure the orderly development of the
23 point so that the area's unique amenities will not suffer; the Cooper's Point
24 Water Company, Inc., composed of landowners sharing in a common well and
25 water system on the point; and Katherine Partlow Draham, who owns and
26 operates a farm adjacent to a portion of the platted property here at issue.

⁸ A true and correct copy of the Petition for Review, as filed with the GMHB, but without lengthy exhibits, is attached as Appendix A to this Reply and incorporated here by reference. Intervention Petitioners respectfully request that the Examiner review the cited pages.

1 *Id.* at 755, n.1. All three were held by the Supreme Court to be proper intervenors, reversing
2 lower court denial of intervention. This approval of intervention included the Cooper Point
3 Association, which was said by the Supreme Court to have “an interest in the property,” noting:
4 “With the members of the association here all residents of the area affected, the association has
5 a direct enough interest to challenge the administrative action.” *Id.* at 758.
6

7 Appellants characterize *Nelson v. Pac. Cnty.*, 36 Wn. App. 17, 671 P.2d 785 (1983),
8 which was cited as a “cf” in the Petition for Intervention, as if it stands for an **abutting** property
9 requirement for intervention. Response at 5; *see* Petition for Intervention at 5, 6. It does not. The
10 Supreme Court’s justification for intervention makes that clear, noting that intervenors had
11 demonstrated sufficient interests because, inter alia, they “had used the disputed area for
12 picnicking and horseback riding.” *Id.* at 25.
13

14 Appellants crown their caselaw discussion with a characterization of *American Discount*
15 *Corp. v. Saratoga West, Inc.*, 81 Wash 2d 34, 499 P.2d 869 (1972), apparently intended to
16 suggest that the decision supports denial of intervention here. However, *American Discount* is
17 actually the start of an extensive line of Washington appellate decisions that intentionally set a
18 low bar for granting intervention. As the Intervention Petition has already pointed out, *Columbia*
19 *Gorge Audubon Soc’y v. Klickitat Cnty.*, 98 Wn. App. 618, 629, 989 P.2d 1260 (1999), citing
20 and relying on *American Discount*, holds unequivocally “A party has the right to intervene on
21 timely motion if it claims an interest relating to the subject of the action, and if the disposition
22 of the action may impair or impede its ability to protect that interest. *Id.* at 37. The determination
23 is again fact specific. *Id.* at 40. Not much of a showing is required, however, to establish an
24
25
26

1 interest. **And insufficient interest should not be used as a factor for denying intervention.**
2 *Id.* at 41.” [Emphasis added].

3 **C. KCC Chapter 6.01 Supports Intervention**

4 Appellants cite KCC 6.01.150.C and KCC 6.01.030 for the proposition that none except
5 a violator entitled to personal service by the Director may participate in a license appeal
6 proceeding. Response at 2. However, Appellants overlook the broader authorization in KCC
7 6.01.150.A “Appeals” which refers to “aggrieved parties” and does not define them in terms of
8 those who have received personal service. Further, significantly, KCC 6.01.150.A authorizes
9 the Examiner to “adopt reasonable rules or regulations for conducting its business.” Appellants’
10 argument then boils down to the extreme claim that a Hearing Examiner Rule permitting
11 intervention is “unreasonable” per se.
12

13 **D. Hearing Examiner Rule I.B and the Washington APA Support Intervention**

14 Appellants distort Rule I.B’s general reference to the Washington APA, RCW Ch.
15 34.05, into the proposition that Rule I.B requires that potential intervenors comply with the
16 APA’s specific standing requirement in RCW 34.05.530. Response at 2. They argue that RCW
17 34.05.530(2) is not met because the Director did not have to consider the Appellants’ interests
18 in his decision. This argument starts off on false premises and ends up with even faultier ones.
19

20 First, Rule I.A. establishes that among the Rules’ overall purposes are promotion of the
21 community’s public interests and fostering openness in public hearings:
22

23 Purpose

24 The hearing examiner system separates regulatory controls from legislative
25 planning, promotes the community’s public and private interests, and expands
26 the principles of fairness, due process, and openness in public hearings.

1 These purposes are not fostered by Appellants' cramped interpretation of intervention.

2 Second, Appellants cite only the APA provision on standing, but not the APA's separate
3 intervention provision, RCW 34.05.443, which independently authorizes the presiding officer
4 to "grant a petition for intervention at any time, upon determining that the petitioner qualifies
5 as an intervenor under any provision of law and that the intervention sought is in the interests
6 of justice and will not impair the orderly and prompt conduct of the proceedings."
7

8 Third, the specific APA standing prescription raised by Appellants is actually met in
9 any event. Appellants' argument that it is not met is based on a tilted formulation: "The Director
10 had no obligation to consider the Petitioners' interests in denying the Appellants' business
11 licenses." Response at 3. This assertion misses the point, even assuming the Director was not
12 required when making his decision to specifically picture in his mind, *e.g.*, Intervention
13 Petitioner Michael Tanksley. The Director was obligated to have in mind the legal implications
14 and consequences of both acceding to Appellants' demands despite their continuing violation
15 of even basic Code requirements and of accepting Appellants' excuses for noncompliance as
16 reflected in their Appeals. Whether or not the Director had Intervention Petitioners' interests in
17 mind, the Director had a duty to consider the consequences of accepting Appellants' evasions
18 of the law in which Intervention Petitioners as well as the public have an interest.
19

20 **E. Appellants' Aspersion Do Not Support Denial of Intervention**

21 Woven throughout Appellants' Response are aspersion that Intervention Petitioners'
22 will use this proceeding as "a bullhorn for Petitioners' political agenda." Response at 7; *see*,
23 *e.g.*, Response at 3, 4, 6. They assert, but do not explain how making legal arguments against
24 unwarranted preemption of local regulations is political, not legal; how seeking to ensure proper
25
26

1 application of the GMA, SEPA, and building and zoning laws is political, not legal; and how
2 disagreement with Appellants’ pretzel logic based on “alternative facts” for continuing their
3 unlawful operations is political, not legal. Again, consequential issues of law and potential
4 precedent are at stake.

5 Appellants’ “bullhorn” aspersions and claim that “intervention will clearly ‘impair the
6 orderly and prompt conduct of proceedings’” appear to be dog whistle accusations, offered with
7 no support other than the “political” label, that Intervention Petitioners will not conduct their
8 case properly and will somehow disrupt the proceedings by taking actions other than the standard
9 ones, such as submission of briefs and legal argument and presentation of evidence as needed.⁹
10 Intervention Petitioners could just as well question the Appellants’ approach to the issues
11 presented here, including whether they themselves have resorted to “bullhorns”. Perhaps by
12 “disruption” Appellants really mean that intervention would derail their hope for under the radar
13 litigation of highly consequential and potentially pecedential issues.
14
15

16 **III. CONCLUSION**

17 Intervention Petitioners and the public should not be left to labor after the fact under the
18 outcomes of the Appeal issues. Intervention is essential and the Petition for Intervention should
19 be granted.

20 ///

21 ///

22 ///

23 _____
24
25 ⁹ Undersigned lead counsel for Intervention Petitioners has practiced law since 1975, land use and environmental
26 law in Washington since 1979, and has substantial experience concerning the conduct of hearing examiner
proceedings without the use of a bullhorn.



1 Dated this 8th day of July, 2022.

2 Respectfully submitted,

3 EGLICK & WHITED PLLC

4 

5 By _____

6 Peter J. Eglick, WSBA No. 8809

7 Joshua A. Whited, WSBA No. 30509

8 Eglick & Whited, PLLC

9 1000 Second Avenue, Suite 3130

10 Seattle, WA 98104

11 Phone: (206) 441-1069

12 Fax: (206) 441-1089

13 Email: eglick@ewlaw.net; whited@ewlaw.net

14 CC: phelan@ewlaw.net

15 Attorneys for Petitioners Friends of Sammamish

16 Valley, Michael Tanksley, and Hollywood Hill

17 Association

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

CERTIFICATE OF SERVICE

The undersigned certifies that on this 8th day of July, 2022, the undersigned caused the following documents to be served on the persons listed below in the manner shown:
PETITIONERS' REPLY IN SUPPORT OF INTERVENTION

Duana Kolousková
Vicki Orrico
Johns Monroe Mitsunaga Kolousková,
PLLC
11201 SE 8th Street Suite 120
Bellevue, WA 98004
Telephone: (425) 467-9966
Attorneys for Cougar Hills LLC and Cave B
LLC

Lena Madden
Prosecuting Attorney's Office
King County Courthouse
516 Third Avenue Room W400
Seattle, Washington 98104
Tel. (206) 477-1120
Attorney for King County: Department of
Local Services

| | |
|-------------------------------------|---|
| <input type="checkbox"/> | By United States Mail, postage prepaid and properly addressed |
| <input type="checkbox"/> | By Legal Messenger or Hand Delivery |
| <input type="checkbox"/> | By Facsimile |
| <input type="checkbox"/> | By Federal Express or Overnight Mail prepaid |
| <input checked="" type="checkbox"/> | By Email: kolouskova@jmmklaw.com orrico@jmmklaw.com charlot@jmmklaw.com |

| | |
|-------------------------------------|---|
| <input type="checkbox"/> | By United States Mail, postage prepaid and properly addressed |
| <input type="checkbox"/> | By Legal Messenger or Hand Delivery |
| <input type="checkbox"/> | By Facsimile |
| <input type="checkbox"/> | By Federal Express or Overnight Mail prepaid |
| <input checked="" type="checkbox"/> | By Email: Lena.Madden@kingcounty.gov |

Signed and certified on July 8, 2022.



Leona M. Phelan
Paralegal, Eglick & Whited, PLLC

APPENDIX A

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

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
CENTRAL PUGET SOUND REGION

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, and Judith Allen,

Petitioners,

V.

KING COUNTY,

Respondent.

NO.

PETITION FOR REVIEW

I. PETITIONERS

A. The lead petitioner for this Petition for Review (PFR) is Friends of Sammamish Valley (FOSV), a Washington nonprofit corporation, with the following mailing address for purposes of this proceeding:

Friends of Sammamish Valley
14241 NE Woodinville-Duvall Rd, #428
Woodinville WA 98072

B. Additional Co-Petitioners are:

- A Farm in the Sammamish Valley LLC
- Marshall Leroy d/b/a Alki Market Garden
- Eunomia Farms LLC

- 1 • Olympic Nursery Inc.
- 2 • C-T Corp.
- 3 • Roots of Our Times Cooperative
- 4 • Regeneration Farm LLC
- 5 • Hollywood Hill Association
- 6 • Terry and David R. Orkiolla
- 7 • Judith Allen

8
9 C. The following attorneys represent all Petitioners and should be copied on all
10 matters:

11 Peter Eglick
12 Josh Whited
13 Eglick & Whited
14 1000 Second Ave
15 Suite 3130
16 Seattle, WA 98104
17 Fax: (206) 441-1089
18 Email: eglick@ewlaw.net; whited@ewlaw.net
19 CC: phelan@ewlaw.net

20 **II. THE CHALLENGED ACTIONS**

21 1. This PFR challenges King County Ordinance 19030, which was passed by the
22 King County Council on a 5 to 4 vote, which went into effect on December 20, 2019 after the
23 County Executive declined to sign it, and on which the notice of adoption was published on
24 January 8, 2020.

25 2. Ordinance 19030, as described in its prefatory sections amends various land
26 use and other regulatory provisions of the King County Code (KCC) including, inter alia,
KCC: 6.01.150; 21A.08.080 and .090; 21A.18.130; 21A.18.030; 21A.30.085; 21A.30.090;
21A.32.100, .110, .120; 21A.38.260; 23.32.010; as well as adding new sections to KCC Ch.
21A.55, KCC Title 6, and repealing KCC 21A.06.1427.

1 3. The effect of Ordinance 19030 is to open King County lands designated as
2 Rural Area and as Agricultural Production to impacts from urban-type commercial uses. In
3 the name of “agritourism,” it defines as “wineries, breweries and distilleries” land uses that in
4 fact operate as bars, nightclubs and event centers. The Ordinance facilitates expansion of
5 these urban uses and their impacts onto lands that lack the urban infrastructure and services
6 these uses require. It unleashes expansion of urban commercial uses in areas that are less
7 expensive due to the lack of urban infrastructure and services, fostering sprawl outside of
8 Urban Growth Areas and rural and agricultural land conversion that the Growth Management
9 Act (GMA) was adopted to preclude.

10
11 4. The Sammamish Valley Agricultural Production District (APD) and adjacent
12 Rural Area buffer are particularly impacted. There, the County has in recent years permitted
13 businesses to operate illegally as bars, nightclubs and event centers. These uses sell wine, beer
14 or distilled spirits produced elsewhere, while producing little or no product on-site. Ordinance
15 19030 purports to legitimize these uses by branding them variously as “remote tasting rooms”
16 (within the “Demonstration Area” established by the Ordinance), “wineries”, “breweries”,
17 “distilleries” and/or “event centers,” treating them as appropriate Agricultural and/or Rural
18 Area uses despite clear conflicts with the GMA and King County Comprehensive Plan
19 (KCCP), and internal King County Code conflicts. Ordinance 19030 adopts the pretense that
20 the uses and sales that it permits at these facilities are part of “tastings” or “temporary special
21 events” without requiring that products at these events be produced by the facilities on-site. It
22 promotes sprawl through urban use burdens and pressure on APD and Rural Areas where real
23 estate is cheaper and overhead is lower. In the Sammamish Valley, it effectively converts
24 such areas into de facto replications, outside of the urban area, of the City of Woodinville’s
25 urban “Woodinville Wine Country.”
26



1 5. Ordinance 19030’s impermissibility under the GMA does not just derive from
2 its provisions affecting the Sammamish Valley APD and Rural Areas. Rural Areas throughout
3 the County will be opened up to purported “wineries”, “breweries”, “distilleries” and/or
4 “event centers” by Code changes including reduction in minimum lot size to 2.5 acres and re-
5 definitions that permit sales of product produced elsewhere.

6 6. This PFR also challenges the County’s adoption of Ordinance 19030 based on
7 an inaccurate State Environmental Policy Act (SEPA) Environmental Checklist and on a
8 SEPA Determination of NonSignificance (DNS) which assumed that there was no need for
9 preparation of an environmental impact statement (EIS) for a purported “nonproject action.”
10 Because the County’s error in issuing the SEPA DNS is so fundamental, Petitioners may
11 request at the Prehearing Conference that the Board entertain a dispositive motion on SEPA
12 compliance.

13 7. The following exhibits are attached to this PFR and incorporated hereon by
14 reference:

- 15 Exhibit A: List of Applicable King County Comprehensive Plan
16 Definitions and Cited Policies
- 17 Exhibit B: King County Department of Local Services – Permitting
18 Division – State Environmental Policy Act (SEPA) – Non-
19 Project Action – Determination of Non-Significance (DNS),
20 dated April 26, 2019
- 21 Exhibit C: SEPA Environmental Checklist, dated April 24, 2019
- 22 Exhibit D: Futurewise Comments on the SEPA DNS for Proposed
23 Ordinance 2018-0241.2, dated May 17, 2019
- 24 Exhibit E: Friends of Sammamish Valley Comments Concerning SEPA
25 DNS for Proposed Ordinance 2018-0241.2
- 26 Exhibit F: Memorandum of Barbara Lau, MA, MBA, CRL, re King
 County SEPA Compliance – Ordinance 2018-0241, dated May
 16, 2019



1 Exhibit G: Memorandum of Roberta Lewandowski re King County SEPA
2 Compliance – Adult Beverage Ordinance, dated May 16, 2019

3 Exhibit H: Letter from Peter J. Eglick of Eglick & Whited PLLC, Attorney
4 for Friends of Sammamish Valley re Friends of Sammamish
5 Valley Comments Concerning Proposed Ordinance 2018-
6 0241.2 – Regulations for Wineries, Breweries and Distilleries,
7 dated May 17, 2019

8 Exhibit I: King County Ordinance 19030 (Proposed No. 2018-0241.4)

9 Exhibit J: The Seattle Times Affidavit of Publication, dated January 8,
10 2020

11 III. DETAILED STATEMENT OF THE ISSUES

12 1. By permitting nonagricultural accessory uses on agricultural lands of long-term
13 significance in a manner and with facilities that would interfere with and not support the
14 continuation of the overall agricultural use of the property and neighboring properties:

15 a. Does Ordinance 19030 fail to be guided by RCW 36.70A.020(1), (2), (8),
16 (10), and (12) (see WAC 365-196-815) and does it violate the GMA duty
17 to protect in, e.g., RCW 36.70A.060(1) and the standards in RCW
18 36.70A.177?

19 b. Does Ordinance 19030 fail to implement, and is it inconsistent with,
20 KCCP¹ Policies RP-202, RP-203, RP-206, R-201, R-202, R-204, R-205, R-
21 301, R-303, R-324, R-336, R-402, R-403, R-606, R-607, R-642, R-643, R-
22 647, R-649, R-655, E-445, E-497, T-202, T-208, T-209, F-209, I-504, U-
23 149, applicable KCCP definitions, and does it violate the consistency
24 requirement in, e.g., RCW 36.70A.130(1)(d)?

25
26

¹ To facilitate the Prehearing Conference, an attached exhibit presents applicable KCCP definitions and cited KCCP Policies.

1 2. By permitting urban-type commercial uses and facilities within Rural Area
2 SO-120 APD buffers:

3 a. Does Ordinance 19030 fail to comply with the requirements of RCW
4 36.70A.060 and RCW 36.70A.177 to assure conservation of agricultural
5 resource lands?

6 b. Does Ordinance 19030 fail to implement and is it inconsistent with KCCP
7 Policies RP-202, RP-203, RP-206, R-201, R-202, R-204, R-205, R-301, R-
8 303, R-324, R-336, R-402, R-403, R-606, R-607, R-642, R-643, R-647, R-
9 649, R-655, E-445, E-497, T-202, T-208, T-209, F-209, I-504, U-149,
10 applicable KCCP definitions, and does it violate the consistency
11 requirement in, e.g., RCW 36.70A.130(1)(d)?
12

13 3. Does Ordinance 19030, by adopting development regulations that fail to
14 implement, and that are inconsistent with King County Agricultural Production Buffer SO-
15 120 and King County Code Section 21A.38.130 and by, e.g., permitting a destination tourist
16 food and alcoholic beverage district on land that is designated to serve as buffer for the
17 Sammamish Valley Agricultural Production District, fail to implement and is it inconsistent
18 with KCCP Policies RP-202, RP-203, RP-206, R-201, R-202, R-204, R-205, R-301, R-303,
19 R-324, R-336, R-402, R-403, R-606, R-607, R-642, R-643, R-647, R-649, R-655, E-445, E-
20 497, T-202, T-208, T-209, F-209, I-504, U-149, applicable KCCP definitions, and does it
21 violate the consistency requirement in, e.g., RCW 36.70A.130(1)(d)?
22
23

24 4. Does Ordinance 19030, by converting the designated Agricultural Production
25 District and its Rural Area buffers into an experimental district “to determine the impacts and
26 benefits of the adult beverage industry on Rural and Agricultural zoned areas,” fail to be

1 guided by RCW 36.70A.020(1), (2), (8), and (10), does it fail to implement and is it
2 inconsistent with KCCP Policies RP-202, RP-203, RP-206, R-201, R-202, R-204, R-205, R-
3 301, R-303, R-324, R-336, R-402, R-403, R-606, R-607, R-642, R-643, R-647, R-649, R-655,
4 E-445, E-497, T-202, T-208, T-209, F-209, I-504, U-149, and applicable KCCP definitions,
5 does it violate the conformance and consistency requirements in, e.g., RCW 36.70A.130(1),
6 and does it violate RCW 36.70A.060(1), RCW 36.70A.110(1), and RCW 36.70A.170?

7
8 5. Does Ordinance 19030, by allowing Rural Area destination tourist food and
9 alcoholic beverage venues for the conduct of adult beverage business high attendance events,
10 by allowing adult beverage businesses that are essentially regional retail facilities in the Rural
11 Areas, and by encouraging retail businesses in the Rural Area by reducing the minimum lot
12 size for many of these facilities to 2.5 acres and incorporating definitional provisions that
13 permit sales of product produced elsewhere, fail to be guided by RCW 36.70A.020 (1), (2),
14 (8), and (10), and does it fail to implement and is it inconsistent with KCCP Policies for, inter
15 alia, avoidance of sprawl, limitation of nonresidential uses and protection and enhancement of
16 rural character and agricultural areas including RP-202, RP-203, RP-206, R-201, R-202, R-
17 204, R-205, R-301, R-303, R-324, R-336, R-402, R-403, R-606, R-607, R-642, R-643, R-647,
18 R-649, R-655, E-445, E-497, T-202, T-208, T-209, F-209, I-504, U-149, applicable KCCP
19 definitions, and does it violate the consistency requirement in, e.g., RCW 36.70A.130(1)(d)?

20
21 6. Does Ordinance 19030 violate RCW 36.70A.070(5)(c) and RCW
22 36.70A.110(1) by failing to contain rural development, assure visual compatibility, reduce
23 inappropriate conversion, protect critical areas, and protect against conflicts with the use of
24 agricultural lands?
25
26

1 7. Is Ordinance 19030’s establishment of an experimental overlay demonstration
2 area inconsistent with KCC requirements for demonstration projects, including but not limited
3 to KCC 21A.55.030.B, is it inconsistent with and does it fail to implement KCCP I-504 and
4 KCC 21A.32.040, and does it violate the consistency and implementation requirement in
5 36.70A.130(1) because, although it purports to establish a temporary “demonstration project”
6 pursuant to KCC Ch. 21A.55, in fact it assures the indefinite continuation of rogue illegal uses
7 regardless of the outcome of the purported “demonstration”?

8
9 8. Does Ordinance 19030, by allowing uses characterized by the County as
10 unlawful to continue to operate unlawfully “for a minimum of twelve months after the
11 effective date of this Ordinance”, as stated in Ordinance 19030 Finding AA, fail to implement
12 and is it inconsistent with KCCP Policy I-504, and KCC 21A.32.040, and does it violate
13 GMA consistency and implementation requirements including, e.g., RCW 36.7A.070, and
14 RCW 36.70A.130(1)(d)?

15
16 9. Did King County fail to comply with SEPA, RCW Ch. 43.21C, and its
17 regulations, WAC Ch. 197-11, including but not limited to: WAC 197-11-055(2); 197-11-
18 060; 197-11-080; 197-11-100; 197-11-315; 197-11-330; 197-11-340; and 197-11-960:

- 19 a. By failing to conduct actual SEPA review at the earliest possible time and
20 instead issuing a DNS that continued King County’s multi-year deferral of
21 SEPA review?
- 22 b. By issuing a DNS based on an inadequate and inaccurate SEPA Checklist
23 that failed to recognize significant adverse impacts and, inter alia,
24 assuming they were balanced out by purported benefits of the proposal?
25
26

- 1 c. By issuing a DNS despite the fact that there are significant unmitigated
2 adverse impacts associated with the Ordinance?
- 3 d. By concluding that an EIS was not required on the basis that adoption of
4 Ordinance 19030 was a “non-project action?”
- 5 e. By failing to recognize how the proposal would be likely to affect
6 environmentally sensitive areas?
- 7 f. By failing to recognize how the proposal would be likely to adversely
8 affect land use, including whether it would allow or encourage land uses
9 incompatible with existing plans, policies and Code?
- 10 g. By failing to recognize how the proposal would be likely to increase
11 demands on transportation or public services and utilities?
- 12 h. By failing to identify how the proposal would conflict with laws or
13 requirements for the protection of the environment?
- 14 i. By failing to acknowledge the impacts of the proposal in allowing
15 continuation of land uses with a history of generating significant adverse
16 environmental impacts while operating illegally?

17
18
19 10. Petitioners hereby incorporate by reference all issues raised by other petitions
20 concerning Ordinance 19030.

21 **IV. STANDING**

22 1. FOSV, including its directors, staff, representatives, and supporters/members
23 have diligently and actively participated in County discussions and proceedings culminating
24 in the County Council’s adoption of Ordinance 19030 by a 5-4 vote in December, 2019.
25 FOSV’s participation has been extensive, including submission of detailed written comments
26

1 (including by email and letter), presentation of testimony at every public hearing and public
2 meeting as well as correspondence and meetings with individual County staff persons and
3 Councilmembers. See RCW 36.70A.280(2).

4 2. FOSV, including its directors, staff, representatives, and supporters/members
5 submitted detailed written comments in response to the County's proposed SEPA DNS,
6 explaining the impacts of the proposal and why the County's refusal to prepare an EIS was
7 legally and factually erroneous.
8

9 3. FOSV, including its directors, staff, representatives, and supporters/members
10 use and enjoy the areas impacted by the Ordinance provisions daily, including particularly
11 those in the Sammamish Valley. Their use and enjoyment of their own properties as well as of
12 adjacent Sammamish Valley Rural and Agricultural areas, are directly impacted by the
13 significant impacts associated with and increased by adoption of Ordinance 19030 including:
14 traffic; unsafe conditions (for both drivers and pedestrians); usurpation of rural and
15 agricultural uses and buffers; polluted runoff harming farms, watersheds, streams, and rivers;
16 land compaction; inadequate septic facilities; and inhibition of use of farmland for fresh food
17 production. They are therefore aggrieved and adversely affected by adoption of Ordinance
18 19030 and all adoptions and actions related to it.
19

20 4. Co-Petitioners also participated before the County, commenting on what
21 became Ordinance 19030. The east side of SR 202 is dedicated under the King County Code
22 as a farmland protection area (SO-120 buffer) with substantial limitations on impervious
23 surfaces. Existing commercial activities already illegally violate these restrictions and
24 Ordinance 19030 will exacerbate the attendant harm through soil compaction, polluted runoff,
25 ground water contamination, and alteration of the sensitive hydrology of the Valley. All co-
26

1 petitioner farms are on the Sammamish Valley floor, which is downslope from the
2 commercial activities across the street. They are adjacent to SR 202 (Redmond-Woodinville
3 Rd) or immediately west of other farms adjacent to the road. They are all across the street
4 from or in close proximity to commercial activities generated by either the Ordinance 19030
5 “Demonstration Area” or “event centers” or “wineries, breweries, distilleries” venues.

6 5. Co-Petitioner Hollywood Hill Association (HHA) members are residents who
7 live nearby in the RA area east of Hwy 202 and who are directly impacted by the harms
8 described in this section.

9 6. Petitioner members/supporters live nearby, own businesses in and around the
10 Sammamish Valley and/or use the Valley for recreation and/or rely on the Valley’s farms and
11 agricultural uses for food and agricultural/horticultural plant materials. All the co-petitioners
12 are harmed when these farm uses are adversely affected.

13 7. All co-petitioners are also harmed by the visual blight and loss of rural
14 character through parking lots, commercial signs, commercial lighting inconsistent with
15 growing crops, crowds, porta potties, food trucks and delivery trucks attendant to the uses
16 allowed by Ordinance 19030.

17 8. Co-Petitioner agricultural users will be directly harmed by polluted runoff
18 from upslope commercial uses, large parking lots for such uses, as well as their compaction of
19 soils. Water running off from upslope travels in and through streams and drainage swales
20 along the east side of SR 502, carrying pollutants from cars and commercial activities.
21 Culverts under SR 202 carry the runoff into several streams that head west across the
22 farmland and into the Sammamish River, polluting not only the farms (many of which are
23 organic) but also the watershed that then runs into the Sound. Excess water rushing downhill
24
25
26

1 during rainy periods from upslope also waterlogs farmland. In addition, agricultural uses are
2 harmed by urban commercial type-uses' reliance under Ordinance 19030 on septic systems.
3 Such septic systems, often originally designed and installed for modest rural uses, are
4 inadequate to serve the commercial-type destination locations authorized under Ordinance
5 19030, leading to ground water contamination and adverse impacts on area wells.

6 9. Co-Petitioners Orkilla's and Judy Allen live immediately upslope and east
7 from illegally operating urban commercial-type uses that would be allowed to continue under
8 Ordinance 19030. They both would be directly harmed by the impacts of substandard human
9 waste handling and septic systems, noise, traffic, odors, and visual blight attendant to such
10 uses.
11

12 10. All co-petitioners use SR 202, running north-south, which is an I-405 bypass.
13 Traffic is already severely problematic on SR 202 and Ordinance 19030's legitimization of
14 so-called "agritourism" uses will increase that harm. The use of unprotected roads and
15 shoulders by pedestrians causes unsafe traffic and driving conditions, including on SR 202
16 where there are no sidewalks or street lighting. The use of farmland for parking, as well as use
17 of parking areas designated for ball fields, Sammamish Valley trail access, and the Tolt
18 Pipeline trail also directly impacts co-petitioners.
19

20 11. Co-Petitioner uses, particularly farm uses, are also specifically and directly
21 harmed by Ordinance 19030 which makes Agricultural land and Rural Areas available for
22 other, "higher" uses, thereby fostering increases in the prices of Agricultural land and its
23 Rural Area buffers and reducing the economic viability of agricultural and rural uses.
24 Ordinance 19030 exacerbates the pressure for conversion of Agricultural and Rural Areas
25 because land in such areas is less expensive than legitimate commercial areas that are required
26

1 to have commercial infrastructure, creating an incentive for inappropriate businesses to move
2 into Rural Area neighborhoods.

3 **V. ESTIMATED TIME REQUIRED FOR HEARING ON THE MERITS**

4 Petitioners estimate that the hearing in this matter will last at least 6 hours (excluding
5 any recess for lunch and breaks).

6 **VI. RELIEF SOUGHT**

7
8 1. Petitioners request as relief that the Board issue a Final Decision and Order
9 (FDO) to the effect that Ordinance 19030 and its related changes and actions are not guided
10 by GMA goals and violate GMA requirements, and that the Board therefore remand the
11 matter back to the County for compliance action; and

12 2. Petitioners request as relief that the Board issue an FDO to the effect that
13 Ordinance 19030 and its related changes and actions were adopted in violation of SEPA and
14 that an EIS must be prepared before such adoption may validly occur; and

15 3. Petitioners request that the Board issue a Determination of Invalidity for
16 Ordinance 19030 and all related changes and actions on the basis that they substantially
17 interfere with fulfillment of the goals of the GMA through the GMA-related defects and flaws
18 described throughout this PFR, as well as through the violation of SEPA.
19

20 The Petitioners have read the Petition for Review and believe the contents to be true.

21 Dated this 4th day of March, 2020.

22
23 EGLICK & WHITED PLLC

24 

25 By _____

26 Peter J. Eglick, WSBA No. 8809

Joshua A. Whited, WSBA No. 30509

1 Eglick & Whited, PLLC
2 1000 Second Avenue, Suite 3130
3 Seattle, WA 98104
4 Phone: (206) 441-1069
5 Fax: (206) 441-1089
6 Email: eglick@ewlaw.net; whited@ewlaw.net
7 CC: phelan@ewlaw.net
8 Attorneys for Petitioners

9 List of Exhibits:

- 10 Exhibit A: List of Applicable King County Comprehensive Plan Definitions and Cited
11 Policies
- 12 Exhibit B: King County Department of Local Services – Permitting Division – State
13 Environmental Policy Act (SEPA) – Non-Project Action – Determination of
14 Non-Significance (DNS), dated April 26, 2019
- 15 Exhibit C: SEPA Environmental Checklist, dated April 24, 2019
- 16 Exhibit D: Futurewise Comments on the SEPA DNS for Proposed Ordinance 2018-
17 0241.2, dated May 17, 2019
- 18 Exhibit E: Friends of Sammamish Valley Comments Concerning SEPA DNS for
19 Proposed Ordinance 2018-0241.2
- 20 Exhibit F: Memorandum of Barbara Lau, MA, MBA, CRL, re King County SEPA
21 Compliance – Ordinance 2018-0241, dated May 16, 2019
- 22 Exhibit G: Memorandum of Roberta Lewandowski re King County SEPA Compliance –
23 Adult Beverage Ordinance, dated May 16, 2019
- 24 Exhibit H: Letter from Peter J. Eglick of Eglick & Whited PLLC, Attorney for Friends of
25 Sammamish Valley re Friends of Sammamish Valley Comments Concerning
26 Proposed Ordinance 2018-0241.2 – Regulations for Wineries, Breweries and
Distilleries, dated May 17, 2019
- Exhibit I: King County Ordinance 19030 (Proposed No. 2018-0241.4)
- Exhibit J: The Seattle Times Affidavit of Publication, dated January 8, 2020