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May 17, 2019

Via Email (ty.peterson@kingcounty.gov) and U.S. Mail

Ty Peterson
Product Line Manager – Commercial
King County Department of Local Services Permitting Division
35030 SE Douglas Street, Suite 210
Snoqualmie, WA 98065-9266

RE: Friends of Sammamish Valley Comments Concerning Proposed Ordinance 2018-0241.2 - Regulations for Wineries, Breweries and Distilleries

Dear Mr. Peterson:

This office represents Friends of Sammamish Valley (FOSV) and submits these comments on the SEPA DNS issued by the County for "Proposed Ordinance 2018-0241.2 - Regulations for Wineries, Breweries and Distilleries."

FOSV has submitted under separate cover comments from its Executive Director which include an explanation of FOSV's interest and standing to comment. FOSV has also already submitted comments from qualified experts in the field, including a former local government Planning Director /SEPA Responsible Official. This letter supplements those submissions and repeats FOSV's request that the County withdraw the DNS and instead issue a Determination of Significance, conduct rigorous scoping, and then go about the necessary work of preparing an Environmental Impact Statement (EIS). Continuing on the current shortcut approach may seem "efficient" now. However, cutting SEPA corners in circumstances such as these will in the end prove counter-productive and drastically inconsistent with the County's obligations under the Growth Management Act (GMA). An explanation follows.

The County's DNS may in part be a result of the Frankenstein nature of the Ordinance, a ninety-five page conglomeration of Code changes and proposed actions. Due to its organization and sprawling content, the Ordinance is an inherent obstacle to informed public participation and Councilmember review. It may have been easier for County staff to demur on properly completing the SEPA Checklist rather than to forthrightly disclose the impacts potentially associated with the Ordinance.

The DNS assumes that no EIS is necessary because the Ordinance is entirely "nonproject" in nature. However, the Ordinance explicitly establishes at least two "projects" (not "nonprojects") in explicitly designated areas. With the site areas and nature of the uses known, SEPA review of impacts is required now, before Ordinance adoption, of these projects' likely significant adverse impacts.

As the Court of Appeals held in Magnolia Neighborhood Planning Council v. City of Seattle, 155 Wash. App. 305, 230 P.3d 190 (2010) in explaining how SEPA applies to nonproject actions:

> [T]he proposed land use related action approved in the FLRP [Fort Lawton Master Plan] does not evade SEPA review simply because the approval of the FLRP does not result in immediate land use changes. Indeed, as Magnolia argues, this is precisely the type of government decision that would have the "snowballing effect" described in Black Diamond [King County v. Boundary Review Board, 122 Wn.2d 648, 860 P.2d 1024 (1993)] if pushed through the LRA application process without SEPA review. Additionally, as Magnolia points out, the FLRP is actually more precise and definite than the plan at issue in Black Diamond. In Black Diamond, there was no pending development proposal other than a preferred use as " '[s]ingle family residential' " or " 'Residential/Golf Course Community.' " But here, the proposal in the FLRP was very detailed and included the number of residential units approved, the layout of the uses, and information indicating potential environmental impacts. Additionally, the City's approval of the FLRP has a greater binding effect than the annexation decision in Black Diamond; as the parties acknowledged at oral argument, once adopted by the federal government as a condition of transfer of the ARC property, it will bind the City as to its use of that property.

See Spokane Cty. v. E. Wash. Growth Mgmt. Hearings Bd., 160 Wash. App. 274, 250 P.3d 1050 (2011).

The Washington Supreme Court's Black Diamond decision, cited in Magnolia, rejected a Determination of Nonsignificance for an annexation, far more aptly characterized as "non project" than any component of the Ordinance at issue here. Further, with regard to certain components of the Ordinance here, such as the two "projects" the Ordinance calls out, the uses and the sites/impact areas are known. Labelling a use or project as "demonstration" or "temporary" does not insulate them from SEPA review, particularly when the demonstration will last for years with no assured termination thereafter.

The Washington Supreme Court's decision in King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd., 142 Wash. 2d 543, 14 P.3d 133 (2000) also applies. Its affirmation of a GMA mandate for protection of agricultural lands cannot be satisfied by assuming that demonstration "projects" or even "nonproject" actions affecting rural areas are not associated with adverse

impacts on agricultural lands and uses. Per the Supreme Court, the pretense that a use is "temporary" or potentially terminable after a period of years makes no difference.

Neither the GMA itself nor the Supreme Court's decision in King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd. allow for the adoption without examination of potential impacts and close review under the GMA of a development regulation that would effectively authorize de-designation or subtraction of agricultural lands as supposedly "unsuitable." A DNS on the balkanization of agricultural lands, without any Checklist disclosure of the location, soils, and quantity of such lands is an impermissibly blindered rollback of the GMA mandates and protections.

FOSV has explained identified in other comments the flaws in the Ordinances fundamental definitions and mechanisms. These will not be repeated here. But each carries with it associated impacts which the County Checklist and DNS ignore. Therefore, in summary, the DNS should be withdrawn and a DS requiring preparation of an EIS for use by the County Council and the public should be prepared.

Sincerely,

EGLICK &WHITED PLLC

Peter J. Eglick
Attorney for Friends of Sammamish Valley

cc: client