

To: Serena Glover, Executive Director, Friends of Sammamish Valley  
From: Roberta Lewandowski  
Date: May 16, 2019  
Subject: King County SEPA Compliance – Adult Beverage Ordinance

Based on my professional experience as former Planning Director and SEPA Responsible Official for the City of Redmond, you have asked me to address the question of whether the issuance of a Determination of Nonsignificance (DNS) by King County in connection with the proposed adoption of the Adult Beverage Ordinance (the Ordinance) is a proper implementation of SEPA. I will first describe my relevant Redmond professional experience and then I will explain why I have concluded that the King County DNS is not appropriate.

### **Related Professional Experience.**

I served as Planning Director for the City of Redmond for 16 years. I was responsible for comprehensive land use planning, including compliance with the Growth Management Act (GMA) and the Countywide Planning Policies (CPP). Along with the Director of Public Works, I served as Redmond's SEPA Responsible Official. In that capacity, I was responsible for ensuring the City complied with the State Environmental Policy Act (SEPA). I participated in making hundreds of SEPA threshold determinations.

My responsibilities as Planning Director for Redmond included coordination with King County and the surrounding cities on regional planning issues and land use and environmental issues involving the Sammamish Valley APD, including the Sammamish River and tributary rivers and streams flowing from the surrounding Rural Areas.

### **The DNS Is Not a Proper Implementation of SEPA.**

In this case, King County has misunderstood the manner in which SEPA applies to a proposal to amend the King County's Zoning Code. Under SEPA, proposals for legislation such as an ordinance amending zoning regulations may be defined as a governmental "nonproject actions". While in many cases the information available about impacts of nonproject actions is less specific than in the case of project specific proposals such as a real estate development project on a specific site ("project action"), nevertheless SEPA requires that the impacts of activities authorized by the legislation be evaluated prior to adopting the legislation. In this context, this means that the impacts of the identified types of businesses, and the development of land with structures and site improvements to support these types of business activities, must be analyzed prior to adopting the legislation.

The logic of the SEPA requirement to evaluate impacts of nonproject actions is apparent. The objective is to provide information on impacts to legislators and the public to enable decisions to be made in the process of formulating legislation that take environmental impact into account. SEPA requires that the cumulative impacts of multiple individual activities, such as multiple development projects and/or the conduct of multiple individual businesses authorized

by a zoning code amendment, be evaluated prior to adopting legislation that would authorize the activities. If no meaningful environmental analysis is conducted “up front”, the ability to evaluate and avoid or mitigate cumulative impacts before it is too late is lost.

The determination of whether adoption of the legislation is likely to result in significant environmental impacts is termed a SEPA “threshold determination”. The primary means of making a threshold determination is to analyze information provided in response to a series of questions set out in a form known as the “SEPA Checklist”. I have reviewed the SEPA Checklist used by the County in making its threshold determination on the Ordinance. It is evident from reviewing the Checklist that the King County representatives charged with implementing SEPA provided virtually no information requested by the SEPA Checklist. The response to virtually all questions on the main portion of the Checklist was “not applicable for this nonproject action”. This is not compliant with SEPA.

The SEPA Checklist includes a “supplemental sheet” for nonproject actions. The supplemental sheet must be completed in addition to, not in lieu of, the main portion of the Checklist. While the County provided more verbiage in its responses to the questions in this part of the form, many of the responses are incomplete, misleading or incorrect. For example, Question 5 reads:

*How would the proposal be likely to affect land and shoreline use, including whether it would allow or encourage land or shoreline uses incompatible with existing plans?*

The response states:

*The proposal does not expand winery, brewery, and distillery uses to new zoning districts within unincorporated King County and seeks to balance Comprehensive Plan policies for preserving rural character while providing limited scale economic activities.*

*Proposed measures to avoid or deduce shoreline and land use impacts are:*

*None proposed.*

The response fails to disclose that the Ordinance will expand retail drinking place uses termed “remote tasting rooms” into Rural Area zones where this use is currently unlawful or the impacts of expanding special event centers in the Rural Area. The Checklist responses do not disclose that these uses often depend upon and create pressure for require urban services, typically considered urban, such as improved/higher capacity streets and pedestrian facilities, sewers, storm drainage, parking areas, lighting, and increased police, fire and emergency medical services. These urban services and infrastructure are not typically present in the Rural Area and under the GMA are not supposed to be. The Checklist does not disclose that the Countywide Planning Policies, King County Comprehensive Plan precluding urban services and infrastructure in the Rural Area and does not acknowledge the potential impacts of inserting land uses that increase demands on such services and infrastructure outside of the Urban Growth Boundary into the Rural Area.

Supplemental Question 6 states:

*How would the proposal be likely to increase demands on transportation of public services and utilities?*

The response states:

*The proposal is not expected to increase demands on transportation or public services and utilities.*

Yet, the Ordinance targets the Rural Area and Agricultural Production District for development as a destination for tourist retail activities:

*Section 29. There is hereby added to K.C.C. chapter 21A.55 a new section to read as follows:*

- A. The purpose of remote tasting room demonstration project A is to:*
- 1. Support agriculture and synergistic development of mixed use adult beverage facilities in order to boost agritourism and the areas' reputations as food and adult beverage destinations;*

*. . . .*

*Section 31. There is hereby added to K.C.C. chapter 21A.55 a new section to read as follows:*

- A. The purpose of the special events demonstration project B is to:*
- 1. Support agriculture and synergistic development of adult beverage facilities in order to boost agritourism and the Sammamish valley's reputation as a food and adult beverage destination.*

As discussed in the memo provided by Barbara Lau that accompanies these comments, the Sammamish Valley is a particularly poor choice for a place to promote development allowed by the Ordinance. The proposed Ordinance would have the effect of extending the Woodinville Tourist District into the Rural Area, adjacent to the APD, by allowing tourist destination drinking places and special event businesses to expand into the two overlay districts extending along highways from the Tourist District. The system of rural roads in the Sammamish Valley is currently congested. Tourist oriented eating and drinking places and event centers draw significant volumes of auto traffic and require large parking areas. These impacts should have been identified, disclosed, quantified and considered.

There is a history of stormwater runoff from Rural Area hillsides making portions of the APD too wet for farming. The overlay districts are placed on hillside slopes that have been given a special zoning overlay designation to buffer the APD including special restrictions to limit stormwater impacts. Yet the impacts of more retail and commercial development in the form of remote tasting rooms and special event centers include increased stormwater runoff from parking areas, drives and new buildings. Increased impervious surfaces reduce groundwater recharge, increase surface water pollution and raise water temperature in streams that are detrimental to fish. The responses in the SEPA Checklist should clearly disclose that the tourist oriented, strip

commercial development fostered by the Ordinance will conflict with the Countywide Planning Policies, the KCCP, and the GMA which all mandate protection for the APD, Rural Area and environmentally critical areas found in the Sammamish Valley.

To fulfill the purposes and requirements of SEPA, King County must prepare an Environmental Impact Statement (EIS). One of the fundamental functions of an EIS is to evaluate alternatives that may have lesser environmental impacts. SEPA recognizes that the same action taken at one location may have much greater environmental impact than if undertaken at another location. The objective of fostering a tourist destination based on adult beverage sales and related events should be evaluated in terms of whether and where this objective can be achieved with lesser environmental impacts and interference with the GMA than in the Sammamish Valley, such as within a city or its Urban Growth Boundary.

Perhaps the clearest way to understand why issuance of the DNS is fundamentally noncompliant with SEPA is to examine the language of the Ordinance. At Section 29, the purposes of the remote tasting room demonstration project A are stated to include:

2. *Enable the county to determine if expanded adult beverage-based uses can be permitted while maintaining the core functions of the Rural Area and Agricultural zones;*
3. *Determine the impacts and benefits of the adult beverage industry on Rural Area and Agricultural zoned areas, including the impacts and benefits of the industry on Agricultural Production Districts and including those properties where the demonstration project sites are located and the surrounding areas;*

The GMA mandates protection for the character of the APD and Rural Area. The Countywide Planning Policies and the King County Comprehensive Plan impose the same requirement. The proposed Ordinance would flatly conflict with this requirement by not assuring protections of the APD and Rural character. Instead, the County is attempting to see how far it can go in introducing urban uses into the Rural Area before the breaking point is reached—the point at which “the core functions of the Rural Area and Agricultural Zones” can no longer be maintained. The Ordinance will set in place an experiment to determine what impacts will result from allowing these uses in the Rural Area and whether they will disrupt the fundamental protections in place for the Rural Area and APD. The Ordinance turns SEPA upside down. Instead of complying with the requirements of SEPA that identification and analysis of environmental impacts take place early in the process of adopting proposed zoning regulations, the Ordinance calls for a wait and see approach.

The Ordinance will put in place an experiment to determine what impacts will result from allowing these uses in the Rural Area and whether they will disrupt the fundamental protections in place for the Rural Area and APD. Only following development and establishment of businesses in the APD and Rural Area as allowed by the Ordinance will the County “[d]etermine the impacts and benefits of the adult beverage industry on the Rural Area and Agricultural Production Districts . . . .” This after-the-fact approach, looking backward to discover environmental impacts, does not comply with either the spirit or the requirements of SEPA. Nor is it possible to reverse the impacts of development once it is already in place, thus making compliance with SEPA all the more important.

The Ordinance specifically targets the Sammamish Valley extending north from the City of Redmond to Woodinville for development of the Tourist destination. The Ordinance would assign two “Special Demonstration Project Overlay” designations to the Rural Area hillsides on the east side of the Valley. The overlay areas are shown on attached Overlay A Map and Overlay B Map. Many aspects of the Ordinance would also affect the Agricultural land adjacent to the Rural Area. Pursuant to the GMA and Countywide Planning Policies, King County has designated these farmlands as agricultural lands of long-term significance and they have been designated as the Sammamish Valley Agricultural Production District as shown on the attached APD Map.

I am very familiar with this unique area. It would be difficult to find an area where the impacts of fostering a tourist destination for adult beverage drinking and special event centers would be more profound. The Washington State Supreme Court recognized the unique and threatened nature of the Sammamish Valley in its landmark decision establishing that preservation of Agricultural land is a paramount and mandatory requirement of the GMA, not a competing objective to be balanced with other GMA objectives. In *King County v. Central Puget Sound Growth Management Hearings Board*, 142 Wn.2d 543; 14 P.3d 133 (2000), the Washington State Supreme Court ruled that the GMA mandate that agricultural land be protected is paramount to competing interests such as the need for recreational land. The Supreme Court upheld the Growth Management Hearings Board order that invalidated the King County Comprehensive Plan and zoning amendments that would have allowed use of agricultural land for sports fields stating:

*The soils of the Sammamish Valley APD have the unique characteristics of prime farmland. The APD includes some of the most productive agricultural land in the state, but it is also among the areas most impacted by rapid population growth and development. Even though the properties in this case lie in the APD, there is pressure to convert the land to nonagricultural uses. . . .*

*When read together, RCW 36.70A.020(8), .060(1), and .170 evidence a legislative mandate for the conservation of agricultural land. Further, RCW 36.70A.177 must be interpreted to harmonize with that mandate. Nothing in the Act permits recreational facilities to supplant agricultural uses on designated lands with prime soils for agriculture.*

*The County's amendments, which allow active recreational uses on designated agricultural lands, do not comply with the GMA . . . . Although the GMA encourages recreational uses of land, there is no conservation mandate for recreational use as with agricultural use. In this case, the GMA mandates conservation of the APD's limited, irreplaceable agricultural resource lands. There are still thousands of acres suitable for athletic fields--outside the APDs.*

The King County Comprehensive Plan (KCCP) designates the land extending east from the Sammamish Valley APD as “Rural Area” to buffer the APD, limit sprawl, protect the rural character of the area and protect sensitive resources, such as groundwater recharge areas and watersheds. The Ordinance would legalize and encourage “remote tasting rooms” in the area designated Overlay A and “event centers” in the area designated Overlay B. These uses require

urban services and draw customers from a wide region. Approximately seven business currently operate in violation of zoning in this area, most have converted former residential structures to business use. These businesses devote substantial portions of their sites to parking. They have insufficient septic capacity to handle large crowds and no storm water management. They clearly generate significant traffic. If adopted, the Ordinance will make these retail uses legal in the Rural Area and will allow others to be established. The SEPA Checklist discloses no data and devotes no analysis to these uses.

The GMA mandates that counties designate Rural Areas in their comprehensive plans to serve as buffers to resource lands. The GMA mandates that county comprehensive land use plans preserve the character of Rural Areas and that development regulations (including zoning) implement and be consistent with the comprehensive plan. The Ordinance will legalize and allow for more remote tasting rooms and special event centers in the Rural Area. In terms of land use impacts, remote tasting rooms are bars or taverns. Bars and taverns are classified as the land use “eating and drinking places” by the King County Zoning Code. This use is classified as a retail use per King County’s zoning code permitted land use charts. Eating and drinking places are allowed in commercial zones. They are not allowed in Rural Area and Agricultural zones.

On sites in the area designated “Overlay B” portion of the Rural Area buffer, the Ordinance would legalize and encourage businesses referred to as “special event centers”. Special event centers will be permitted in connection with a business activity defined very loosely by the Ordinance as a “winery”, “brewery” or “distillery” (W/B/D). The business conducted by special event centers is hosting social and business gatherings for groups of up to 250 people such as weddings, \_\_\_\_\_. Event centers typically serve food and alcoholic beverages.

As noted, approximately seven businesses currently operate tasting room and/or event centers in violation of zoning in this area. If adopted, the Ordinance will make these retail and special event uses legal in the Rural Area.

### **Conclusion.**

For the reasons stated above, and based on my knowledge as described above and my experience as a SEPA Responsible Official and as a Planning Director working with GMA, a Determination of Significance (DS) SEPA threshold determination should have been issued for the proposed Ordinance. The failure to do so and the County’s issuance of its cursory DNS shortchanges the public and substantially interferes with implementing the goals and policies of the GMA. If the Ordinance is not itself withdrawn, further consideration should only occur after preparation of an Environmental Impact Statement, including an analysis of potential alternative locations for the Overlay A and Overlay B areas.