No. 102055-4

(Court of Appeals No. 56890-0-II)

IN THE SUPREME COURT

OF THE STATE OF WASHINGTON

English Farm LLC and Jennifer English Wallenberg,

Appellants,

v.

City of Vancouver, JLL, HP Inc., Jennifer Baker, Marian English-Huse, and Don Jennings,

Respondents.

RESPONDENTS CITY OF VANCOUVER'S AND HP INC.'S JOINT ANSWER TO PETITION FOR REVIEW

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I. IDENTITY OF ANSWERING PARTIES

Respondents HP Inc. ("HP") and the City of Vancouver ("City") (collectively referred to as "Respondents") answer the Petition for Review filed by Petitioners English Farm LLC and Jennifer English Wallenberg (collectively "Petitioners"), Appellants below. Petitioners seek review of only a portion of the Court of Appeals' holdings in *English Farm v. City of Vancouver*, 56890-0-II, Wash. Ct. App. May 2, 2023 (the "Opinion").

II. COUNTERSTATEMENT OF THE CASE

The complete history of the regulatory framework and relevant facts that apply to this case are well set forth in Respondents' joint brief to the Superior Court.[1] A summary follows.

A. Section 30 Subarea Plan

The City adopted the Section 30 Urban Employment

[1] CP-1992-2011.

Center Plan ("Subarea Plan") with a vision to create one of Vancouver's largest 21st Century urban employment centers.[2] This policy aims to transform Section 30's predominantly privately-owned mined land annexed by the City in 2008 into an employment center. HP, the City's largest, private, non-health care related employer presented the City with the first proposal to achieve the goals in the Subarea Plan.[3]

In 2009, after an open public review, the City adopted the Subarea Plan as part of the comprehensive plan to establish economic development policies for Section 30.[4] The ordinance also adopted the Section 30 Urban Employment Center Design Guidelines ("Design Guidelines") and chapter 20.690 VMC (collectively the Subarea Plan, Design Guidelines, and Code are referred to as the "City's Planning Documents").[5]

With few exceptions, the Subarea Plan's 122 policies use

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[2] CP 879, 984, 1611.
[3] CP 2704:11-14.
[4] CP 864-865.
[5] CP 1440-1471.

aspirational and subjective language to ensure maximum flexibility to future City Council decision makers and Master Plan applicants.[6] The Code implements the Subarea Plan through submittal requirements and a public review process. Chapter 20.690 VMC directs applicants and the public to relevant code provisions; and master plan approval criteria are set forth under VMC 20.690.050(C).[7] In addition, the City has adopted the Optional DNS (Determination of Non-Significance) process under VMC 20.790.230, and a SEPA review process under chapter 20.790 VMC.[8]

After public hearings, the City and HP entered a Development Agreement and HP vested to the City's Planning Documents as written on December 16, 2019 ("HP Development

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[6] CP 888-921. *See also* CP 863, 876, 879, 880, 892, 935, 1788, 2199:8-2200:3, 2230:5-8, 2358:11-14 all describing flexibility in the City's Planning Documents.

[7] CP 1397, 1596-1598, 1666-1668, 1013-1017. Chapter 20.690 VMC as vested in the HP Development Agreement appears at CP 2400-2416.

[8] WAC 197-11-680 authorizes the City to adopt its local appeals process.

Agreement").[9] Approval of the HP Development Agreement was not appealed.[10]

B. HP's Planning Efforts

1. The HP Development Agreement.

The 68-acre property subject to the HP Development Agreement is located in the City's Section 30 (the "HP Property").[11] Nearly all Section 30 property is zoned Employment Center Mixed Use ("ECX"), including the HP Property, Petitioners' property, an asphalt plant to the east, a concrete plant to the east, and mined property to the north and east.[12] In addition, the HP Property borders residential neighbors to the west who are outside of the City limits.[13]

At the time of the HP Development Agreement, HP did not own any property in Section 30, but had a purchase and sale agreement for real property consisting of approximately 68 acres,

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[9] CP 756, 805-856, 822-823.
[10] CP 1429-1430.
[11] CP 756.
[12] CP 763, 1427-1428.
[13] *Id.*

including an eight-acre portion of Petitioners' property.[14] Petitioners subsequently sold those eight acres to HP.[15]

The HP Development Agreement contains a conceptual project layout showing buildings contemplated on the east side of the 68-acre subject property along a planned extension of NE 184th Avenue, with landscaped parking areas along the center and western portion of the property.[16] In the HP Development Agreement the City and HP agreed and acknowledged that HP could seek Master Plan review separate from site plan application approval.[17] Consistent with the HP Development Agreement, HP submitted a Master Plan according to the provisions of the City's Planning Documents as vested in the HP Development Agreement.[18] The Master Plan carries forward the conceptual design from the HP Development Agreement.[19]

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[14] CP 799, 830-831, 885, 1437.
[15] CP 1721. See CP 1024.
[16] CP 839.
[17] CP 1224, 1240, 1246.
[18] CP 752-856, 1429.
[19] CP 787, 791, 800, 803.

2. The HP Master Plan.

HP has been an active member of the Vancouver community for more than 35 years.[20] Over the course of HP's tenure, thousands of people have been employed, raised their families, and become deeply invested in Vancouver community activities.[21] The focus of the HP Master Plan is an employment center to occur over the next 15-20 years as a catalyst for investment and employment growth within the City.[22]

The Master Plan does not propose specific development at this time, and does not include site plan review.[23] The Master Plan includes building footprints, but no building heights.[24] The document explains that the conceptual Full Site Utilization Plan ("FSUP") proposes potential sizes, locations, configurations and uses associated with full site build-out,[25] and that HP retained

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[20] CP 755.
[21] CP 755.
[22] CP 757.
[23] CP 1438.
[24] CP 764, 1002-1003, 1012, 2426.
[25] CP 761, 787, 800.

discretion on ultimate building placement.[26] In addition, the Master Plan confirms the future site plan review process.[27] References to future site planning reflects HP's freedom to make decisions in the future about scale, including, but not limited to, building height and orientation, type of building, or target employees who will occupy the buildings, among other decisions.[28]

The City deemed the HP Master Plan application complete on December 4, 2020, and issued a Notice of Application, Remote Public Hearing and Optional SEPA Determination of Non-Significance on December 18, 2020.[29] The notice was mailed to Petitioners, which prompted Petitioners to share their comments on the Master Plan, primarily focused on their view. Beginning on January 13, 2021, with an e-mail submission by

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[26] CP 788.
[27] CP 758, 773, 781, 785, 1115.
[28] CP 1168, 1434-1435, 1169-1171, 1195, 1438, 1534, 1535, 1537, 1541-1542, 1544.
[29] CP 1094, 1552, 2424. *See also* CP 1128 (notice of change of date of public hearing).

Petitioner Jennifer English Wallenberg, and ending on May 17, 2021, with Petitioners' presentation to City Council through their counsel, Petitioners directly participated in the public review process 14 separate times.[30]

During this review, Petitioners raised concerns about potential, but unsubstantiated impacts to views from their property, and potential impacts to the vineyards from development first envisioned in the HP Development Agreement, and thereafter consistently planned for in the HP Master Plan. The message that English Farm delivered is that "[w]e agreed to annexation into the City of Vancouver. Of course we are aware that the area is urbanizing and were involved in guiding that process."[31] As to improving the value of their property, Petitioners wanted to jumpstart infrastructure

[30] CP 188-190, 1132-1134, 1505-1533, 1601-1602, 1624-1634, 1635-1636, 1690-1700, 1719-1725, 1726-1761, 1812-1814. Petitioners also spoke at all public meetings except two workshops that are not treated as public hearings. *See* CP 2509:12-2510:21, 2628:20-2631:14, 2737:21-2740:25.
[31] CP 1629.

improvements along SE 1st Street by selling this key piece of property to HP.[32] All of this was stated in the context of Petitioners' statements in written testimony submitted for the April 13, 2021, hearing, that Petitioners could continue growing grapes and making wine despite tall buildings:

> "While it is true that tall buildings obstructing views of Mt St Helens with [*sic*] not preclude English Farm from growing grapes or making wine."[33]

Thus, Petitioners assured the City that their livelihood would not be affected if the winery and vineyard experiences some unknowable impact, that Petitioners could continue to grow grapes and make wine despite HP's future development, and that overall their property values would increase—which is supported by the improved infrastructure accompanying the HP Master Plan.[34]

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[32] CP 1438, 1721.
[33] CP 1632.
[34] CP 1726 (not Petitioners' livelihood to maintain farm), CP 1492-1498 also supported by the Memorandum of Option to

In connection with the City workshops and the related public hearings, appointed and elected officials requested additional information from City staff.[35] HP responded to each item raised during public review.[36]

As to specific potential impacts identified by Petitioners, HP responded to the best of its ability given the information available at the time according to potential outcomes of the Master Plan.[37] Further, HP provided an in-depth response to the

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Purchase; see footnote 30, *supra*. citing location of English testimony.

[35] During the February 9, 2021 workshop, planning Commissioners posed questions to staff and the staff responded. CP 2477:7-22, 2478:10-2479:8, 2494:5-2495:11; 2487:10-2488:4, 2489:8-2490:7, 2493:10-2494:4; 2496:4-2499:25, 2500:1-2501:12, 2501:15-2503:13, 2503:14-17, 2541:4-2542:18, 2550:19-2551:5; 2548:14-2549:2, 2549:4-25, 2550:10-17; 2555:17-2556:13, 2556:17-2557:1. Requests summarized at CP 2589:20-24, 2691:13-2692:24.

[36] Response to Planning Commission at CP 2600:21-2601:16, 2637:24-2638:15, CP 2601:18-2602:9 (photographs of site), CP 2619:5-21, 2624:22-2625:5 (no rendering provided because design work had not started), CP 2622:11-15, 1170, 1195-1196 (plant list), CP 2616:14-19 (coordination of roads and utilities), CP 2625:13-2626:5 (plazas and open space).

[37] CP 1535-1536, in addition the full letter provides legal argument justifying the City's approval. CP 1534-1545. In 2009,

potential view impacts asserted by Petitioners,[38] including a legal analysis that Petitioners had no right to a protected view of Mt. St. Helens.[39] HP ultimately concluded that Petitioners raised concerns that it would consider at site plan review.[40]

Throughout the staff report, analyzing the Design Guidelines that are specific to site planning, the City carried forward each one to site plan review through Conditions 1 and

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the City's Planning Documents were subject to review, including public hearings. CP 1432-1433. Petitioners were represented by attorneys at the time, but did not appear to have one speak on their behalf. CP 2107:17-21. Instead, Mr. Carl English spoke on behalf of the winery in relation to his concerns about the 1st Street improvements. CP 2126:22-23, 2128:10-2133:16. Only Mr. McCabe raised concerns about views. CP 2139:12-2141:7. Thereafter Planning Commissioners and City staff engaged in a dialogue in this regard. CP 2166:4-15, the July 28, 2009 Planning Commission Deliberations Transcript. Despite Mr. McCabe referencing Mt. St. Helens, the Planning Commission only adopted Design Guideline A.6.1 mentioning views to Mt. Hood. *Id.* *See also*, CP 1168-1170, 1404, 1410, 1414, 1421-1428.

[38] CP 1435-1437, and see associated imagery at CP 1474-1478, English Development Agreement at CP 1479-1491, and Memorandum of Option to Purchase at CP 1492-1498.

[39] CP 1438.

[40] CP 1541-1542, 1113-1114, 1119, 2459-2461.

2.[41] In addition, the City staff presentations to the Planning Commission and City Council reflected this future refinement that would occur at site plan review—subject to its own review process—inclusive of compliance with the City's Planning Documents. The Master Plan was approved on May 17, 2021, by way of Resolution M-4126.[42]

C. LUPA Action.

On June 4, 2021, Petitioners initiated an action under LUPA, seeking vacation of Resolution M-4126 in addition to suing the City for an alleged breach of a 2007 Development Agreement. The trial court affirmed the City Council's decision on the LUPA petition and dismissed Petitioners' breach of contract claim, which the Court of Appeals affirmed.

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[41] CP 1017-1028, 1038, 2452.
[42] CP-1546-1581.

III. ARGUMENT

A. Review can only be granted under the criteria specified in RAP 13.4(b), and any issues or claims not in the Petition are deemed abandoned.

As to any issue absent from the petition—including Petitioners' claim that the City is liable for breach of contract—those arguments are deemed abandoned. *Sargent v. Seattle Police Dep't*, 179 Wn.2d 376, 401, 314 P.3d 1093 (2013) (Court will not consider any error absent from petition for review).

As to the issues raised, Supreme Court review is justified in limited circumstances. RAP 13.4(b). Contrary to Petitioners' assumption, whether "[t]he Opinion … is [or is] not supported by substantial evidence and reflects a clearly erroneous application of the law to the facts" is irrelevant to whether review in this Court is justified. Pet. at 6. Rather, to warrant this Court's review, Petitioners must demonstrate that the Court of Appeals' unpublished Opinion "is in conflict with a decision of the Supreme Court," "is in conflict with another decision of the Court of Appeals," or is "an issue of substantial public interest

that should be determined by the Supreme Court." RAP 13.4(b)(1), (b)(2), (b)(4). As shown below, the Petition falls short of these demanding standards. Review should be denied.

B. The issues raised in the Petition are inadequate for review under RAP 13.4(b).

1. Petitioners fail to identify any conflict with any decision of this Court or published decision of the Court of Appeals.

Petitioners point to two published decisions in a failed effort to claim a precedential conflict exists, but their petition confirms no conflict exists. Petitioners first point to, *Woods v. Kittitas County*, 162 Wn.2d 597, 174 P.3d 25 (2007), asserting the Opinion "inappropriately extend[s] *Woods* beyond this Court's ruling and contrary to the basic tenants [sic] of the GMA…" Pet. at 11 (Underlined emphasis added). Petitioners advance the same argument with respect to *Spokane County v. E. Wash. Growth Mgmt. Hrg's Bd.*, 176 Wn.App. 555, 309 P.3d 673 (2013), arguing the "Opinion… erroneously extends the holding of *Spokane County* beyond that Court of Appeals Division III's express intent." *Id*. (Underlined emphasis added). Notably,

the Petition does not identify any *conflict* with *Woods* or *Spokane County*, instead positing only a conclusory and unsupported contention the Opinion "extend[s] both *Woods* and *Spokane County* farther than either issuing court intended…" Pet. at 12. An unpublished Opinion's alleged "extension" of an earlier, published decision is not a recognized basis for Supreme Court review. RAP 13.4(b).

A review of both *Woods* and *Spokane County* confirms no conflict exists. *Woods* held site specific rezones are subject to the superior court's subject matter jurisdiction under LUPA, and that the Growth Management Act ("GMA") does not apply directly to site specific rezones. *Woods*, 162 Wn.2d at 612-613. Somewhat analogously, *Spokane County* held a comprehensive plan amendment combined with a site specific rezone was properly before the GMA's regional hearings board because the rezone application would not have been authorized under the then-existing comprehensive plan. *Spokane County*, 176 Wn.App. at 562, 572.

Both cases include analysis of the same proposition: how to interpret whether the comprehensive plan is implemented in a land use decision. Significantly, both cases hold that the comprehensive plan is a guide to making land use decisions, and general conformance is all that is required. *Woods*, 162 Wn.2d at 613, *Spokane County*, 176 Wn.App. at 574. The latter principle stems from *Barrie v. Kitsap County*, 93 Wn.2d 843, 613 P.2d 1148 (1980), in which the Court upheld a rezone because it "generally conform[ed] with the plan." *Id.* at 849. The Court of Appeals rightly applied this 43-year old principle of law to the facts before it in this case. Petitioners' unsupported argument that the result below creates a "disastrous effect" is without merit. Pet. at 12. Put simply, there is neither a distinction, nor a conflict between the Opinion and any Washington appellate decision. Thus, the Petition should be denied.

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2. The Opinion is correctly reasoned and supported by the law and record, given the high level of deference owed the City Council in determining consistency with and implementation of the comprehensive plan.

The structure of chapter 20.690 VMC is consistent with the Court of Appeals' understanding of the manner in which the Subarea Plan is referenced in the approval criteria. The Subarea Plan is part of the City's comprehensive plan. *English Farm*, slip op. 2.[43]

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[43] While the Opinion may have more accurately stated that the implementing regulations for the Subarea Plan were also adopted, the Opinion is correct in its statement that "Chapter 20.690 VMC implements and adopts the Subarea Plan…" *English Farm*, slip op. 3. The VMC adopts the Subarea Plan in various places,

> VMC 20.690.030(B): "The zone designations and overlay enable development in accordance with the adopted policies of the Section 30 Employment Center Plan."
>
> VMC 20.690.040(G)(1): "Collector arterial roadway alignment shall be consistent with the conceptual roadway alignments shown in the Section 30 Employment Center Plan document."
>
> VMC 20.690.040(G)(2): "Connections to streets that border Section 30 Plan District shall be substantially as shown in the Section 30 Employment Center Plan

Where the question before the City Council is whether the HP Master Plan "implements" the comprehensive plan under VMC 20.690.050(C)(1)[44], the Opinion's reliance on *Spokane County v. E. Wash. Growth Mgmt. Hrg's Bd.*, 173 Wn.App. 310, 333, 293 P.3d 1248 (2013), case is correct. *English Farm*, slip op. 10-11. The City Council is the elected body tasked with weighing and balancing competing comprehensive plan policies, particularly when the plan itself is premised on flexibility to achieve the desired employment goals in the Subarea Plan.[45] *English Farm*, slip op. 2 and 11.

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document."

In addition, VMC 20.690.050 contains many references to "consistency with the Section 30 Employment Center Plan." Moreover, the Court of Appeals correctly references Ordinance No. M-3930 that adopted the City's Planning Documents and had full access to the ordinance. *English Farm*, slip op. 2, *accord* Brief of Resp't HP, Appx. A-2 (containing CP 597-630, 1993).

[44] VMC 20.690.050(C)(1) requires a finding that, "The Master Plan implements the Section 30 Employment Center Plan and requirements of this chapter."

[45] Flexibility in the Subarea Plan policies and Design Guidelines is described at length at CP 1993-1996, and Brief of Resp't HP, pp. 8-12.

Once more the Petition echoes the failed argument before the City Council, and lower courts—if Petitioners desired to make particular Subarea Plan policies mandatory during Master Plan review, the appropriate time to challenge the Subarea Plan content or implementing regulations was at adoption in 2009.[46] *Woods*, 162 Wn.2d at 613-614. Similarly, Petitioners' first time mention of WAC 365-196-800(1),[47] applicable only at the time of adoption of chapter 20.690 VMC, should have been raised in a challenge back in 2009, not in this review. *Id.* Petitioners' disguised challenge to the adequacy of chapter 20.690 VMC

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[46] *English Farm*, slip op. 2.

[47] WAC 365-196-800(1):

> "(1) Development regulations under the act are specific controls placed on development or land use activities by a county or city. Development regulations must be consistent with and implement comprehensive plans adopted pursuant to the act.
>
> 'Implement' in this context has a more affirmative meaning than merely "consistent." See WAC 365-196-210. 'Implement' connotes not only a lack of conflict but also a sufficient scope to fully carry out the goals, policies, standards and directions contained in the comprehensive plan."

cannot be achieved through its Petition. *Id.* at 615.

Even assuming *arguendo*, Petitioners timely made their argument, they attempt to draw an artificial distinction between the deference owed the elected body in amending the comprehensive plan, and the Code provision here that requires a finding by the City Council that the HP Master Plan implements the Subarea Plan (i.e. the comprehensive plan). This is a distinction without a difference, when the City Council is charged with balancing competing Subarea Plan policies to determine whether implementation has occurred. As in *Spokane County*, 173 Wn.App. at 333, here the City Council is required to examine the policies in total and in the flexible context within which the Subarea Plan operates to determine that in fact, the HP Master Plan implements the Subarea Plan. Petitioners make no argument about why the weight of competing goals and policies as a fundamental planning responsibility assigned to the local government should be abrogated in this unpublished case. The Petition should be denied on that failure alone.

Moreover, this Court's understanding of the role of local development regulations as a means to carry out the goals of the comprehensive plan has been well-settled since *Woods*, 162 Wn.2d at 613. The City's Code provides for approval with conditions, and HP Master Plan Condition of Approval 1 fully ensures that the goals set forth in the comprehensive plan are achieved, as all applicable Subarea Plan and Design Guideline sections will be reviewed at site plan approval,

> "1. Demonstrate compliance with the provisions of VMC 20.690 and all applicable sections of the Section 30 Plan and Design Guidelines as modified by the 2019 Development Agreement and provided in the Master Plan."[48]

The Court of Appeals made no error in looking to substantial evidence in the entire record to support the City's decision, and its understanding that Condition of Approval 1 will apply at site plan review to require findings against the applicable Subarea Plan policies is correct. *English Farm*, slip op. 9, citing

[48] CP 1038, 2452.

Phoenix Dev. Inc. v. City of Woodinville, 171 Wn.2d 820, 828-829, 256 P.3d 1150 (2011); *see also English Farm*, slip op. 12-14.

3. Petitioners' waived review as to the second issue related to SEPA review.

Petitioners' second issue presented for review challenges the Court of Appeals' determination that they waived their argument "[t]hat the City's decision violated SEPA and the City should have withdrawn its DNS." *English Farm*, slip op. 16. The Opinion reached this conclusion based on the unremarkable proposition that "[a] plaintiff alleging noncompliance with SEPA must exhaust administrative remedies before filing suit." *CLEAN v. City of Spokane*, 133 Wn.2d 455, 465, 947 P.2d 1169 (1997), *cited and followed in English Farm*, slip op. 16. Undisputedly, Petitioners never appealed the City's DNS. *English Farm*, slip op. 16.

Nevertheless, the Petition contends the Court of Appeals' conclusion conflicts with *King County v. Washington State*

Boundary Review Board, 122 Wn.2d 648, 860 P.2d 1024 (1993). Not only is there no conflict, *King County* supports the conclusion reached below.

At issue in *King County* was the county's Boundary Review Board's approval of two proposed annexations by the City of Black Diamond. *Id.* at 652-653. The City, Board, and various landowners appealed the superior court's decision directly to this Court, arguing in part that the county had waived its ability to challenge Black Diamond's DNS by "not specifically includ[ing the DNS] within the *notice of appeal to the Superior Court.*" *Id.* at 659-660. (Emphasis added). This Court rejected that argument, noting that the "notice of appeal contained a general claim that the Board had failed to comply with SEPA." *Id.* at 660. But significantly, King County had properly exhausted its administrative remedies by "appeal[ing] the DNS to the Black Diamond City Council." *Id.* at 657.

Unlike King County, Petitioners did not do so. *English Farm*, slip op. 16-17. Petitioners had full notice and opportunity

to review the HP Master Plan SEPA Checklist, comment on the same, and appeal the City's DNS.[49] VMC 20.790.230(B), 20.790.440(D), 20.790.640(G), RCW 43.21C.075(4), WAC 197-11-340(2)(c) and 197-11-340(2)(f).

In essence, Petitioners conflate the exhaustion of remedies doctrine as properly applied in *CLEAN*, 133 Wn.2d at 465 (on which the Court of Appeals relied below), with *King County's* analysis vis-à-vis the scope of judicial review based upon the contents of a notice of appeal filed in superior court. However, that is not a conflict. As evidence, the only portion of *King County* speaking to exhaustion of remedies was this Court's refusal to consider an argument that was never properly "raised before the Board." *King County*, 122 Wn.2d at 669. Where the validity of an ordinance under the GMA is not challenged before the lower body (in that case the boundary review board, here the City), judicial review is precluded. *Id*. at 668-669.

[49] CP 1094-1095, 1552, 2424. *See also* CP 1128 (notice of change of date of public hearing).

Consequently, *King County* supports the Opinion's waiver analysis and negates any basis for review. RAP 13.4(b)(1).

Petitioners' mischaracterization of the preservation and exhaustion principle as applying only to whether SEPA-related arguments were raised during judicial review is unsupported. *See* Pet. at 18-20. If Petitioners had wanted to challenge the SEPA determination, then an appeal should have been filed consistent with their rights explained in the notice—to submit comments and appeal the DNS. Petitioners failed to preserve their rights under SEPA, therefore, this issue was waived. *Ellensburg Cement Products, Inc. v. Kittitas County*, 179 Wn.2d 737, 743-745, 317 P.3d 1037 (2014); and *CLEAN*, 133 Wn.2d at 464-465.

This exhaustion of local remedies to avoid waiver is well-settled by this Court, and nothing about Petitioners' waiver of the issue during City review of the Master Plan warrants reconsideration, particularly as no changes in the factual record occurred between the notice of application and SEPA

determination and the issuance of the DNS.[50] The Opinion correctly held that Petitioners waived their SEPA claim, and that Petitioners conceded they did not appeal the City's DNS to City Council. *English Farm*, slip op. 16.

Petitioners' claims notwithstanding, lower courts have rightly rejected their claim that Master Plan Condition of Approval 2 results in serial SEPA review. *English Farm*, slip op. 15. Nothing in the Petition identifies precedent with which the Opinion conflicts. *See* RAP 13.4(b)(1)-(2). HP has maintained from the outset that it will exercise its discretion in choosing its design, materials, height, and a myriad of other aspects of each phase of development. Making these choices after master planning is a sanctioned land use process, where future compliance is subject to the site plan review process. *KS Tacoma Holdings, LLC v. Shorelines Hearings Board*, 166 Wn.App. 117,

[50] Petitioners' arguments before the Court of Appeals focused on unsupported claims that the facts had substantially changed in the record after the DNS notice issued. Opening Brief COA, p. 28.

134, 272 P.3d 876 (2012), *rev den,* 174 Wn.2d 1007, 278 P.3d 1112 (2012). HP's SEPA response is exactly what one would expect at this stage of environmental review, occurring at the earliest time for the affected property, but ahead of any of HP's aesthetic decision making that will occur at site plan submittal.[51] *Id.* Master Plan Condition 2 was well-placed to address this issue and the Court of Appeals correctly understood SEPA review would continue. *English Farm*, slip op. 15.

Where the law is settled that exhaustion of local remedies is a prerequisite to judicial review, and where future SEPA compliance is required under law and the Master Plan's conditions of approval, the Court should deny this Petition.

4. Petitioners fail to establish an issue of substantial public interest because the City's master planning process and code implementation affects only a small portion of property in eastern Vancouver.

Review may be warranted "when a petition involves issues of substantial public interest that should be determined" by this

[51] More fully argued at CP-2023, 2027-2028.

Court. RAP 13.4(b). For example, review was warranted in *State v. Watson*, 155 Wn.2d 574, 577, 122 P.3d 903 (2005), which involved a published appellate decision that had the potential to affect *every* sentencing proceeding in Pierce County. That is not the case here. The issues here arise from the City's Planning Documents that govern property owned by about 12 different property owners.[52] The Subarea Plan recognizes the sanctity of existing Development Agreements, and many of those properties may not be subject to the Code standards at issue here.[53] Thus, the Section 30 planning regime and unpublished Opinion affect only a small number of people.

Seeking to avoid this incontrovertible fact, Petitioners' argue that this case involves one of substantial public interest by contending every decision regarding the GMA is a serious issue of public importance. Pet. at 8. In other words, Petitioners urge

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[52] CP 763.

[53] "The Plan update recognizes and respects existing property owner development agreements…" CP 863.

a position, unsupported by any authority, that would mean every land use decision demands Supreme Court review. *DeHeer v. Seattle Post-Intelligencer*, 60 Wn.2d 122, 126, 372 P.2d 193 (1962) ("Where no authorities are cited in support of a proposition, the court is not required to search out authorities, but may assume that counsel, after diligent search, has found none.")

Notwithstanding Petitioners' contention, this case does not impact a substantial public interest. Rather, it involves the planning of a small area of one city under a unique set of local code requirements, all with a specific history of Development Agreements entered upon annexation. Such a case does not impact statewide planning policy.

IV. HP is entitled to an award of attorneys' fees.

Under RCW 4.84.370, parties prevailing on appellate review from LUPA decisions are entitled to "reasonable attorneys' fees and costs." HP made this request at the Court of Appeals and was rightly awarded its fees for its defense of the superior court's decision. *English Farm*, slip op. 21. HP includes

in this answer to the Petition that same request for fees. See RAP 18.1(j). Respondents prevailed in the LUPA matter before the lower courts satisfying the requirement under RCW 4.84.370(1)(b) to qualify for fees here. *Gendler v. Batiste,* 174 Wn.2d 244, 264-265, 274 P.3d 346 (2012) (in another case with mandatory attorneys' fees under RCW 42.56.550(4) fees were awarded). Should the Court deny review, HP will be a prevailing party "in all prior judicial proceedings." RCW 4.84.370(1)(b). Therefore, HP is entitled to fees. RAP 18.1(j).

V. CONCLUSION

For all of the foregoing reasons, Respondents request a speedy denial of this Petition to both achieve LUPA's purpose of timely review under RCW 36.70C.010, and allow Respondents to move forward with "The first major economic development project" in eastern Vancouver's Section 30, which sets the stage for further development throughout Section 30 as supporting infrastructure is brought in to serve the HP site, and will include "a capital investment alone. . . in the hundreds of millions of

dollars."[54]

DATED this 30th day of June, 2023

Certificate of Compliance: I certify that this answer contains 4,849 words, in compliance with RAP 18.17.

TOMASI BRAGAR DUBAY

/s/ Jennifer Bragar
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[54] CP 2705:3-12, 1382.

CERTIFICATE OF SERVICE

I certify that on June 30, 2023, I served a copy of the foregoing document, described as **RESPONDENTS' CITY OF VANCOUVER AND HP INC'S JOINT ANSWER TO PETITION FOR REVIEW** on the following persons by electronic service by electronic service:

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I declare under penalty of perjury under the laws of the State of Oregon that the foregoing is true and correct, and that this Declaration was executed in Portland, Oregon.

Dated: June 30, 2023.

/s/ Anayeli Nieves Alvez
Legal Assistant
Tomasi Bragar DuBay

TOMASI BRAGAR DUBAY PC

June 30, 2023 - 2:41 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	102,055-4
Appellate Court Case Title:	English Farm LLC, et al, v. City of Vancouver, et al.,
Superior Court Case Number:	21-2-01039-3

The following documents have been uploaded:

- 1020554_Answer_Reply_20230630141929SC401823_3160.pdf
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