No. 102177-1

SUPREME COURT
OF THE STATE OF WASHINGTON

KING COUNTY,

Respondent,

v.

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

Petitioners.

AMICUS CURIAE MEMORANDUM OF SIERRA CLUB IN SUPPORT OF REVIEW

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A. INTRODUCTION

The Friends of Sammamish Valley ("FOSV") and Futurewise petitioned this Court for review of the June 12, 2023 Court of Appeals opinion: *King County v. FOSV and Futurewise*, Court of Appeals No. 83905-5-I (hereinafter "COA Opinion"). FOSV and Futurewise petitions for review articulate that Washington State Supreme Court review is merited under the criteria of RAP 13.4(b) because the issues involve substantial public interest. The COA Opinion is contrary to the terms of the State Environmental Policy Act, RCW 43.21C ("SEPA") and the Growth Management Act, RCW 36.70A ("GMA"), and contrary to case law involving both important environmental statutes.

Sierra Club further represents that the COA Opinion arouses substantial public interests in environmental impacts as well as the weakening of statutes aimed at the protection of the Washington environment and requests that the Washington Supreme Court accept discretionary review under RAP 13.4(b)(4).

King County Ordinance 19030 ("Ordinance 19030"), if allowed to stand, will inevitably be used by other local jurisdictions to justify expansion of alcohol retail activity in agricultural or rural zones, and thereby set a dangerous precedent for use of these zones for urban-serving businesses.[1] This Court should not allow Ordinance 19030 to undermine the GMA's protection of agricultural lands, as the Growth Management Hearings Board (GMHB) rightfully recognized in its ruling against Ordinance 19030.[2] This case deserves Supreme Court review.

B. THE INTERESTS OF *AMICUS*

Amicus curiae-applicant Sierra Club adopts and incorporates its statement of interest contained in its motion for leave to file an amicus memorandum. As noted in their motion

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[1] King County Ordinance 19030. Certified Record (CR) 217-338.

[2] See *FOSV et al. v. King County*, Central Puget Sound Region Growth Management Hearings Board (GMHB) Case No. 20-3-0004c, Order Nunc Pro Tunc Correcting Scrivener's Errors in Final Decision and Order (Jan.27, 2022). CR 49403-49457 and attached as Appendix B to the Futurewise Petition for Review.

for leave to submit this memorandum on review, Sierra Club was founded in 1892 and is the nation's oldest grassroots environmental organization. With more than 700,000 members nationwide and 27,000 members in its Washington Chapter, Sierra Club has urgent interests in addressing the causes of human-induced climate change, protecting air and water quality, preserving habitat, and remedying the overburdened conditions experienced by environmental justice communities.

The COA Opinion on Ordinance 19030 implicates many interests of Sierra Club's members and many other Washingtonians.

C. STATEMENT OF CASE

Amicus curiae-applicant Sierra Club adopts the statements of the case set forth in the petitions of FOSV and Futurewise.

This *amicus* memorandum focuses on the harms to the environment that will result because Ordinance 19030 permits urban activities on rural and agricultural lands. The COA Opinion hollows out SEPA and the GMA, as well as the King

County Comprehensive Plan (KCCP) and Countywide Planning Policies (CPPs).

The genuine harms to the environment to be caused by Ordinance 19030 are not speculative. Ordinance 19030 permits urban activities on rural and agricultural lands and flouts numerous goals of the GMA and the Shoreline Management Act (RCW 90.58.020) by:

- encouraging commercial development in rural and agricultural areas,[3]
- encouraging sprawl,[4]
- encouraging inefficient single-occupancy-vehicle transportation,[5]
- encouraging business development that is inconsistent with adopted comprehensive plans,[6]
- harming natural resource industries,[7]

[3] RCW 36.70A.020(1).
[4] RCW 36.70A.020(2).
[5] RCW 36.70A.020(3).
[6] RCW 36.70A.020(5).
[7] RCW 36.70A.020(8).

- reducing open space and harming fish and wildlife,[8]
- harming the environment,[9]
- contradicting the requests of the thousands of residents who participated in public outreach processes,[10]
- encouraging development where public facilities and services are inadequate,[11] and
- harming a shoreline of the State. [12]

D. ARGUMENT

In Washington, a petition for review will be accepted by the Supreme Court, among other reasons, "[i]f the petition involves an issue of substantial public interest that should be determined by the Supreme Court."[13] Statewide policy in

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[8] RCW 36.70A.020(9).
[9] RCW 36.70A.020(10).
[10] RCW 36.70A.020(11).
[11] RCW 36.70A.020(12).
[12] RCW 90.58.020.
[13] RAP 13.4(b)(4); see, e.g., *State v. Watson*, 155 Wash. 2d 574, 577, 122 P.3d 903, 904 (2005).

addition to experts and Sierra Club volunteers, staff, and membership argue that the environmental and political implications of this case are of significant public interest warranting review by this Court.

I. Environmental interests are harmed by urban activities in rural area and agricultural zones.

A rural area by definition lacks urban infrastructure such as sewer hookup, sidewalks, traffic signals and turn lanes, streetlights, and parking lots.[14] Urban use manufacturing and retail businesses need this infrastructure.

The issues presented in this case involve areas of great concern to citizens of the state and environmental advocates such as stormwater management, culvert removal, water quality, salmon and orca recovery, transportation, food security, and increasing the tree canopy.

Ordinance 19030 and the COA Opinion undermine our ability to address issues like climate change, biodiversity loss,

[14] RCW 36.70A.070(5).

and our ability to create sustainable climate-resilient communities in Washington. All of Washington will experience environmental harm if the COA Opinion is allowed to stand.

II. Climate change impacts from sprawl are of substantial public interest.

Our efforts to reduce the GHG emissions that are a driving force behind climate change become doubly important as the impacts in Washington increase in severity and frequency. While the contribution of emissions from activities in Washington may be small relative to the global fluxes of GHG emissions, it is imperative that we do our part to lower these emissions.

Manufacturing facilities and retail bars sprawling through rural areas, rather than clustered in the cities, will create more truck and car traffic and be counter to County goals to reduce our carbon footprint. Additionally, traffic impacts would overwhelm the roads that are meant to carry rural area volumes of traffic.

Transportation is one of the largest sectors of GHG emissions in the state of Washington.[15] Standards exist for reducing these emissions and reducing vehicle miles traveled, both of which will be made more challenging if sprawl is allowed to continue unabated as would be the case with allowing Ordinance 19030 and the COA Opinion to stand.

As GHG emissions continue, we can expect the added CO2 in the atmosphere to boost global average temperature and that this rising temperature creates more flooding, extreme weather, droughts, wildfires and disease. Deloitte Economics Institute estimates that if left unchecked, the economic cost of climate change in the United States alone could reach $14.5 trillion by 2070.[16] We'll also have to spend huge amounts of money repairing the damage caused by extreme weather.

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[15] Washington State Department of Ecology, Air Quality Program, Washington State Greenhouse Gas Emissions Inventory: 1990–2019, Publication 22-02-054 (December 2022).

[16] Deloitte Economics Institute. The Turning Point: A new economic climate in the United States. (January 25, 2022).

This year is on track to be the hottest year in recorded history, and this past July was the hottest month on record.[17] As the climate warms, extreme heat events are occurring more frequently, a trend we expect to emerge in Washington state too. Events such as the "heat dome" of late June 2021 when high temperature records were set all across the Pacific Northwest, are more likely to occur in a climate change-enhanced warmer future.

Heat events kill people and exacerbate chronic health issues like heart and kidney disease.[18] The volume of heat-related illnesses during an extreme heat event can strain the health system — increasing 911 calls, ambulance transports, emergency department visits and hospital admissions — and can ultimately be lethal.[19]

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[17] National Oceanic and Atmospheric Administration, July 2023 Global Climate Report, (August 14, 2023).
[18] Vogel, J., et. al. In the Hot Seat: Saving Lives from Extreme Heat in Washington State. University of Washington's Climate Impacts Group. (2023).
[19] *Id.*at 2.

Policy that promotes sprawl and more vehicular emissions, such as would be the case with Ordinance 19030 and the COA Opinion if allowed to stand, cannot be tolerated if we are to effectively mitigate the GHG emissions from the transport sector in the state.

III. Public transit suffers if sprawl is permitted.

Transit service is most effective where density of residential dwellings and commercial activity is sufficient to create strong ridership demand and warrant a level of frequency that reinforces and builds on this ridership. Sprawling urban-serving businesses outside urban growth areas (UGAs) lack sufficient densities to justify public transit service, yet also cause the urban areas where those businesses might otherwise locate to not reach the density for which they are zoned, resulting in less effective public transit or less (or no) transit service. In effect, Ordinance 19030 and the COA Opinion force Washingtonians to drive cars more miles and have fewer lower-impact transport options.

IV. Food security and supply of agricultural crops are critical public interests in the era of climate change.

Negative impacts to agriculture production due to climate change are threatening food security. The County should be enacting policy that supports our farms and local agricultural production to enhance local food security. Over several decades, King County has spent millions of taxpayer dollars on successful rural, fish and farmland protection programs through its Conservation Futures Program.[20] As climate change impacts become more significant and intense, the availability of locally produced food becomes more important as a component of climate resilience. Farmers need high quality soils to successfully farm. Placing urban serving businesses on prime farmland near to urban areas puts farmers out of business and reduces our ability to achieve increasingly important local food security. Allowing the COA Opinion to stand is completely

[20] See eg. King County Conservation Futures Website. https://kingcounty.gov/en/legacy/services/environment/stewardship/conservation-futures.aspx

counter to the initiatives in support of and taxpayer dollars being spent on resource land protection programs.

V. The COA Opinion curtails the ability to use provisions of the GMA to protect Washington's environment.

The location, design, and operation of wineries, breweries, and distilleries would interfere with agricultural use of such designated lands, and thwart the conservation of productive agricultural land, while not discouraging incompatible under the COA Opinion. Standards for agricultural accessory uses and activities that have been restricted to those that are consistent with the size, scale, and intensity of the existing agricultural use of the property would be more difficult to apply if the bad precedent is allowed to stand.[21] Fulfilling the GMA Planning Goals for natural resource industries, environment, and public facilities and reducing the inappropriate conversion of undeveloped land into sprawling, low-density development in rural areas would become more difficult under the COA

[21] RCW 36.70A.177.

Opinion's precedent.[22] The ability of Sierra Club or other such organizations to seek legal remedies under the provisions of GMA would be harmed if Ordinance 19030 and the COA Opinion are allowed to stand.

VI. Inadequate and inaccurate SEPA Review adopted in COA Opinion is bad precedent.

SEPA requires specific consideration of each regulatory change and its related impacts. A threshold determination shall not balance whether the beneficial aspects of a proposal outweigh its adverse impacts, but rather, shall consider whether a proposal has any probable significant adverse environmental impacts under the rules stated in this section.[23] SEPA is a full disclosure document that must provide enough information to adequately inform the decision makers before they decide on policy as to the likely, significant environmental impacts of their action. By allowing an inadequate SEPA review to stand via the

[22] RCW 36.70A.020.
[23] WAC 197-11-330(5).

COA Opinion, future efforts to fully and correctly apply SEPA would be harmed.

VII. Species extinction is exacerbated by allowing urban uses to sprawl into rural areas.

The continued expansion of urban uses into area that would otherwise be designated as agricultural production zones or Rural areas will degrade more natural and cropland environments that can serve as habitat for many animals and plants. Biodiversity has intrinsic value, and as such, its loss impoverishes society, yet certain species may be more at risk of extinction with conversion of agricultural and Rural lands to urban uses in areas that are on the fringe of urban areas. Habitat degradation or loss can be especially critical for pollinator species such as bees, with negative consequences for the remaining agricultural lands near those that are impacted by encroachment. The added sprawl development into agricultural and Rural lands which Ordinance 19030 and the COA opinion would enable will harm biodiversity and increase the likelihood of species extinction that is related to degraded and lost habitat.

The impact on pollinators such as bees is especially concerning for the effects this can have on various food crops that depend on their ecological services.

VIII. Allowing adult beverage businesses to sprawl into Rural Areas and Agricultural Zones encourages similar requests for other incompatible uses.

In the Sammamish Valley, the drive toward unpermitted and incompatible uses has been led by adult beverage businesses, but others follow closely. SEPA,[24] the GMA,[25] Countywide Planning Policies,[26] and case precedent[27] all speak to the

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[24] WAC 197-11-960(D)(5).
[25] RCW 36.70A.020(8).
[26] 2021 King County Countywide Planning Policies, adopted as King County Ordinance 19384 on December 21, 2021 at 35, "DP-59 Prevent incompatible land uses adjacent to designated Natural Resource Lands to avoid interference with their continued use for the production of agricultural, mining, or forest products."
https://kingcounty.gov/~/media/depts/executive/performance-strategy-budget/regional-planning/CPPs/2021_CPPs-Adopted_and_Ratified.ashx?la=en
[27] *City of Redmond v. Central Puget Sound Growth Management Hearings Board*, 136 Wn.2d 38 (1998)(quoting Richard L. Settle & Charles G. Gavigan, The Growth Management Revolution in Washington: Past, Present, and Future, 16 U. Puget Sound L. Rev. 867, 907 (1993) "Natural

importance of discouraging incompatible uses. The *2016 King County Comprehensive Plan* states:

> "The location of the Rural Area between the Urban Growth Area and the designated Natural Resource Lands helps to protect commercial agriculture and timber from incompatible uses . . .."[28]

And the GMA requires that KCCP policies be implemented by a local jurisdiction's development regulations.[29]

Allowing adult beverage businesses on rural area and agricultural land will inevitably result in requests from other types of businesses and make it virtually impossible to discourage additional incompatible uses.

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resource lands are protected not for the sake of their ecological role but to ensure the viability of the resource-based industries that depend on them. Allowing conversion of resource lands to other uses or allowing incompatible uses nearby impairs the viability of the resource industry."

[28] 2016 King County Comprehensive Plan, Ordinance 18427, as amended by Ordinances 18623, 18810, 19034, 19146, and 19555 at p.3-3. (Updated December 6, 2022).

[29] RCW 36.70A.040 ("Development regulations must implement comprehensive plans").

E. CONCLUSION

Washington's GMA has clear purposes: concentrated urban growth, sprawl reduction, environmental protection, high quality of life, improved low-impact access to services and amenities, among them.[30] The COA Opinion creates dangerous precedent that leads to the environmental degradation and sprawl that SEPA and the GMA were enacted to prevent and which are issues of significant public interest. For the above reasons, *amicus curiae*- applicant Sierra Club respectfully requests that the Washington Supreme Court grant FOSV and Futurewise petitions for discretionary review.

*We certify this memorandum contains **2441** words, excluding the parts of the document exempted from the word count by RAP 18.17.*

Dated this this 11th day of September 2023.

[30] RCW 36.70A.020 ("Planning goals.").

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Kai McDavid, declare that I am over the age of eighteen, not a party to this lawsuit and am competent to testify as to all matters herein.

On September 11, 2023, I filed the foregoing document with the Supreme Court of the State of Washington, and served a copy of said document via the Washington Appellate Courts efiling and service system and via email as indicated below:

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED: September 11, 2023, at Seattle, Washington.

SMITH & LOWNEY

September 11, 2023 - 3:53 PM

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