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NO. 92805-3

SUPREME COURT OF THE STATE OF WASHINGTON

SNOHOMISH COUNTY, KING COUNTY, and BUILDING
INDUSTRY ASSOCIATION OF CLARK COUNTY,

Respondents,

v.

WASHINGTON STATE DEPARTMENT OF ECOLOGY; and PUGET
SOUNDKEEPER ALLIANCE, WASHINGTON ENVIRONMENTAL
COUNCIL, and ROSEMERE NEIGHBORHOOD ASSOCIATION,

Petitioners,

and

POLLUTION CONTROL HEARINGS BOARD,

Respondent Below.

STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY'S
RESPONSE TO MASTER BUILDERS ASSOCIATION OF KING
AND SNOHOMISH COUNTY'S AMICUS CURIAE
MEMORANDUM

ROBERT W. FERGUSON
Attorney General

Ronald L. Lavigne
Senior Counsel
WSBA #18550
P.O. Box 40117
Olympia, WA 98504-0117
OID #91024

FILED AS
ATTACHMENT TO EMAIL

 ORIGINAL

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I. INTRODUCTION

As the Master Builders Association of King and Snohomish County acknowledge, this case presents “important interests . . . that need to be balanced.” Master Builders Association of King and Snohomish County’s Amicus Curiae Memorandum (“MBA Brief”) at 3. MBA notes, “at some fixed point in time” developers need to know what regulations will apply to their projects. *Id.* On the other hand, the public policy of the state of Washington is to maintain the highest possible standards to ensure the purity of all waters of the state. RCW 90.48.010. No one disputes that the stormwater requirements at issue in this case are necessary to reduce municipal stormwater pollution to the maximum extent practicable and protect Washington’s waters from the adverse impacts of poorly managed municipal stormwater. Nor does anyone dispute that the challenged timing requirement for implementation of these necessary stormwater pollution controls inform developers what regulations will apply to their development projects at a fixed point in time. The challenged timing requirement informs developers that submitted development applications prior to June 30, 2015, that they will need to comply with updated stormwater pollution controls if they have not started construction prior to June 30, 2020. The challenged requirement not only sets a fixed point in time at which updated stormwater pollution controls will apply, but also

gives developers that submitted applications prior to June 30, 2015, at least five years notice of the fixed point in time when the updated pollution controls will apply.

The Court of Appeals majority improperly balanced the interests at issue in this case and expanded Washington's vested rights statutes to prevent the state of Washington from requiring developers who do not timely start construction from complying with stormwater pollution controls necessary to reduce municipal stormwater to the maximum extent practicable and protect Washington's waters from the adverse impacts of poorly managed municipal stormwater. Accordingly, Ecology respectfully requests that this Court accept review of the "important interests" raised by this case, and reverse the Court of Appeals majority.

II. ARGUMENT

Snohomish County, King County, and the Building Industry Association of Clark County successfully moved the Court of Appeals for discretionary review under RCW 34.05.518(3) by arguing that this case "involves fundamental issues of state-wide or regional significance supporting this Court's acceptance of direct review." Petitioners Joint Motion for Discretionary Review at 14. In particular, Petitioners successfully argued that the geographic scope of the Municipal Stormwater Permit condition at issue, the scope of activities impacted by

the condition, and the importance of stormwater regulation presented fundamental and urgent state-wide or regional issues. *Id.* at 14–15. MBA’s Brief confirms that these issues continue to be present and this case continues to involve “an issue of substantial public interest that should be determined by the Supreme Court.” RAP 13.4(b)(4).

As MBA notes in its Motion to File Amicus Curiae Memorandum (Motion), the Puget Sound region is expected to receive over one million new residents by the year 2040, creating a strong demand for new housing. MBA Motion at 1–2. The ability to accommodate over one million new residents while still maintaining “the highest possible standards to insure the purity of all waters of the state,” RCW 90.48.010, is an issue of substantial public interest that should be decided by this Court.

MBA argues that the application of vested rights “is vitally important to MBA members and other land owners in the State of Washington.” MBA Brief at 4. Ecology agrees that the proper application of Washington’s vested rights statutes is vitally important not only to MBA members and other land owners, but to all citizens of the state of Washington who are interested in maintaining the highest possible standards to ensure the purity of all waters of the state of Washington.

MBA greatly exaggerates the practical impact the updated stormwater pollution controls will have on developers, and paints a picture

of new regulations suddenly impacting an ongoing construction site. MBA Brief at 5–6. This argument ignores the language of the Municipal Stormwater Permit. Contrary to MBA’s assertions, the Municipal Stormwater Permit provides a fixed point in time by which the updated stormwater pollution controls must be implemented. For developers that submitted applications prior to June 30, 2015, that fixed point in time is June 30, 2020, if the developer has not started construction by that date. AR at 4998 (2013 Permit, Condition S5.C.5.a.iii). This fixed point in time is sufficiently far into the future, and applies only if a developer has not started construction by June 30, 2020. The challenged Permit condition gives significant advance notice of the fixed point in time at which updated pollution controls will apply to projects that have not begun construction by June 30, 2020.

The Court of Appeals majority failed to properly balance the public’s interest in the purity of all waters of the state with developers’ interest to have a “fixed point in time” at which updated stormwater pollution controls must be implemented, despite the fact that the Municipal Stormwater Permit establishes a “fixed point in time” at which the updated stormwater pollution controls must be implemented. Restoring that balance is an issue of substantial public interest and this Court should accept review and conclude that stormwater pollution

controls the state of Washington directs local governments to implement under state and federal water pollution laws are not development regulations that are subject to Washington's vesting statutes.

III. CONCLUSION

As MBA itself acknowledges, the issue in this case is an issue of substantial public interest that should be determined by this Court. Accordingly, this Court should accept review and reverse the Court of Appeals majority decision to expand Washington's vesting statutes to stormwater pollution controls the state of Washington directs local governments to implement.

RESPECTFULLY SUBMITTED this 16th day of May, 2016.

ROBERT W. FERGUSON
Attorney General



RONALD L. LAVIGNE, WSBA #18550
Senior Counsel

Attorneys for Petitioner
State of Washington,
Department of Ecology
P.O. Box 40117
Olympia, WA 98504-0117
(360) 586-6751
RonaldL@atg.wa.gov

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the state of Washington that on May 16, 2016, I caused to be served the Department of Ecology's Response to MBA's Amicus Curiae Memorandum in the above-captioned matter upon the parties herein as indicated below:

ALETHEA HART
LAURA KISIELIUS
DEPUTY PROSECUTING ATTORNEYS
SHONOMISH COUNTY PROSECUTING
ATTORNEY'S OFFICE
3000 ROCKEFELLER AVENUE, M/S 504
EVERETT WA 98201-4046

[x] By Email:
laura.kisielius@snoco.org;
ahart@snoco.org
cryden@snoco.org

JOSEPH B. ROCHELLE
DEVON SHANNON
DARREN CARNELL
SENIOR DEPUTY PROSECUTING ATTORNEYS
KING COUNTY PROSECUTING ATTORNEY'S
OFFICE
516 3RD AVENUE, ROOM W400
SEATTLE, WA 98104

[x] By Email:
Joe.rochelle@kingcounty.gov;
Devon.shannon@kingcounty.gov;
Darren.carnell@kingcounty.gov;
Diana.cherberg@kingcounty.gov

JAMES HOWSLEY
JORDAN RAMIS PC
1499 SE TECH CENTER PL., SUITE 380
VANCOUVER, WA 98683-9575

[x] By Email:
Jamie.howsley@jordanramis.com;
Lisa.mckee@jordanramis.com
Joseph.schaefer@jordanramis.com

JAN HASSELMAN
JANETTE K. BRIMMER
EARTHJUSTICE
705 SECOND AVENUE, SUITE 203
SEATTLE, WA 98104

[x] By Email:
jhasselman@earthjustice.org;
jbrimmer@earthjustice.org
chamborg@earthjustice.org

DIONNE PADILLA-HUDDLESTON
ASSISTANT ATTORNEY GENERAL
LICENSING & ADMINISTRATIVE LAW DIVISION
800 5th AVENUE
SEATTLE, WA 98104

[x] By Email:
dionnep@atg.wa.gov
katieb2@atg.wa.gov

NANCY BAINBRIDGE ROGERS
RANDALL P. OLSEN
ATTORNEYS FOR MBA

[x] By Email:
nrogers@cairncross.com
rolsen@cairncross.com

Courtesy copies provided via email to:

Theresa Wagner
Attorney for City of Seattle

Theresa.wagner@seattle.gov

Christopher D. Bacha
Attorney for City of Tacoma

cbacha@ci.tacoma.wa.us
tkropelnicki@ci.tacoma.wa.us

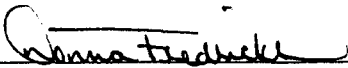
Lori Terry Gregory
Attorney for Pierce County/Coalition

terrl@foster.com
pricm@foster.com

Christine Cook
Attorney for Clark County

Christine.cook@clark.wa.gov
Thelma.kremer@clark.wa.gov

DATED this 16th day of May, 2016, at Olympia, Washington.



DONNA FREDRICKS, Legal Assistant

OFFICE RECEPTIONIST, CLERK

To: Fredricks, Donna (ATG)
Cc: Laura Kisielius; Althea Hart (ahart@snoco.org); Cindy Ryden; Joe Rochelle; Devon Shannon; Darren Carnell; Diana Cherberg; James Howsley (jamie.howsley@jordanramis.com); Lisa McKee; Joseph Schaefer; Jan Hasselman; Janette Brimmer; C. Hamborg; Padilla-Huddleston, Dionne (ATG); Mocer, Katie (ATG); nrogers@cairncross.com; rolsen@cairncross.com; Theresa Wagner (Theresa.wagner@seattle.gov); Chris Bacha; Tina Kropelnicki; Lori Terry Gregory; 'pricm@foster.com'; Christine M. Cook (Christine.cook@clark.wa.gov); Thelma Kremer (Thelma.Kremer@clark.wa.gov); Lavigne, Ronald (ATG)
Subject: RE: Supreme Court No. 92805-3; Snohomish County, et al. v. Wash. State Dept. of Ecology, et al.

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From: Fredricks, Donna (ATG) [mailto:DonnaF@ATG.WA.GOV]

Sent: Monday, May 16, 2016 2:10 PM

To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>

Cc: Laura Kisielius <laura.kisielius@snoco.org>; Althea Hart (ahart@snoco.org) <ahart@snoco.org>; Cindy Ryden <cryden@snoco.org>; Joe Rochelle <joe.rochelle@kingcounty.gov>; Devon Shannon <devon.shannon@kingcounty.gov>; Darren Carnell <darren.carnell@kingcounty.gov>; Diana Cherberg <diana.cherberg@kingcounty.gov>; James Howsley (jamie.howsley@jordanramis.com) <jamie.howsley@jordanramis.com>; Lisa McKee <lisa.mckee@jordanramis.com>; Joseph Schaefer <joseph.schaefer@jordanramis.com>; Jan Hasselman <jhasselman@earthjustice.org>; Janette Brimmer <jbrimmer@earthjustice.org>; C. Hamborg <chamborg@earthjustice.org>; Padilla-Huddleston, Dionne (ATG) <DionneP@ATG.WA.GOV>; Mocer, Katie (ATG) <KatieB2@ATG.WA.GOV>; nrogers@cairncross.com; rolsen@cairncross.com; Theresa Wagner (Theresa.wagner@seattle.gov) <Theresa.wagner@seattle.gov>; Chris Bacha <cbacha@ci.tacoma.wa.us>; Tina Kropelnicki <tkropelnicki@ci.tacoma.wa.us>; Lori Terry Gregory <terrl@foster.com>; 'pricm@foster.com' <pricm@foster.com>; Christine M. Cook (Christine.cook@clark.wa.gov) <Christine.cook@clark.wa.gov>; Thelma Kremer (Thelma.Kremer@clark.wa.gov) <Thelma.Kremer@clark.wa.gov>; Lavigne, Ronald (ATG) <RonaldL@ATG.WA.GOV>

Subject: Supreme Court No. 92805-3; Snohomish County, et al. v. Wash. State Dept. of Ecology, et al.

Attached for filing in Case No. 92805-3, *Snohomish County, et al. v. Dept. of Ecology, et al.*, is the Department of Ecology's Response to Master Builders Assoc. of King and Snohomish County's Amicus Curiae Memorandum, together with an attached Certificate of Service. Thank you for your attention to this matter.

Donna Fredricks

Legal Assistant

donnaf@atg.wa.gov

(360) 586-4617

Document filed on behalf of:

Ronald L. Lavigne, Senior Counsel, WSBA #18550 (ronaldl@atg.wa.gov)

Office of the Attorney General
Ecology Division
P.O. Box 40117
Olympia, WA 98504-0117
(360) 586-6751