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Court of Appeals  
Division II  
State of Washington  
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No. 51501-6-II

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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CITY OF PUYALLUP,

APPELLANT,

v.

PIERCE COUNTY, KNUTSON FARMS, INC., AND RUNNING BEAR  
DEVELOPMENT PARTNERS, LLC,

RESPONDENTS.

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JOINT BRIEF OF RESPONDENTS IN REPLY TO AMICUS BRIEF BY  
CITIES OF SHORELINE AND ELLENSBURG

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[4845-6521-8160]

**TABLE OF AUTHORITIES**

**CASES**

DynCorp Tri-Cities Servs., Inc., 156 Wn.2d 168, 125 P.3d 119 (2005).....3

Duckworth v. City of Bonney Lake, 91 Wn.2d 19, 586 P.2d 860 (1978) ...3

**REGULATIONS**

WAC 197-11-948..... *ibid*

The Cities of Ellensburg and Shoreline<sup>1</sup> present an Amicus Brief that offers virtually no legal analysis that appellant City of Puyallup qualified as an “agency with jurisdiction” over the proposed Knutson Farms Industrial Park project pursuant to WAC 197-11-948. Instead the Amici attempt to manufacture broader consequences from the summary judgment order on review, beyond those specific to this case, grounded upon a balancing test the trial court did not establish. Based upon the interests the Amici articulate and the issue identified, the Amicus Brief does not warrant consideration here.

The trial court below entered summary judgment as follows:

Respondents Knutson Farms, Inc. and Running Bear Development Partners LLC’s Motion for Summary Judgment is **GRANTED** and the City of Puyallup’s Motion for Summary Judgment is **DENIED**. The City of Puyallup was not authorized under WAC 197-11-948 to issue a Notice of Assumption of Lead Agency or assume lead agency status over the proposal at issue here. The City of Puyallup was therefore not authorized and without jurisdiction to issue the May 10, 2017 Notice of Assumption of Lead Agency Status and the Determination of Significance and Request for Comments on Scope of EIS. Said Notice of Assumption of Lead Agency Status and Determination of Significance are therefore void and without legal effect.

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<sup>1</sup> Though the City of Yakima joined in the motion requesting to participate in briefing as an Amicus Curiae, Yakima did not sign the Amicus Brief submitted nor did it submit its own brief.

(CP 852.) The trial court did state in the course of its oral ruling, which analyzed the applicable regulations against the undisputed facts of this particular case: “I find that the water, sewer, and roads are not a sufficient jurisdictional hook to give the City the authority it is seeking to assert in this case.” (RP 57.) This comment was not, however, incorporated into the dispositive order dismissing the City’s appeal. (*See* CP 849-54.)

In fact, the trial court specifically resisted the City of Puyallup’s effort to incorporate the court’s dicta into a finding or a standard to applying WAC 197-11-948. Following the summary judgment arguments and announcement of its ruling, counsel for Respondents Knutson Farms, Inc. and Running Bear Partners Development, LLC (collectively “Knutson”) asked the Court for guidance in preparing the final order. Specifically, counsel asked if she should include the court’s rationale for ruling in the order. (RP 59.) The trial court instructed:

I am strongly, as are our appellate courts and the civil rules, in favor of the less-is-more approach for summary judgment orders, so I definitely don’t want any additional language placed in.

(*Id.*) Of course, the trial court’s instruction was consistent with the well-accepted law that appellate review of a summary judgment decision is *de novo*. This court will engage in the same inquiry as the trial court, making any findings or reasoning stated by the trial court superfluous. *Korlund v.*

*DynCorp Tri-Cities Servs., Inc.*, 156 Wn.2d 168, 177, 125 P.3d 119 (2005); *Duckworth v. City of Bonney Lake* 91 Wn.2d 19, 21-22, 586 P.2d 860 (1978).

Despite that clear instruction, the City of Puyallup urged the trial court to affirmatively state in the summary judgment order: “The Court concludes that the sewer, water and roadwork over which the City has permitting authority are not part of the proposal and therefore do not provide a sufficient jurisdictional hook to give the City the authority it is seeking to assert in this case.” (CP 811-12.) The trial court declined the City’s request and entered a summary judgment without commentary, much less the articulation of any balancing test or standard to be applied in the future. (See CP 849-54.)

Nonetheless, the Cities of Ellensburg and Shoreline rely on the omitted language to advance their argument that the trial court’s decision must be reversed to avoid broader ramifications to other municipalities. Their Amicus Brief urges this Court to nullify a standard that does not exist and, even if it did, would have no precedential authority. Nonetheless, the Amici frame and limit the issue briefed as follows:

Whether the lower court incorrectly added a type of balancing test that requires a “substantial jurisdictional hook” in order to be considered an “agency with jurisdiction” for purposes of WAC 197-11-948, WAC 197-11-714(3) and other SEPA rules.

(Amicus Brief at p. 4.)

Based upon the interests presented and the issue identified, the Amicus Brief does not warrant consideration. The trial court did not “inject[] a requirement that there be a ‘sufficient jurisdictional hook’ in order to be considered an ‘agency with jurisdiction.’” (Amicus Brief at p. 7.) Nor did the trial court “inject[] a balancing test into the rule which does not exist and leads a cloud of confusion over non lead agencies being able to assume lead agency status.” (*Id.*) The Amici’s policy or proclaimed broader public concern is grounded a single sentence employed by the trial court in its oral announcement that summary judgment was granted in favor of the respondents that is superfluous to this Court’s *de novo*.

Finally, the Amici assert, without reference to any particular argument, that the analysis presented in Respondents’ brief is founded upon policy arguments rather than the language employed in the SEPA rules. Review of Respondents’ Brief reveals the Amici’s statement is not true. The Amici then summarily assert, without explanation, that the trial court’s summary judgment order would effectively render assumption of lead agency status a nullity.<sup>2</sup> (Amicus Brief at p. 5.) They claim that municipalities impacted by a project will lose an important safeguard.

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<sup>2</sup> Notably, while both Ellensburg and Shoreline state that they have experience with “projects that simultaneously implicate both county and city permits,” neither state that

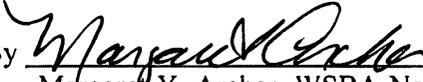
But the Amici confuse impacts with permitting authority over the proposal itself. WAC 197-11-948 does not include agencies impacted by a proposal in the definition of “agency with jurisdiction.”

The City of Puyallup did not qualify as an “agency with jurisdiction” over the project that is the subject of this appeal. The Amici offer no arguments that are responsive to those presented in Respondents’ Brief and focus, inappropriately on trial court dicta that establishes no standards for future application. The Amicus Brief will not aid in resolution of the issues presented and should not be considered by this Court.

Dated this 17<sup>th</sup> day of August, 2018.

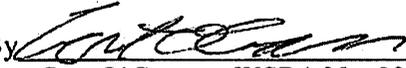
Respectfully submitted,

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they have ever utilized the assumption of lead agency action provided by WAC 197-11-948. (Amicus at p. 3.) It would appear that neither has actually utilized this tool that they currently assert is an essential safeguard to effective SEPA review.

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on August 17, 2018 I served via email a true and correct copy of the foregoing by addressing and directing for delivery to the following:

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DATED at Tacoma, Washington this 17<sup>th</sup> day of August, 2018.

  
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**Transmittal Information**

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**The following documents have been uploaded:**

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**Comments:**

Joint Brief of Respondents in Reply to Amicus Brief by Cities of Shoreline and Ellensburg

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