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SUPREME COURT
OF THE STATE OF WASHINGTON

C/A No. 68048-0-I (Consolidated with Case No. 68049-8-I)

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

TOWN OF WOODWAY and SAVE RICHMOND BEACH,
Petitioners/Respondents

vs.

BSRE POINT WELLS, LP and SNOHOMISH COUNTY,
Respondents/Appellants

RESPONDENT SNOHOMISH COUNTY'S SUPPLEMENTAL BRIEF

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I. INTRODUCTION

This case presents a vested rights question which the Court of Appeals correctly determined is clearly answered by RCW 36.70A.302(2), a statutory provision in the Growth Management Act (Chapter 36.70A RCW) (“GMA”). That statute provides that a property owner vests development rights when he files a complete application for a development permit while the comprehensive plan and development regulation provisions the application relies upon are on appeal to the growth management hearings board (“growth board” or “board”) but before the board issues a decision. The Court of Appeals correctly determined that under RCW 36.70A.302(2), if the board later determines that those underlying plan provisions or regulations were adopted in violation of the State Environmental Policy Act (Chapter 43.21C RCW) (“SEPA”), that procedural infirmity does not affect the vested status of the previously filed development application.

The Petitioners in this case, the Town of Woodway (“Woodway”) and Save Richmond Beach (“SRB”),¹ contend that the GMA invalidity provisions in RCW 36.70A.302 fail to address the specific facts presented in this case. They argue that the GMA is silent on what happens to a

¹ Each Petitioner incorporates by reference the arguments in the other Petitioner’s brief and petition for review. The County will also refer to the Petitioners collectively as “Woodway” unless it is responding to a specific comment or argument in one of SRB’s filings.

development permit application that is filed relying on comprehensive plan provisions or development regulations that are then on appeal to the board when the board later determines those plan provisions and/or regulations were adopted in violation of SEPA. Petitioners argue that because the GMA does not allow a determination of invalidity to be imposed under RCW 36.70A.302 solely for a SEPA violation, there is a gap in the law that requires judicial backfill. Petitioners argue that this backfill can and should be provided through a collateral superior court lawsuit, separate from the growth board proceedings, even if filed months after the board's decision, requesting the trial court to enter an order voiding the permit application and thereby thwarting the property owner's vested development rights. That is what happened in this case when King County Superior Court Judge Dean Lum entered an order in November 2011 enjoining Snohomish County ("County") from processing property owner BSRE Point Wells LP's ("BSRE") vested application.

As the Court of Appeals explained in its well-reasoned opinion ("Opinion"), the Petitioners' position is wrong. First, the legislative history of the amendments to the GMA during the 1995 and 1997 legislative sessions reflect that the Legislature made a conscious choice that vested permit applications would not be affected by later board orders. Although it could have done so, the Legislature made no exceptions for

permit applications relying on GMA enactments that had been adopted with a SEPA flaw. The 1995 amendments to the GMA provided that vested permit applications relying on GMA enactments then on appeal were immune from challenge, even if the board later found those enactments violated SEPA or the GMA. After studying the issue for two more years, the Legislature readopted the same provisions in 1997 (re-codified to a new GMA section). The provisions remain unchanged to this day, documenting the Legislature's clear intent that vested development applications not be affected by procedural violations of SEPA.

Additionally, Petitioners' reliance on SEPA case law from the 1970s is unpersuasive. That case law is both outdated and inapplicable. It is outdated because it predates the GMA and specifically RCW 36.70A.302(2), which now is the controlling authority on this issue. It is inapplicable because it primarily concerns SEPA defects in project-level permit decisions. In contrast, the issue in this case concerns a SEPA flaw in the adoption of GMA-based legislative provisions upon which a subsequently filed permit application, which has not yet undergone its own project-level SEPA review, relies.

Finally, Petitioners' position, if adopted, would create a procedural nightmare for both property owners and local permitting jurisdictions, and would be contrary to this State's longstanding "bright line" Vested Rights

Doctrine. In Petitioners' view, a development application that vested under RCW 36.70A.302(2) is subject to becoming "de-vested" through a court order issued months or even years after the application is filed. A property owner could spend hundreds of thousands of dollars on development expenses, relying on its vested permit application, only to have some disgruntled litigants (like the Petitioners in this case) file a lawsuit months or even years after the application was filed, seeking a court order preventing that application from undergoing project review, including SEPA compliance. Such a procedural scenario is contrary to this state's Vested Rights Doctrine, and to the notions of fairness and certainty that spawned it. Yet that is exactly the rule of law the Petitioners urge this Court to adopt. This Court should reject Petitioners' arguments and affirm the Court of Appeals.

II. ARGUMENT

A. **This Case is Controlled by RCW 36.70A.302(2), Which Establishes the Clear Rule that a Vested Development Application Relying on Plan or Regulatory Provisions on Appeal to the Growth Board is Immune from Any Board Decision Post-Dating the Filing of a Complete Application.**

As the Court of Appeals correctly ruled, the outcome in this case is controlled by RCW 36.70A.302(2), which provides:

A determination of invalidity is prospective in effect and does not extinguish rights that vested under state or local law before receipt of the board's order by the city or county.

The determination of invalidity does not apply to a completed development permit application for a project that vested under state or local law before receipt of the board's order by the county or city or to related construction permits for that project.

In this provision, the Legislature took the unusual step of expressing its intent not once but twice. As the Court of Appeals pointed out, the legislative history of this subsection indicates how that came to be.²

Following receipt of the 1994 report from the Governor's Task Force on Regulatory Reform, the 1995 Legislature "adopted regulatory reform legislation broadly integrating growth management planning and environmental review."³ In explaining the overarching purpose of the regulatory reform legislation, the Legislature stated that the GMA is a "fundamental building block of regulatory reform."⁴ The Legislature stated that the GMA "provides the means to effectively combine certainty for development decisions, reasonable environmental protection, long-range planning for cost-effective infrastructure, and orderly growth and development."⁵ In this statement of legislative intent, the Legislature made clear that its purpose in enacting the GMA was to integrate several different fundamental planning and environmental goals and policies,

² Town of Woodway, et al. v. Snohomish County, et al., 172 Wn. App. 643, 652-59, 291 P.3d 278 (2013); see also County's Opening Brief, at 14-22.

³ 172 Wn. App. at 655.

⁴ Laws of 1995, Ch. 347; Section 1, quoted in County's Reply Brief at 15.

⁵ Id.

including SEPA (“reasonable environmental protection”) and the Vested Rights Doctrine (“certainty for development decisions”).

Tellingly, through this language, the 1995 Legislature stated that the GMA would integrate these different planning policies and goals with “reasonable” environmental protection, not “absolute” or “unqualified” environmental protection. In other words, although the procedural environmental requirements imposed by SEPA were important, they were not more important than other land use planning considerations and legal principles which the Legislature specifically called out in this expression of legislative intent, including the Vested Rights Doctrine.

As the Court of Appeals pointed out, the 1995 Legislature addressed the question of what happens to vested rights pending a growth board appeal by authorizing the board to issue a determination of invalidity.⁶ If the growth board issued a determination of invalidity as part of its final decision and order, no development permit applications could vest from the date of the growth board’s invalidity order until the board determined that subsequently enacted county or city legislation was compliant with the GMA.⁷ As the Court of Appeals noted, the new invalidity language “left intact the developer’s ability to vest development

⁶ 172 Wn. App. at 655-56, citing Skagit Surveyors & Engineers, LLC v. Western Washington Growth Management Hearings Board, 135 Wn.2d 543, 561-62, 958 P.2d 962 (1998).

⁷ 172 Wn. App. at 656, quoting Laws of 1995, Ch. 347, Section 110.

permit applications while any appeal of the challenged enactment remained pending,”⁸ by providing that a determination of invalidity shall “(b)e prospective in effect and shall not extinguish rights that vested under state or local law before the date of the board’s order;”⁹

As noted by the Court of Appeals, even after these invalidity provisions were adopted, the Legislature remained concerned with the impact of allowing development applications to vest to comprehensive plan provisions and development regulations during appeal.¹⁰ Accordingly, the 1995 Legislature directed the newly formed Land Use Study Commission to further study the issue.¹¹

The Land Use Study Commission took another look at that specific vesting issue and reported back to the Legislature in January 1997. In its report, it recommended that the Legislature adopt changes to the GMA “that clarify that projects that vested prior to the determination [of invalidity] are not affected by the order,”¹² Taking its cue from the Land Use Study Commission report, the Legislature reaffirmed its 1995 language that vested development applications would not be affected by later board orders. Moving RCW 36.70A.300(3) to a new section on

⁸ 172 Wn. App. at 655-56.

⁹ 172 Wn. App. at 656, Laws of 1995, Ch. 347, Section 110 (RCW 36.70A.300(3)(a)).

¹⁰ 172 Wn. App. at 657.

¹¹ *Id.*; Laws of 1995, Ch. 347, Section 804(4).

¹² 172 Wn. App. at 658 (quoting Land Use Study Commission’s 1996 ANNUAL REPORT).

invalidity (RCW 36.70A.302), the Legislature took the unusual step of enacting a second sentence in new RCW 36.70A.302(2) which repeated what it had said in 1995¹³ in what was now the first sentence of that statute: vested development applications are not affected by a later board order finding that the plan provisions and development regulations upon which those applications rely were invalid under RCW 36.70A.302.¹⁴

Thus, by 1997 the Legislature had twice stated clearly and unequivocally that vested development permit applications filed while an appeal of the underlying comprehensive plan provisions and development regulations was pending before the growth board would not be affected by a later board ruling finding noncompliance or invalidity. A board finding of invalidity only prevented the vesting of any new permit applications relying on the invalidated provisions from and after the date of the board's determination of invalidity, but did not affect already vested applications. RCW 36.70A.302(2) has remained unchanged since 1997.

The actions of the Legislature since 1997 should leave no question but that RCW 36.70A.302(2) is the definitive word on the status of permit applications that are filed prior to a board ruling. As the County pointed out in its Opening Brief to the Court of Appeals, on at least three occasions in the last ten years the Legislature has considered and rejected

¹³ See footnote 9.

¹⁴ RCW 36.70A.302(2) is quoted on pages 4-5 above.

proposed amendments to the GMA that would have prevented the vesting of permit applications relying on plan provisions and development regulations on appeal to the growth board until the board ruled favorably on them.¹⁵ It is clearly the Legislature's will that property owners be allowed to vest development permit applications relying on plan provisions and development regulations that are on appeal to the board.¹⁶

In response to this clear statutory mandate in RCW 36.70A.302(2), Woodway makes several arguments. All are unavailing. First, Woodway concedes that RCW 36.70A.302(2) does not allow determinations of invalidity to be made solely based on violations of SEPA.¹⁷ However, Woodway contends that RCW 36.70A.302(2) only applies to permit applications that are already vested, not to applications that were "void *ab initio*" (i.e., not vested), as it contends BSRE's was.¹⁸ However, Woodway fails to explain or prove how BSRE's permit applications were "void," let alone how the County should have known they were void (and presumably rejected them) at the time of submittal, prior to any ruling by the board. In fact, BSRE's applications were accepted by the County,

¹⁵ County's Opening Brief at 22-23.

¹⁶ The Legislature's introduction and rejection of a bill implies that its intent was not to do what that bill would have accomplished. Human Rights Commission v. Cheney School District No. 30, 97 Wn.2d 118, 123, 641 P.2d 163 (1982); Deputy Sheriff's Guild v. Board of Clallam County Commissioners, 92 Wn.2d 844, 851, 601 P.2d 943 (1979)(the tabling of a bill "has some probative value relative to the legislature's intent" (quoting In re Bale, 63 Wn.2d 83, 89, 385 P.2d 545 (1963))).

¹⁷ Woodway Response Brief at 20.

¹⁸ Woodway Response Brief at 22; Petition for Review at 11.

which determined them to be complete and vested long before the growth board ever ruled that there had been a flaw in the County's compliance with SEPA in adopting the underlying plan provisions and development regulations.¹⁹ Once BSRE's complete applications were filed and vested, there were no provisions of law in the GMA or elsewhere that would have authorized the County to subsequently declare the applications "de-vested" or to stop processing them, and Woodway has pointed to none.

Secondly, Woodway admits that no determination of invalidity may be made based solely on a procedural violation of SEPA.²⁰ Yet under Woodway's novel reading of the law, BSRE's application should have been found void based on the board's finding of noncompliance due to a SEPA flaw. Since under the GMA, a finding of noncompliance under RCW 36.70A.300 is less severe than a determination of invalidity under .302, this position is illogical, as the Court of Appeals points out.²¹

Third, Woodway ignores the fact that the GMA thoroughly addresses all remedies for SEPA violations in the enactment of GMA legislation. The 1995 Legislature stated that its regulatory reform legislation was to act as "an integrating framework for all other land-use

¹⁹ 172 Wn. App. at 648-49.

²⁰ 172 Wn. App. at 660-61 and footnote 22 (a determination of invalidity may only be entered based on substantial interference with GMA's goals, not for a violation of SEPA alone).

²¹ 172 Wn. App. at 661 and footnote 24.

related laws.”²² SEPA was one of those “land-use related laws” that was integrated in the GMA. The GMA has, since its outset, included SEPA appeals in its appeal framework.²³ It is incomprehensible and illogical that the Legislature would adopt a detailed framework for appeals of GMA enactments (including SEPA violations therewith), provide a detailed subsection²⁴ addressing vested permit applications that are filed while board appeals were pending, make no explicit provision that such vested applications would be affected by a flaw in the SEPA procedure in the adoption of underlying GMA enactments, but intend that those vested permit applications should be found void by a court in a collateral judicial attack apart from the board appeal. Yet Woodway and SRB contend that by not specifically mentioning SEPA in RCW 36.70A.300 or .302, the Legislature intended to abrogate those very vested rights for permit applicants that it established in .302(2) if there was a SEPA violation in the adoption of an underlying plan provision or development regulation relied upon by a permit application. As the County has exhaustively argued,²⁵ Professor Richard Settle, the State’s pre-eminent authority on SEPA, has concluded that a SEPA violation does not trump vested rights

²² Laws of 1995, Ch. 347, Section 1, quoted in County’s Reply Brief at 15.

²³ RCW 36.70A.280(1)(a); see County’s Opening Brief at 12-13.

²⁴ RCW 36.70A.302(2).

²⁵ See County’s Opening Brief at 31-33; County’s Answer at 9, 18.

under the GMA. Woodway's position is illogical and untenable, and the Court of Appeals properly rejected it.

B. Petitioners' Pre-GMA Case Law is Inapplicable.

To support their contention that BSRE's development applications were void *ab initio*, Petitioners rely on pre-GMA case law primarily holding that project permit applications may be denied where the applicant fails to comply with SEPA. These cases are inapplicable for a number of different reasons: (a) they do not address vested rights, which is the crucial issue in this case, (b) they predate RCW 36.70A.302(2), which is now the relevant legal authority on the issue, (c) they concern the failure to comply with SEPA in connection with an applicant's project permit application rather than with a legislative enactment by a local jurisdiction, and/or (d) they are non-GMA cases. The County addressed Woodway's arguments at length in its briefing below.²⁶ It will not repeat those arguments here. The Court of Appeals thought so little of Woodway's case law that it dismissed these authorities in a mere footnote of the Opinion.²⁷

Woodway claims, without providing any legal authority, that (a) these cases are still good law because they have not been overruled, and (b) these cases support the position that BSRE's permit applications are

²⁶ County's Opening Brief at 28-30; County's Reply Brief at 5-11.

²⁷ 172 Wn. App. at 663, footnote 26.

void because the growth board found a procedural violation of SEPA in the County's adoption of the plan provisions and regulations upon which BSRE's permit applications rely.²⁸ Although these cases may still be controlling in another context, i.e., that approved permit applications could be voided where required SEPA review was not performed in connection with those applications, Woodway has failed to show how these old cases are relevant or controlling in light of the explicit language of RCW 36.70A.302(2) in the fact pattern of this GMA-era vested rights case.

Woodway's cases involve egregious violations of SEPA, where the permits or other actions were approved or undertaken in gross disregard of SEPA. In contrast to those cases, here the County's SEPA violation was a relatively minor procedural one: In adopting its plan amendments and development regulations, the County thoroughly evaluated the full impacts of BSRE's proposed comprehensive map and zoning change, but simply failed to evaluate a less dense alternative, which the growth board ruled it should have done.²⁹ In addition, in Woodway's cases, the SEPA violation occurred in connection with the projects or actions themselves. Here, the SEPA flaw occurred in connection with the County's adoption of legislative enactments upon which BSRE's later permit applications relied. Further evidence of Woodway's failure to recognize the distinction

²⁸ Woodway Petition for Review at 3-10.

²⁹ County's Reply Brief at 5-7.

between GMA enactments adopted by a local jurisdiction and project-level permits applied for by an applicant is demonstrated in its public policy concerns regarding inconsistencies in the administration and enforcement of SEPA.³⁰ In reality, those arguments are a red herring as they present a false dichotomy, which the County and BSRE fully addressed in their briefing.³¹ There has been no SEPA violation in connection with BSRE's applications. In fact, BSRE's applications have not yet undergone SEPA review. Petitioners (and the general public) will have a full opportunity to comment on the SEPA review and analysis of BSRE's project at the appropriate time.

In short, Woodway has attempted to use its old case law to graft legal principles on to this case that are factually and legally inapplicable. Woodway contends that these cases stand for the proposition that any procedural flaw in compliance with SEPA, no matter how minor, warrants the voiding of any permit applications relying on that SEPA, even where the SEPA flaw was not in connection with the permit applications themselves. It cites no authority for that position.

Most importantly, none of Woodway's cases deal with the vested rights of permits filed during the GMA era, with RCW 36.70A.302(2) in effect. That statute clearly establishes how the law applies to the facts in

³⁰ Petition for Review, pp. 16-17.

³¹ County's Answer, pp. 15-18; BSRE's Answer, pp. 19-20.

this case. Woodway's cases are inapplicable where there is a statute directly on point. It is no wonder that the Court of Appeals gave short shrift to Woodway's arguments.

C. Petitioners' Position is Inconsistent with the Vested Rights Doctrine and is Unworkable for Property Owners and Local Permitting Jurisdictions.

Petitioners' position is inconsistent with the Vested Rights Doctrine because it would authorize a court to declare a permit application that has already vested to be "de-vested," as happened in this case. The notion that a vested permit application can have its vested status overturned is contrary to the policy underlying the Doctrine and the Doctrine itself, and therefore contrary to law.

The Court of Appeals Opinion described and summarized the Vested Rights Doctrine.³² One of the Doctrine's fundamental tenets is the certainty of the vesting date – the date of filing of a complete application that complies with applicable regulations.³³ In this case, BSRE filed its development applications while the underlying plan provisions and development regulations were on appeal to the growth board, but prior to the board's decision. At the time BSRE filed its applications, the County considered them complete and therefore vested under RCW

³² 172 Wn. App. at 651-52.

³³ Id.

36.70A.302(2).³⁴ Neither Petitioner challenged, through the Land Use Petition Act (Chapter 36.70C RCW)(“LUPA”), their vested status within 21 days of the County’s publication of its notice that the applications were complete. The County was therefore obligated, under RCW 36.70B.080(1),³⁵ to process those applications in a timely manner.

Woodway claims that once the growth board decision was issued, BSRE’s permit applications were “void *ab initio*.”³⁶ The term “void *ab initio*” means “null from the beginning.”³⁷ The notion that BSRE’s permit applications were void *ab initio* is a logical impossibility. They could not have been “null from the beginning” (i.e., from the date of filing) since they were complete when filed; Petitioners do not contend otherwise.³⁸ BSRE’s applications were also consistent with the Urban Center plan provisions and regulations then on appeal to the board, nor do Petitioners contend otherwise. The applications were therefore vested.

³⁴ 172 Wn. App. at 652, footnote 11.

³⁵ “The time periods for local government actions for each type of complete project permit application should not exceed one hundred twenty days, unless the local government makes written findings that a specified amount of additional time is needed to process specific complete project permit applications or project types.”

³⁶ Woodway Response Brief at 22.

³⁷ Black’s Law Dictionary, 9th Ed., 2009.

³⁸ See CP 400 (“Petitioners would stipulate that the BSRE applications are complete.”).

Petitioners failed to challenge, through a LUPA action, the County's determination that BSRE's applications were vested.³⁹ Once BSRE's applications vested, the County was required to process them. The concept that a vested application could later become "de-vested" is contrary to the certainty and predictability principles that form the foundation of the Vested Rights Doctrine.⁴⁰

Woodway and SRB contend that once the growth board determined there was a flaw in the County's adoption of the underlying plan provisions and development regulations, BSRE's applications became void. SRB claims that it immediately contested the vested status of the BSRE applications at the time they were filed since it believed the underlying plan provisions and regulations upon which BSRE's applications relied had been adopted in violation of SEPA.⁴¹ However, SRB fails to provide any legal authority for how the County could have ignored the legal requirements in RCW 36.70B.080(1) (to process permit applications in a timely manner), thereby subjecting itself to potential delay damages under RCW 64.40.020(1)⁴², and refused to accept or

³⁹ The County's determination that the applications were vested was a "land use decision" appealable under LUPA. RCW 36.70C.020(2)(b). See BSRE Response Brief at 6-8, 31-35.

⁴⁰ 172 Wn. App. at 651.

⁴¹ SRB Response Brief at 13-14.

⁴² Property owners have an action for damages based upon a local government's failure to timely process a permit application.

process BSRE's applications based solely on SRB's beliefs. The growth board issued no order relating to the applications, nor could it. Growth boards only have jurisdiction over the adoption of legislative enactments such as comprehensive plan provisions, development regulations and amendments thereto, not over permitting issues.⁴³ The County had no authority to stop the processing of BSRE's applications until Judge Lum's erroneous ruling in this collateral action.

Under Petitioners' "collateral attack" scenario, there are three possible outcomes for an application filed while relevant plan provisions or development regulations are on appeal to the board: (1) Some applications will go forward because no one challenges them; (2) others, such as BSRE's, will be shut down when challengers (like Woodway and SRB) find a sympathetic judge; or (3) still others, even if attacked, will go forward with processing because the court challenge is unsuccessful. It is incomprehensible that the Legislature could have intended such random potential results to occur to permit applicants if there were a procedural violation of SEPA in the adoption of the regulations upon which such applications were grounded. Such an outcome is the antithesis of the "certainty" guaranteed by the Vested Rights Doctrine.

⁴³ RCW 36.70A.280(1)(a).

Further, a ruling in favor of Petitioners would have impacts far greater than might appear from this case. This case is unusual in that only one property owner, BSRE, is affected by the County's plan provisions and regulations. Normally, a county's legislative enactments would impact property owners on an area-wide, or even countywide basis, where many citizens and potential permit applicants would be placed in limbo until a board appeal is resolved.

Petitioners' position has practical problems as well. It makes no sense that a property owner can proceed with development plans on a vested application, paying for SEPA studies, bank loans and other obligations, only to find out months later that his application had become "devested." It similarly makes no sense for a county or city to spend thousands of dollars in staff time processing a vested application only to find out months later that the application is "devested" and must stop processing it. That is an untenable situation. The only way to prevent such a potential waste of time, money and resources would be to hold off on processing an application until there is an assurance that there is no growth board appeal, or if there is an appeal, to wait until there is a decision finding no SEPA violation, which could result in delays measured in months, if not years.

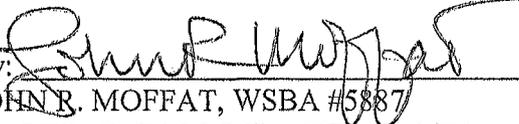
However, the de facto moratorium on development that would result from delayed processing of applications in the manner described above would not only be contrary to the requirement in RCW 36.70B.080(1) to process applications in a timely manner, it would also be reading into the GMA provisions that are not there. In fact, it would be reading the GMA as if the proposed legislative amendments to the GMA that failed three times in 2007, 2008 and 2009 had actually passed.⁴⁴ The Court of Appeals chose not to rewrite history to please Petitioners.

III. CONCLUSION

The Court of Appeals decision was correct in all respects. It recognized that RCW 36.70A.302(2) controls the facts in this case. This Court should reject Woodway's and SRB's arguments and affirm the Court of Appeals decision.

Respectfully submitted this 3rd day of July, 2013.

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⁴⁴ See County's Opening Brief at 22-23.

DECLARATION OF SERVICE

I, Regina McManus, hereby declare that on this 3 day of July, 2013, I filed and served Snohomish County's Supplemental Brief upon persons listed and by the method(s) indicated:

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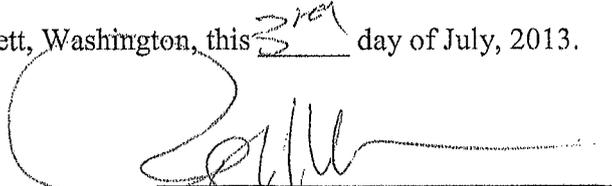
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I declare under the penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

SIGNED at Everett, Washington, this 3rd day of July, 2013.



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OFFICE RECEPTIONIST, CLERK

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Attached for filing in Woodway, et al. v. BSRE Point Wells, LP, et al. (Supreme Court No. 88405-6) is Respondent Snohomish County's Supplemental Brief. Please let me know if you have any trouble opening the document. Thank you.

Filed by Regina McManus (425-388-6347), on behalf of:

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