74327-9

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IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

NO. 74327-9-I

CITY OF MUKILTEO, a municipal corporation; and
SAVE OUR COMMUNITIES, a Washington non-profit corporation,

Appellants,

v.

SNOHOMISH COUNTY and
PROPELLER AIRPORTS PAINE FIELD, LLC, a Delaware LLC,

Respondents.

BRIEF OF APPELLANTS

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I. INTRODUCTION

The State Environmental Policy Act ("SEPA") requires preparation of an environmental impact statement prior to government agencies embarking on significant new activities. The law is intended to infuse environmental considerations into the decision-making process or, in the words of our Supreme Court, to assure agency decisions with environmental consequences are made "by deliberation, not default." *Stempel v. Dept. of Water Res.*, 82 Wn. 2d 109, 118, 508 P. 2d 166 (1973).

The Snohomish County Council committed Snohomish County to entering into a lease for a new, commercial air passenger terminal at Paine Field without conducting any environmental review. The Council's commitment, made without first conducting environmental review, violated SEPA.

Decades of case law and SEPA regulations instruct that SEPA's requirements are to be met as early in the process as possible, before momentum builds in favor of one alternative or another. "When government decision may have . . . snowballing effects, decision makers need to be apprised of the environmental consequences *before* the project picks up momentum, not after." *King County v. Washington State Boundary Review Board for King County*, 122 Wn.2d 648, 663-64, 860 P.2d 1024 (1993). Contrary to SEPA's requirements, the County Council

entered into the irrevocable option and set up a process to obtain the environmental information *after* the County's commitments had been made.

Any environmental review that occurs for the passenger terminal at a later date will not provide the County Council with the ability to reject or modify the lease based on the results of SEPA review. By committing itself to the long-term lease prior to conducting SEPA review, the County Council broke the law.

Snohomish County also violated the requirement of the Snohomish County Code that any lease related to Paine Field presented to the County Council must be accompanied by a statement of the options available to the Council, a written evaluation of each option's merits, and a written recommendation for Council action. SCC 15.04.040(3). No written assessment of alternatives and written recommendation was provided to the County Council before the Council approved the option to lease Paine Field for the commercial airline terminal. This flaw in the decision-making process provides a second, independent basis for voiding the Council's actions.

Because environmental review was required before the Council approved the lease option, the City of Mukilteo and Save Our Communities (collectively, "Mukilteo") request that the Court overturn

the Superior Court's order granting Snohomish County and Propeller's motions for summary judgment and find that the County Council's decision was made in violation of SEPA and SCC 15.04.040(3). The Court should reverse the Superior Court's order granting Snohomish County and Propeller's motions for summary judgment and instead grant summary judgment to Mukilteo on both of those grounds.

II. ASSIGNMENTS OF ERROR AND ISSUES

A. Assignment of Error

1. Assignment of Error No. 1

The trial court erred in granting the County and Propeller's motion for summary judgment by finding that the execution of the lease option was not a "project action" as defined under RCW 43.21C.031(1) and WAC 197-11-704(2)(a), and by finding that Snohomish County did not violate SCC 2.10.010(2).[1]

B. Issues Pertaining to Assignment of Error

Whether the County's proprietary decision to lease land made without the benefit of environmental review violated SEPA's mandate to prepare an EIS before government decisions are made that have probable significant environmental impacts?

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[1] The Superior Court's order referenced SCC 2.10.010(2); however, the County and Propeller relied upon SCC 2.10.010(12). CP 651.

Whether entering into a legally binding option to lease land at Paine Field for a commercial air passenger terminal constitutes a "project action" subject to SEPA review?

Whether the Option to Lease irrevocably commits Snohomish County to a specific course of action in leasing Paine Field to Propeller?

Whether the County met the requirement under SCC 15.04.040(3) that any matter relating to management or operation of Paine Field presented to the Council by the County Executive be accompanied by a statement of the options available to the Council, a written evaluation of each option's merits, and a written recommendation for Council action?

Whether SCC 2.10.010(12) exempts the County Council from complying with the requirements of SCC 15.04.040(3)?

III. STATEMENT OF THE CASE

A. The State Environmental Policy Act

Overlaying all local regulations is Washington's State Environmental Policy Act ("SEPA"), chapter 43.21C RCW. SEPA is the legislative pronouncement of our State's policy to assure that the environmental impacts of government decisions are taken into account before, not after, government decisions are made. *Lands Council v. Washington St. Parks & Recreation Comm'n*, 176 Wn. App. 787, 807–808, 309 P.3d 734 (2013).

> In essence, what SEPA requires, is that that the "presently unquantified environmental amenities and values will be given appropriate consideration in decision making with economic and technical considerations." RCW 43.21C.030(2)(b). It is an attempt by the people to shape their future environment by deliberation, not default.

Stempel v. Dept. of Water Resources, supra, 82 Wn.2d at 118. *See also*, *ASARCO, Inc. v. Air Quality Coalition*, 92 Wn.2d 685, 707, 601 P.2d 501 (1979) (SEPA requirements constitute a directive to shape the future environment by deliberation, not default).

For a government decision maker to fully consider the environmental impacts of a proposal, SEPA must be integrated early in the process. SEPA regulations require that the "lead agency shall prepare its threshold determination and environmental impact statement, if required, *at the earliest possible point in the planning and decision-making process*, when the principle features of a proposal and its environmental impacts can be reasonably identified." WAC 197-11-055(2) (emphasis supplied). Both the threshold determination and Environmental Impact Statement ("EIS") must be developed early. *See* WAC 197-11-310(2) ("The responsible official of the lead agency shall make the threshold determination, which shall be made as close as possible to the time an agency has developed or is presented with a proposal."); WAC 197-11-406 ("The [EIS] shall be prepared early enough so it can serve practically

as an important contribution to the decision making process and will not be used to rationalize or justify decisions already made."). An agency should not wait to conduct environmental review until a detailed final proposal exists: "In general, agencies should adopt procedures for environmental review and for preparation of EISs on private proposals at the conceptual stage rather than the final detailed design stage." WAC 197-11-055(4).

The process for implementing SEPA's goals and requirements is straightforward. SEPA environmental review is required for any local agency decision that meets the definition of an "action" and is not categorically exempt. WAC 197-11-310(11). "Actions" include new and continuing activities (including projects and programs) entirely or partially financed, assisted, conducted, regulated, licensed, or approved by agencies. WAC 197-11-704. "Project actions" include agency decisions to purchase, sell, lease, transfer, or exchange natural resources, including publicly owned land, whether or not the environment is directly modified by the initial real estate decision. *Id.*

The first step in the SEPA review is the preparation of an environmental checklist. WAC 197-11-315. The checklist and other information are used to make a "threshold determination," which is the formal decision as to whether the proposal is likely to cause significant

adverse environmental impacts. WAC 197-11-330. The threshold determination will result in issuance of a Determination of Non-Significance (DNS), a Mitigated DNS, or a Determination of Significance (DS). If a DS is issued, a full EIS must be prepared. WAC 197-11-340; -355; -360.

If a DNS is issued, environmental review is cut short. Thus, our Supreme Court recognized early on that extra judicial scrutiny is required at the threshold determination stage.

> The policy of the act, which is simply to ensure via a 'detailed statement' the full disclosure of environmental information so that environmental matters can be given proper consideration during decision making, is thwarted whenever an incorrect 'threshold determination' is made. The determination that an action is not a 'major action significantly affecting the quality of the environment' means that the detailed impact statement of SEPA is not required before the action is taken or the decision is made. Consequently, without a judicial check, the temptation would be to short-circuit the process by setting statement thresholds as high as possible within the vague bounds of the arbitrary or capricious standard.

Norway Hill, 87 Wn.2d at 273, 552 P.2d 674 (internal quotations omitted).

Once triggered, SEPA's environmental review requires agencies to carefully consider the range of probable significant adverse impacts caused by a proposal, including those likely to arise or exist over the lifetime of the proposal. WAC 197-11-060(4)(c). The EIS must describe the existing environment that will be affected by the proposal, analyze

significant impacts of alternatives including the proposed action, and discuss reasonable mitigation measures that would significantly mitigate these impacts. WAC 197-11-440(6)(a). The rules require that an EIS inform decision makers and the public of mitigation measures that would avoid or minimize adverse impacts or enhance environmental quality. WAC 197-11-400(2) and (6).

Early implementation of SEPA is critical, because the EIS must not be an empty, paperwork exercise or serve simply as an announcement of impacts likely to follow. It is more than a disclosure document. It must be *used* by agency officials to plan actions and make decisions. WAC 197-11-400(4). EISs shall serve as the means of assessing the environmental impact of proposed agency action, rather than justifying decisions already made. WAC 197-11-402(10).

Needless to say, an EIS prepared after the agency makes its decision is as good as no EIS at all. SEPA's "look before you leap" requirement is intended to "promote the policy of fully informed decision making by government bodies when undertaking 'major actions significantly affecting the quality of the environment.'" *Norway Hill Preservation and Protection Assoc. v. King County*, 87 Wn.2d 267, 552 P.2d 674 (1976). The main purpose of the EIS process is not just full disclosure, but also full consideration of environmental consequences and

values prior to government action so that the decision makers are fully informed about the impacts of their decisions. *City of Des Moines v. Puget Sound Regional Council*, 108 Wn. App. 836, 849, 988 P.2d 27 (1999).

B. Historical Operations at Paine Field

Paine Field was built in the late 1930s and, since then, it has primarily served aircraft maintenance businesses; small, private planes; and Boeing service and test flights. CP 202-203. Snohomish County is currently the owner and operator of the airport. CP 93. Flight operations at the airport consist of a variety of aircraft, including private charter services and recreational aircrafts. CP 166. Several companies provide maintenance on aircraft that are flown into Paine Field to be repaired. CP 202-203.

The airport does not provide commercial passenger service and there is no terminal to serve passenger airlines. CP 93.[2] Much like the King County International Airport (aka Boeing Field) — another general aviation airport in the area — Paine Field serves a different function than a commercial passenger airport. Paine Field does not have the facilities to

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[2] San Juan Airlines briefly offered scheduled commercial air service to Portland and Vancouver, B.C., at Paine Field from December 1, 1987 to December 1, 1988. CP 180-181. Through the course of its twelve months of operations, San Juan Airlines had approximately four flights a day between Paine Field and Portland and approximately one to two flights a day between Paine Field and Vancouver, B.C. *Id.* There has been no commercial service at Paine Field in the almost 30 years since San Juan Air's aborted effort and there was none offered in the decades before, either. *Id.*

cater to airline passengers that are found at a commercial passenger airport, *e.g.,* car rental fleets, efficient transportation access, and a passenger airline terminal. CP 111.

C. Approval of the Option to Lease

The Snohomish County Code provides a specific process for the Snohomish County Council to act as the proprietor of Paine Field. Any lease or individual license of airport property that is presented to the Snohomish County Council by the airport director or County Executive must "be accompanied by a statement of the options that are available to the council, a written evaluation of their written merits, and a written recommendation by the executive for council action" before the County Council approves the lease. SCC 15.04.040(3). After the County Council approves, disapproves, or approves the lease with conditions, the lease becomes valid and binding upon Snohomish County when signed by the County Executive or airport director. SCC 15.04.090.

On February 11, 2015, the County Executive presented the proposed Option to Lease between Snohomish County and Propeller. CP 752. The proposed lease was an exhibit attached to the option. CP 77. The County Executive cited SCC 2.10.010(12) and SCC 15.04.040(3) as the legal basis for the Executive's recommendation that the Council approve the Option in the Executive/Council Approval Form presented to the

County Council. *Id.* But the County Executive did not provide an alternatives analysis to the County Council as required by SCC 15.04.040(3). The Option to Lease and Lease were not accompanied by a threshold determination or EIS as required by SEPA either.

In Motion 15-069 dated March 2, 2015, the County Council made the final real estate decision for the County acting as the landowner of Paine Field. CP 204. The County Council approved a three-year exclusive Option to Lease Land to Propeller at Paine Field (referred to as "The Snohomish County Airport" in the Motion), citing SCC 2.10.010(12) as its authority for approval. *Id.* The Council acted without an EIS and without the analysis required by SCC 15.04.040(3).

The Motion states that Propeller desires to obtain an exclusive option to lease real property at Paine Field for the purpose of constructing, operating, and maintaining a passenger terminal facility. *Id.* The Motion approves "execution of the Option to Lease with Propeller Airports Paine Field LLC **and approves the form of the Land Lease in substantially the form attached to the Option to Lease.**" *Id.* (emphasis supplied).

The Paine Field Airport Director then signed the "Option to Lease Land at the Snohomish County Airport Contingent on Compliance with SEPA" on March 11, 2015. CP 80. The Option contract states: "During the 'Term' (defined below), and subject to all terms and conditions set

forth herein, the County grants to Propeller, an exclusive right and option to negotiate and enter into a lease of the Property, in substantially the form attached hereto as Exhibit B (the 'Lease')." *Id.* With that, the County Council committed Snohomish County to the "Snohomish County Airport Land Lease," which is attached as Exhibit B to the Option to Lease.

D. The Content of the Option to Lease and the Lease

The Option to Lease commits the County to leasing Paine Field under the terms of the Lease as it currently is written. CP 77. The Lease allows Propeller to use County property to construct and operate a passenger terminal complex, and related support facilities such as a baggage claim buildings, security buildings, auto parking, inside and outside terminal concessions (including access for rental cars, taxis, and ground transportation), and various other support activities as determined necessary by Propeller. CP 94, 111-113. The term of the lease is thirty years, with two ten-year extensions at Propeller's option. CP 106-107.

The Lease contains forty-four pages of detailed provisions. Among them, the Lease provides Propeller with the discretion to not comply with noise mitigation, procedures, and policy which Propeller deems to be not "practicable." CP 129. The Lease requires that "Propeller shall accommodate all Passenger Airlines who wish to serve the Airport except as provided in the Lease." CP 112. In the event that a

passenger airline desires to provide service at Paine Field, but there is insufficient space to accommodate the airline, "Propeller and the County will negotiate in good faith to find necessary space in close proximity to the Terminal to accommodate such operations." *Id.* In effect, the lease contemplates no specific cap on the amount of commercial passenger flights served by Propeller's terminal. The only limitation on the number of commercial flights is the space available to Propeller at Paine Field, and even then, the County must work in good faith to allow Propeller to expand its operations if it so chooses.

The title of the Option to Lease states that it is "Contingent on Compliance with SEPA." CP 77. A provision in the lease option states that "a SEPA process must be completed prior to exercise of the Option and execution of the Lease." CP 78. However, there is no clawback provision in the Option that allows the County Council to choose not to enter into the long-term Lease or to alter the terms of the Lease based on the information developed during the subsequent SEPA environmental review process. The County planning department may conduct environmental review later and make permit decisions based on that environmental review, but the Council cannot cancel the lease or alter the terms of the Lease based on what it learns from that environmental review.

When it executed the Option to Lease, the County locked itself into the Lease attached to the Option.

E. The Impacts of the Lease

As noted, Paine Field does not currently have a terminal for passenger airlines and is not currently served by passenger airlines. CP 93. Paine Field does not currently have car rental fleets; it does not have transportation access for larger numbers of passengers using a commercial terminal; and it does not have inside and outside terminal concessions, including access for rental cars, taxis, and ground transportation. CP 111. With the Lease, Paine Field will have all of that and more.

The specific areas of Paine Field leased to Propeller will drastically change under the terms of the Lease. Four parcels, identified as A1, A2, A3, and A4, are the subject of the Lease. CP 529. Currently, all four parcels are empty stretches of pavement, used either for vehicle or aircraft parking. *Id.* There are no buildings on those parcels. *Id.* The empty stretches of pavement will be transformed into a 25,000 square foot terminal building with various accessory structures necessary to serve the terminal. CP 236. Various accessory buildings allowed by the Lease will be used for rental car services, maintenance and storage, and other accessory uses. CP 185. Once Propeller has built out its entire proposed

terminal complex, the use of subject property will have significantly changed.

On a larger scale, this change of use will cause significant adverse impacts to the surrounding community. As the only commercial passenger airport serving the metropolitan area north of downtown Seattle, Propeller's proposal to offer commercial passenger service at Paine Field will result in increased commercial aircraft operations, increased traffic to and from the terminal, and increased noise impacts from commercial aircraft. The ancillary uses of a commercial airport, such as increased traffic and businesses incidental to commercial air travel, will also develop either out of necessity to serve the airport or opportunity to provide travelers with various services. The passenger terminal will serve as a catalyst for other development in the vicinity. *See, e.g., Cheney v. City of Mountlake Terrace*, 87 Wn.2d 338, 344, 552 P.2d 184 (1976) ("Implicit in [SEPA] is the requirement that the decision makers consider more than what might be the narrow, limited environmental impact of the immediate, pending action. The agency cannot close its eyes to the ultimate probable environmental consequences of its current action.").

As with all airports, the noise impacts on surrounding residents and businesses is a major concern. Paine Field already receives numerous complaints from surrounding residents and monitors noise through three

semi-permanent noise monitors located in Snohomish County. CP 164. With the increased air traffic resulting from commercial passenger service, the noise impacts will be far worse.

Environmental review that could have informed the County's lease negotiations did not occur before the County committed itself to the Lease. For instance, Snohomish County bargained for traffic mitigation fees to offset traffic impacts. CP 109. However, the County bargained for this fee without the benefit of being fully informed by environmental review. The missing environmental review could have moved the County to seek additional fees to mitigate traffic impacts (beyond the minimum mitigation required by the county's traffic ordinance). In its proprietary capacity, the County was also free to bargain for other environmental benefits, such as limitations on single occupancy vehicle usage to offset traffic impacts and to limit greenhouse gas emissions. But the County was not informed of the adverse environmental impacts beforehand.

IV. STANDARD OF REVIEW

The Court of Appeals reviews decision on summary judgment *de novo*, engaging in the same inquiry as the trial court. *International Longshore & Warehouse Union, Local 19 v. City of Seattle*, 176 Wn. App. 512, 519, 309 P.3d 654 (2013). Summary judgment is appropriate if, after viewing the pleadings and drawing all reasonable inferences in favor of

the nonmoving party, the court infers there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Higgins v. Stafford*, 123 Wn.2d 160, 168-69, 866 P.2d 31 (1994). "[W]hen reasonable minds could reach but one conclusion . . . questions of fact may be determined as a matter of law, and summary judgment is appropriate." *ESCA Corp. v. KPMG*, 135 Wn.2d 820, 833, 959 P.2d 651 (1998).

V. ARGUMENT

The Option to Lease is an action subject to SEPA review. The County was required to complete SEPA review before entering into the Option to Lease.

SEPA review applies to all "project actions" that are not categorically exempt. Project actions include agency decisions to lease publically owned land. WAC 197-11-704(2)(a)(ii). SEPA case law and regulations make it clear that the Option to Lease is a "project action." Courts have repeatedly held that agency decisions which commit the agency to a particular course of action are project actions subject to SEPA review.

The Option to Lease is not some remote initial step that leaves the County with the ability to make decisions about leasing options in the future — it is a legally binding and enforceable contract that commits the

County to leasing Paine Field to Propeller under the terms of the attached Snohomish County Airport Land Lease once Propeller exercises its option. Therefore, the Option to Lease is a project action subject to SEPA review.

Even project actions may avoid environmental review if they are categorically exempt. *See* WAC 197-11-800. Propeller asserted below that the action falls within an exemption for lease decisions which will not result in any change in use of the property. WAC 197-11-800(5)(c). This exemption does not apply here because the lease will result in a change of use, both from the perspective of the four parcels that are the subject of the lease (which will be transformed from asphalt lots to an air passenger terminal) and from the perspective of Paine Field as a whole, which will add commercial air passenger service to its list of activities.

At first glance, one might think that the County had every intention of ensuring consistency with SEPA when it executed the Option to Lease. The title of the Option to Lease states that the Option is "Contingent on Compliance With SEPA." CP 77. A provision in the Option to Lease titled "Exercise of Option Subject to SEPA Compliance," states that "a SEPA process must be completed prior to exercise of the Option and execution of the Lease." CP 78-79. But these provisions give the appearance of SEPA compliance when, in reality, they come too late to inform the decision of the County, in its proprietary capacity, to lease

county property. The language creates a smoke screen that makes it appear that the decision to execute the Option to Lease was consistent with SEPA when, in fact, it was quite the opposite.

The SEPA contingency referenced in the Option to Lease's title simply comes too late to inform the County's proprietary decision to lease Paine Field to Propeller. SEPA regulations require that the "lead agency shall prepare its threshold determination and environmental impact statement, if required, *at the earliest possible point in the planning and decision-making process*, when the principle features of a proposal and its environmental impacts can be reasonably identified." WAC 197-11-055(2) (emphasis supplied). The principle features of Propeller's proposal to lease Paine Field for commercial passenger service are unambiguous. The Lease already exists, and Snohomish County agreed to the terms of the Lease as written when it entered into the Option to Lease. While subsequent SEPA review may inform the County permit writers' decisions enforcing the minimum requirements in the county code, it will be too late to be used by the County Council or County Executive as they wield their much broader, proprietary function powers.

In addition to disregarding the requirements of SEPA review, the County also ignored the requirements of the Snohomish County Code. Any lease relating to Paine Field that is presented to the County Council

by the County Executive must be accompanied by a written identification and analysis of the alternatives available. SCC 15.04.040(3). The County Executive and County Council simply ignored this requirement and never provided a written analysis of alternatives. Thus, the County approved the Option to Lease in violation of SCC 15.04.040(3), too.

A. The Snohomish County Council's Decision to Approve an Option to Lease Land to Propeller is Subject to SEPA Requirements

1. The exclusive option to lease legally commits the County to the terms of the lease and is the only decision the County Council will make before the lease is signed

The exclusive Option to Lease Land at Paine Field committed the County to lease land to Propeller under the specific terms set forth in the Snohomish County Airport Land Lease. Under the terms of the Option, Propeller has the right to walk away from the Lease, but the County does not. If Propeller decides to go forward with the Lease, the County has to go forward with the Lease, too. CP 77.

In effect, the County made the decision to enter into the Land Lease when it executed the Option to Lease. The County Council will not have the opportunity to revise or rescind the Lease later, regardless of what information is developed in the SEPA process.

The County Council's hands are tied because an option contract is "a complete, valid, and binding agreement by the terms of which a collateral offer is kept open for a specified period of time." *Bennett Veneer Factors, Inc. v. Brewer*, 73 Wn.2d 849, 853, 441 P.2d 128 (1968). If the optionee (here, Propeller) unconditionally exercises the option in accordance with the terms of the contract, then the optionor (the County) must transfer the property in accordance with the terms of the contract. *Pardee v. Jolly*, 163 Wn.2d 558, 568, 182 P.3d 967 (2008). Under Washington law, the terms of an option contract are to be strictly construed. *Id.* Specific performance is frequently the only adequate remedy for a breach of a contract regarding real property because land is unique and difficult to value. *Id.* *See also Andersen v. Brennen*, 181 Wash. 278, 280-81, 43 P.2d 19 (1935) ("Speaking generally, it is the rule that the optionee is held to a strict performance of the option contract"); *Time Oil Co. v. Palmer*, 28 Wn.2d 272, 274, 182 P.2d 695 (1947) ("It is an accepted rule of law in this jurisdiction that a lessee's option to purchase contained in a lease agreement, is grounded upon consideration, and is enforceable by specific performance").

The Option to Lease between the County and Propeller states: "During the 'Term' (defined below), and subject to all terms and conditions set forth herein, the County grants to Propeller, an exclusive

right and option to negotiate and enter into a lease of the Property, *in substantially the form attached* hereto as Exhibit B (the 'Lease')." CP 77. (emphasis supplied). Thus, the Option to Lease between the County and Propeller obligates the County to lease Paine Field under the terms of the Snohomish County Airport Land Lease if Propeller unconditionally exercises the option within a certain time period. If the County Council were to attempt to not execute the Lease after Propeller exercises its option or if the County Council desired to add conditions, Propeller could sue for specific performance and force the County to lease Paine Field with the terms of the Lease as is. Under the terms of the option, Propeller has the choice to not enter into the Lease for whatever reason it may have (or no reason at all), but the County does not have that choice. CP 77. The County effectively made the decision to lease the land at Paine Field to Propeller when it approved the Option to Lease.

2. The Option to Lease is a project action subject to SEPA

The County Council's decision to approve and execute the Option to Lease is a "project action," which triggers SEPA review. The County Council's decision to enter into the Option legally binds the County to lease Paine Field to Propeller. Because the Option represents the County Council's unqualified commitment to lease Paine Field, the Option

constitutes a project action as that term is defined by SEPA regulations. *See* WAC 197-11-704(2)(a)(ii).

On multiple occasions, Washington courts have considered the question of whether a certain act is simply a "preliminary step" that does not trigger SEPA review or a "project action" that requires SEPA review. SEPA case law and the SEPA regulations makes it clear that the Option to Lease was a "project action."

Under SEPA, an "action" that requires environmental review can be categorized as either a "project" action or a "non-project" action. WAC 197-11-704(2). Both are subject to SEPA. "Project" actions include agency decisions to "purchase, sell, *lease*, transfer, or exchange natural resources, including publicly owned land, whether or not the environment is directly modified." WAC 197-11-704(2)(a)(ii) (emphasis supplied).

The Option is a project action under SEPA because the County Council made the decision to lease publically owned land at the time it executed the Option. The Option commits the County Council to lease Paine Field once Propeller exercises the Option. Thus, under the terms of WAC 197-11-704(2)(a)(ii), the County's decision was a "project action" because it was a decision to enter into a lease.

But even if this Court were to view the Option to Lease as a preliminary step to entering into the Lease, the County's decision is still a

project action subject to SEPA review. The Court of Appeals recently recognized that a preliminary action that commits an agency to leasing publically owned land is a project action under SEPA. In *Columbia Riverkeeper v. Port of Vancouver*, 189 Wn. App. 800, 357 P.3d 710 (2015), the "lease agreement" at issue was an agreement to enter into a lease if certain contingencies were met. *Id.* "[E]ither the Port or Tesoro/Savage may terminate the agreement before the lease begins if Tesoro/Savage cannot obtain full regulatory approval." *Id.* at 804. Even though the Port could avoid the lease before contingencies were met, Division 2 of the Court of Appeals held that the "lease agreement" was a SEPA "action." The court found that the "lease agreement represents a decision on a specific construction project in a specific location. Further, upon [fulfillment of the conditions precedent] the lease agreement essentially will be binding on the Port." *Id.* at 815, 357 P.3d 710. The court held that the lease agreement was an action under SEPA—a ruling directly contrary to the argument advanced by Snohomish County here.

Likewise, in *Magnolia Neighborhood Planning Council v. City of Seattle*, 155 Wn. App. 305, 313, 230 P.3d 190 (2010) ("*Magnolia*"), a federal law required the City of Seattle to include a redevelopment plan in conjunction with the city's offer to purchase certain federal property. If the federal government approved the city's offer to acquire the property,

the federal law bound the city to use the property as specified in its redevelopment plan. *Id.* at 308, 230 P.3d 190. The city created the redevelopment plan and submitted it as part of its offer to the federal government, without the benefit of environmental review. The city stated that it would delay SEPA review until the city applied for building permits and rezoning. The city argued that the redevelopment plan was not an "action" subject to SEPA review because the redevelopment plan would not be implemented unless the Federal agency approved the application to purchase the property. *Id.* at 314, 230 P.3d 190.

The court rejected the city's argument and concluded that the plan was a project action subject to SEPA review because it was a "decision on a specific construction project, located in a defined geographic area." *Id.* The court concluded that it was also a decision to purchase, sell, lease, transfer, or exchange publically owned land because the redevelopment plan included developing the property into market rate housing. *Id.* Even though submission of the redevelopment plan did not result in immediate land use changes, the court held that it was a project action because the redevelopment plan was binding upon the city if the federal agency approved the application, and, therefore, should be subject to SEPA review "at the earliest possible stage to allow decisions to be based on complete disclosure of environmental consequences." *Id.* at 316, 230 P.3d

190 (*citing Washington State Boundary Review Board for King County*, 122 Wn.2d at 663-64, 860 P.2d 1024).

The Option to Lease executed by the County Council similarly represents a decision on a specific construction and operation project in a specific location. Defined parcels of land have been identified at Paine Field, the Lease contains specific terms and conditions relating to the construction and operation of a commercial passenger terminal, and the County has committed itself to entering into the Lease. Indeed, the Option is more binding upon the County than the lease agreement in *Columbia Riverkeeper* or the redevelopment plan in *Magnolia*. In *Columbia Riverkeeper,* the port could terminate the contract if contingencies were not satisfied. *Columbia Riverkeeper*, 189 Wn. App. at 804, 357 P.3d 710. In *Magnolia*, the city retained the option to not follow through with its offer to acquire the property. *Magnolia*, 155 Wn. App. 305, 230 P.3d 190. But here, the County Council has completely tied the County's hands. The County has no option to not sign the Lease as is, if Propeller decides to go ahead with its plans. *See* CP 77; *Pardee*, *supra,* 163 Wn.2d at 568.

It is immaterial that the Option does not result in immediate land use changes; it is still a project action. Neither the redevelopment plan in *Magnolia* nor the lease agreement in *Columbia Riverkeeper* resulted in immediate land use changes, but both were found to be project actions. In

fact, the court specifically rejected the contention that the redevelopment plan was not a project action in *Magnolia* because it did not result in immediate land use changes. *Magnolia*, 155 Wn. App. at 317. The court instead stated that the redevelopment plan was a specific proposal in a specific location that would become binding in the future. *Id.* Likewise, the Option is not a remote decision that the County can later reverse or modify.

An action may be binding even if it is not the last decision that will move a project forward. *See Magnolia*, 155 Wn. App. at 318, 230 P.3d 190 (noting that even though implementation of the City's redevelopment plan was subject to federal approval, "once adopted by the federal government as a condition of transfer of . . . property, it will bind the City as to its use of that property"). Postponing SEPA until the final, binding action is anathema to SEPA's repeated calls to insert environmental considerations into the decision making process as early as possible. *See* WAC 197-11-055(2) ("the lead agency shall prepare its threshold determination and environmental impact statement, if required, at the earliest possible point in the planning and decision-making process"); WAC 197-11-310(2) (threshold determinations "shall be made as close as possible to the time an agency has developed or is presented with a proposal"); *Washington State Boundary Review Board for King County*,

supra, 122 Wn.2d at 663-64 ("One of SEPA's purposes is to provide consideration of environmental impact factors at the earliest possible stage to allow decisions to be based on complete disclosure of environmental consequences."). The Option to Lease is the appropriate stage to conduct SEPA review.

This Court recently identified a government decision which fell short of constituting an "action" triggering SEPA. The nature of that decision readily distinguishes it from the Option at issue here.

In *International Longshore and Warehouse Union, Local 19 v. City of Seattle*, 176 Wn. App. 512, 309 P.3d 654 (2013), a private investor acquired land on which he proposed to develop and operate a new sports arena. King County and the City of Seattle entered into a memorandum of understanding that laid out the process that the parties would follow to complete necessary reviews, including environmental reviews, if the County and the City ultimately decided to participate in the development. *Id.* at 516, 309 P.3d 654. In the memorandum of understanding, the City expressly reserved its ability to make future decisions about whether to participate and invest in the project until after review under SEPA. *Id.* at 516, 309 P.3d 654. Additionally, the memorandum of understanding did not represent a definite proposal that could be sufficiently reviewed. *Id.* at 521, 309 P.3d 654. As the court noted, "[a]ll that has happened so far in

terms of SEPA is a decision about the process that will be used to make a decision." *Id.* at 522, 309 P.3d 654.

The procedural memorandum that dictated the process to make a future decision in *International Longshore* stands in sharp contrast to the County's substantive decision to lease Paine Field to Propeller. The Option to Lease states "the County grants to Propeller, an exclusive right and option to negotiate and enter into a lease of the Property, in substantially the form attached hereto as Exhibit B (the 'Lease')." CP 77. The Lease includes legal descriptions of the property subject to the Lease, and it restricts that property to a single use: the construction and operation of a passenger terminal complex consisting of certain buildings and improvements located on the property as well as related automobile parking facilities and other uses ancillary and incidental thereto in accordance with the terms and provisions of the Lease. CP 94, 96. The Option to Lease does not establish a process to make a future decision of whether or not to lease Paine Field and the terms of the lease—that decision was already made when the County Council approved the Option to Lease. Furthermore, the Lease is a definite proposal that can be reviewed at this stage. Unlike *International Longshore*, the County does not have to wait for a concrete proposal to take shape. The Lease already exists, and there is nothing to be gained by delaying environmental review

– except assuring that it comes too late to inform the County Council's decision.

Federal case law under the National Environmental Policy Act ("NEPA") also supports the conclusion that the Option to Lease is subject to environmental review. Because NEPA is substantially similar to SEPA, Washington courts may look to federal case law for SEPA interpretation. *International Longshore, supra*, 176 Wn. App. at 525. Federal courts have held that agencies are precluded from making an "irreversible or irretrievable commitment of resources"[3] before undertaking environmental review, and many of these NEPA cases turned on whether the agency reserved absolute authority to make future decisions after environmental review was completed. *See Conner v. Burford*, 848 F.2d 1441, 1446 (9th Cir. 1988) (concluding federal gas and oil leases on national forest land prematurely committed resources in violation of NEPA because the government did not "reserve . . . the absolute right to prevent all surface disturbing activity" (i.e., the no-action alternative) pending the outcome of NEPA review); *Center for Environmental Law & Policy v. U.S. Bureau of Reclamation*, 715 F. Supp. 2d 1185, 1195 (E.D. Wash. 2010), *aff'd*, 655 F.3d 1000, 1006 (9th Cir. 2011) (authorization of water right permits was

[3] Similarly, SEPA requires that an EIS identify "any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented." RCW 43.21C.030(c)(v).

not an irreversible commitment because the agency retained "absolute authority to decide whether" to actually allow the water use after the agency completed a NEPA review); *Friends of Southeast's Future v. Morrison,* 153 F.3d 1059, 1063 (9th Cir. 1998) (finding that the agency's "Tentative Operating Schedule" made no irretrievable commitment of resources "because the government retains absolute authority to decide whether any such activities will ever take place on the . . . lands") (*quoting Conner*).

The Option to Lease flies in the face of the standard articulated by *Conner* and other federal NEPA cases. When Propeller tenders the lease for the Council's approval, the Council will have no choice but to execute the lease, despite the information developed during the SEPA process, because the option does not reserve any authority, let alone "absolute authority" to the County Council to reject or modify the lease based upon the environmental review.

3. The Option to Lease is not categorically exempt from SEPA

Certain "actions" are categorically exempt from SEPA review. *See* WAC 197-11-800. Below, the County and Propeller argued the option was exempt under WAC 197-11-800(5)(c), which provides:

> [Land use decisions that are exempt includes] leasing, granting an easement for, or otherwise authorizing the use

> of real property *when the property use will remain essentially the same as the existing use for the term of the agreement*."

WAC 197-11-800(5)(c) (emphasis added). No Washington court has interpreted this language. "The court's fundamental objective is to ascertain and carry out the Legislature's intent, and if the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent." *State, Dept. of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002). This Court can resolve the plain meaning of WAC 197-11-800(5)(c) on its face. If the use of the real property subject to a lease does not remain essentially the same as the existing use, then the lease is not categorically exempt.

The County's decision in this case to lease land is not categorically exempt from SEPA review under WAC 197-11-800(5)(c) because the Lease will most certainly change the use of the property. First, this argument is a *post hoc* rationalization invented by counsel, which is prohibited. *See Aviation West Corp v. Washington State Dept. of Labor and Industries*, 138 Wn.2d 413, 437, 980 P.2d 701 (1999). Neither Snohomish County nor Propeller characterized the decision as categorically exempt prior to this litigation. To the contrary, the Snohomish County Executive informed the County Council that the Lease "required environmental review." CP 659. The issue was not whether it

was exempt from review, but rather when the required SEPA review would occur. Thus, the Option provides for SEPA review prior to execution of the Lease. CP 78-79. Although the SEPA review occurs long after the County has made its commitment to leasing the public land to Propeller, neither the County nor Propeller claimed the action was exempt. Any *post hoc* rationalization to the contrary should be rejected.

In any event, the terms of the Lease clearly indicate that the Option to Lease and Lease are not categorically exempt. The use of the public property subject to the Lease will change drastically. Currently, all four parcels (totaling more than ten acres) are undeveloped — they consist of paved lots that are used for parking aircraft and automobiles. CP 86, 529. In contrast, the Lease grants Propeller the right to use the property "for the construction and operation of a passenger terminal complex consisting of certain buildings and improvements located on the Property (the "Terminal") and related automobile parking facilities and other uses ancillary and incidental thereto in accordance with the terms and provision of this Lease." CP 94-95. Once Propeller has built out its entire proposed terminal complex, the use of the subject property will have significantly changed. The construction and operation of a 25,000 square foot commercial passenger terminal is not "essentially the same" as the property's current use as a paved lot.

Below, the County and Propeller argued that the lease does not change the use of the property because it has been and will continue to be used as an airport. This argument fails for two reasons. First, the categorical exemption provision clearly refers to the change in use of the subject property, not the area surrounding the subject property, so it is not necessary to analyze the overall use of Paine Field. The lease contemplates a dramatic change in the use of the four parcels slated for development as a commercial passenger terminal. That is sufficient to take the action out of the scope the exemption.

But even if the analysis included the entirety of Paine Field, the overall use of Paine Field will change under the terms of the lease. Paine Field is not currently used for commercial passenger service and cannot currently support commercial passenger service. CP 93. The lease will change the fundamental use of Paine Field to include commercial air service for the first time since a one-year experiment failed in the 1980s.

Propeller and Snohomish County might argue that the current uses are not so different from a commercial passenger service. But a new passenger airport is not "essentially the same" (WAC 197-11-800(5)(c)) as the existing charter operations and Boeing service center. The existing uses do not engender large amounts of passenger cars dropping off and

picking up aircraft passengers nor create a need for rental car operations, increased transit access and taxicab service.

The mix of aircraft operations will change, too. In 2014, there were 113,460 aircraft operations at Paine Field (where "operation" refers to either a departure or a landing). CP 233. But almost 95% of these "aircraft operations" were aircraft that are not the type operated as part of commercial passenger service. Rather, they fell under the category of "general aviation aircraft." *Id.* General aviation aircraft is a broad category that includes all aviation other than commercial airlines or the military, most commonly small single engine prop recreational aircraft, but also hot air balloons, small executive jets, aerial firefighting, and helicopters. CP 532.

In sum, whether the Court looks just at the use of the property subject to the Lease or the use of Paine Field as a whole, the use will not remain essentially the same. Therefore, the County's decision is not exempt under WAC 197-11-800(5)(c).

4. Even if the Lease did not constitute a change in use, the proposal would fall under an exception to the categorical exemption

The exemption does not apply for an additional reason: Propeller's proposal fits into an exception to categorical exemptions. The SEPA regulations state: "If a proposal fits within any of the provisions in Part

Nine of the rules, the proposal shall be categorically exempt from threshold determination requirements (WAC 197-11-720) *except* as follows . . . The proposal is a segment of a proposal that includes: A series of actions, physically or functionally related to each other, some of which are categorically exempt and some of which are not." WAC 197-11-305(1)(b)(i) (emphasis in original).

The Option, the Lease, subsequent project permits, and, ultimately, the construction and operation of the terminal and other related facilities are a series of actions that are functionally related to each other. Through the Option, Propeller has secured the right to lease the land and seek permits to construct and operate a commercial passenger terminal. All of these actions are necessary and connected steps that Propeller must follow to begin commercial passenger service at Paine Field. The decisions to approve permits for construction and operation of a new commercial passenger terminal are not categorically exempt from SEPA. *See* WAC 197-11-800. Therefore, because the Option to Lease is a segment of a proposal that fits within the exception articulated in WAC 197-11-305(1)(b)(i), no categorical exemption can apply to it. The Option and Lease are subject to SEPA review.

B. The County Council's Action Impairs SEPA's Purposes

Below, the respondents presented a "no harm; no foul" argument. According to the respondents, even if SEPA is delayed, no harm would occur because the County permit writers will be able to utilize the SEPA process when adding conditions to permits. But this ignores that the County Council had a far broader array of mitigation options available to it than the permitting agencies will have. By committing to the terms of the Lease, the Council unlawfully limited the choice of reasonable alternatives available to it in its proprietary capacity. Moreover, the Council's decision created significant momentum for the project, which would likely guide subsequent decisions by the permit writers. *See Washington State Boundary Review Board for King County*, 122 Wn.2d at 664, 860 P.2d 1024. For these reasons, SEPA's requirement to incorporate SEPA as early as possible is relevant and important here.

1. The County Council lost its opportunity to address additional environmental issues

The Option to Lease terminated the Council's ability to shape the lease based on information that is generated from the subsequent environmental review. We recognize that the County's permit writers will have the ability to utilize SEPA to inform their permit decisions, but that

environmental review will come too late to inform the Council's proprietary decision.

Below, Propeller argued that SEPA did not apply to the County's proprietary decision. CP 480. That argument fundamentally misunderstands SEPA. The County was acting in its proprietary capacity in leasing Paine Field to Propeller and, therefore, it was free to dictate any terms of the lease that it chose. As a landowner, the County has unlimited authority to deny a lease outright and/or define the terms of the Lease in any manner it chooses in order to mitigate the impacts of the proposed property use. *Public Utility Dist. No. 1 of Pend Oreille County v. Town of Newport*, 38 Wn.2d 221, 227, 228 P.2d 766 (1951) (a municipal corporation in its private proprietary aspects may exercise its business powers very much in the same as a private individual or corporation). *See also Okeson v. City of Seattle*, 150 Wn.2d 540, 549, 78 P.3d 1279 (2003) ("A municipal corporation is generally considered to act in one of two capacities — a governmental capacity or a proprietary capacity").

No Washington court has ever held that SEPA does not apply when an agency is acting in its proprietary capacity. The definition of "project actions" makes it clear that SEPA applies to all agency actions, including proprietary ones: project actions include agency decisions to "License, fund or *undertake any activity* that will directly modify the

environment." WAC 197-11-704(2)(a)(i) (emphasis supplied). Washington courts routinely apply SEPA to proprietary functions of agencies. For example, in *Lands Council v. Washington State Parks Recreation Com'n*, the Washington State Parks and Recreation Commission made the decision to classify portions of Mt. Spokane State Park to allow a proposed ski area expansion to move forward. *Lands Council*, 176 Wn. App. at 790, 309 P.3d 734. The Commission argued that it could delay creating an EIS until the final approval was presented to the Commission because "only then will the actual location, size, and configuration of the ski runs be known." *Id.* at 805, 309 P.3d 734. The court rejected this argument. *Id.* at 808, 309 P.3d 734. The court held that the State Parks and Recreation Commission's wholly proprietary decision of whether to classify state parks land to allow a ski area expansion was subject to SEPA and, to inform this proprietary decision related to the management of State Park lands, the Commission should have prepared an EIS at the earlier stage. *Id.* at 807. As the court noted, "an EIS would have made an important contribution to the decision whether the ski area should be expanded." *Id.* at 805.

Before the Option to Lease was executed, reasonable alternatives and mitigation measures that could have been considered included alternative locations for the passenger terminal; an alternative limiting

non-aeronautical facilities; and mitigation (to address greenhouse gas emissions, other air pollution and traffic) that would have required preferred access for transit serving the terminal and disincentives for single occupancy vehicles. The County Council also could have insisted on conditions to address off-site impacts and/or additional lease payments to allow the County to address off-site impacts itself. But these and other alternatives and mitigation measures are now unavailable to the County — regardless of any information later generated in the SEPA process — because the terms of the Lease are set in stone. This is not a "no harm; no foul" situation. SEPA's fundamental purpose, to assure decisions "by deliberation, not default" has been eviscerated.

2. The County's decision improperly builds momentum in favor of permitting the facility

There is a second, more subtle and pernicious effect stemming from the County Council's precipitous action. The nature of the administrative process is such that early decisions, especially by a county council, have an inexorable effect on later decisions made by staff. Our Supreme Court articulated this effect in *Washington State Boundary Review Bd. for King County, supra*, 122 Wn.2d at 664, where it warned about the "virtually unstoppable administrative inertia" that initial government decisions have on subsequent agency decisions.

> One of SEPA's purposes is to provide consideration of environmental impact factors at the earliest possible stage to allow decisions to be based on complete disclosure of environmental consequences . . . even if adverse environmental effects are discovered later, the inertia generated by the initial government decisions (made without environmental impact statements) may carry the project forward regardless. When government decision may have such snowballing effects, decision makers need to be apprised of the environmental consequences *before* the project picks up momentum, not after.

Id. at 663-64 (emphasis in original).

In *King County*, the Supreme Court reversed a Boundary Review Board decision to approve an annexation — simply relocating a city boundary line — because it was the first step towards the ultimate goal of a large development adjacent to the City of Black Diamond. The board argued that it could delay SEPA review for a later date because future property development on the annexed portions was too speculative. *Id.* at 662, 860 P.2d 1024. The Supreme Court rejected this argument, holding that "a proposed land-use related action is not insulated from full environmental review simply because there are no existing specific proposals to develop the land in question or because there are no immediate land-use changes which will flow from the proposed action." *Id.* at 664, 860 P.2d 1024.

Here, of course, the impacts and consequences are far more direct. The Option and its attendant Lease cast the die. The momentum and

direction that those provide to subsequent permit decisions cannot be ignored. SEPA's objective to assure fully informed decisions by completing environmental review as early as possible will not be attained if the Superior Court decision stands.

C. The Option Should Be Declared Void Based on the County's Failure to Follow the Requirements of SCC 15.04.040(3).

In addition to ignoring the clear mandates of SEPA, Snohomish County disregarded provisions of the Snohomish County Code that apply specifically to Paine Field. The Option should be voided because it was adopted without adherence to the procedures required by law.

Chapter 15.04 in the Snohomish County Code regulates actions concerning Paine Field. *See* SCC 15.04.010(1). The provision that is relevant to the County's action states:

> Any matter relating to management or operation of [Paine Field] that is presented to the County Council for action by or through the airport manager or executive, including but not limited to individual licenses or leases of airport property or proposed rates, terms or forms of leases to be approved by the executive under SCC 2.10.010(12), ***shall be accompanied by a statement of the options that are available to the Council, a written evaluation of their relative merits, and a written recommendation by the executive for Council action***.

SCC 15.04.040(3) (emphasis supplied).

In addition to the specific requirements for the County Executive relating to matters connected to Paine Field under Chapter 15.04, Chapter 2.10 in the Snohomish County Code sets forth general rules associated with the County Executive. Section 2.10.010 identifies the functions of government that are deemed "executive functions" that shall be performed by the County Executive. This provision, relied on by the County, states:

> ***Approval of*** all licenses to occupy, use or access the Snohomish County Airport and ***all airport leases; PROVIDED, That in accordance with SCC 15.04.040, the county executive may recommend individual*** licenses or ***leases for approval by the council***, and shall recommend in such detail as the council may require proposed rates, terms and forms of leases to be approved by the executive in which event the county council by motion will establish the rates to be charged and other terms of any such lease and approve the form of lease utilized which rates, terms and form may be changed from time to time by the county council; and PROVIDED, FURTHER, That the county executive shall submit an annual report to the county council, not later than February 15th of each year, showing the names of parties, rents, reserve, areas rented, and time period of each such lease and license. ***Any lease or license executed pursuant to this section shall be deemed to be with the approval of the county council as required by chapter 15.04 SCC.***

SCC 2.10.010(12) (emphasis supplied).

In the Executive/Council Approval Form that the County Executive signed on February 11, 2015, the County Executive cited SCC 2.10.010(12) and SCC 15.04.040(3) as the legal basis for the Executive's recommendation that the Council approve the Option. CP 752. On March

2, 2015, the Council adopted its motion approving the Option to Lease, citing SCC 2.10.010(12) as its authority for approval of the Option. CP 204.

The County has not disputed that the mandatory written assessment of alternatives and written recommendation by the Executive required by SCC 15.04.040(3) was not provided to the County Council before the Council approved the Option to Lease. Instead, the County contended below that because the County Council relied on its authority under SCC 2.10.010(12) to approve the Option to Lease, it was excused from the requirements of SCC 15.04.040(3).

The County's argument ignores that the Council cannot amend the code simply by not citing it in a motion and that, in any event, SCC 2.10.010(12) explicitly requires adherence to SCC 15.04.040 when the County executive recommends leases for approval. *See* SCC 2.10.010(12) ("PROVIDED, That **in accordance with** SCC 15.04.040, the county executive may recommend individual licenses or leases for approval by the council" (emphasis supplied)). Thus, the section cited by the County does not excuse the County from the requirements of SCC 15.04.040(3) — it explicitly requires adherence to it.

Furthermore, reading SCC 2.10.010(12) to remove the requirement for a written evaluation and assessment of alternatives under SCC

15.04.040(3) would make that requirement completely meaningless and superfluous in every decision. Local ordinances must be interpreted and construed so that all of the language used is given effect, with no portion rendered meaningless or superfluous. *See Sleasman v. City of Lacey*, 159 Wn.2d 639, 643, 151 P.3d 990 (2007) (courts interpret local ordinances the same as statutes); *Whatcom County v. City of Bellingham*, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996) (statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous). Both SCC 2.10.010(12) and SCC 15.04.040(3) are applicable to decisions by the County Council on leases at Paine Field. There is no way to excuse the requirement for a written evaluation and assessment of alternatives required by SCC 15.04.040(3) without rendering that portion of the ordinance meaningless. The County's reading of the ordinance is simply wrong — SCC 2.10.010(12) does not negate the requirement for a written evaluation and assessment of alternatives required by SCC 15.04.040(3).

VI. CONCLUSION

For the reasons explained above, this Court should reverse the Superior Court's decision granting summary judgment to Snohomish County and Propeller and enter summary judgment in favor of Mukilteo on its SEPA and SCC 15.04.040(3) claims.

Dated this 25 day of March, 2016.

Respectfully submitted,

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IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

CITY OF MUKILTEO, a municipal corporation; and SAVE OUR COMMUNITIES, a Washington non-profit corporation, Appellants, v. SNOHOMISH COUNTY and PROPELLER AIRPORTS PAINE FIELD, LLC, a Delaware LLC, Respondents.	NO. 74327-9-I (King County Superior Court Cause No. 15-2-06802-4 SEA) DECLARATION OF SERVICE

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2016 MAR 16 PM 1:30

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I, PEGGY S. CAHILL, under penalty of perjury under the laws of the State of Washington, declare as follows:

I am the legal assistant for Bricklin & Newman, LLP, attorneys for the City of Mukilteo and Save Our Communities herein. On the date and

in the manner indicated below, I caused the Brief of Appellants to be served on:

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