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Case No. 92805-3

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**SUPREME COURT OF THE STATE OF WASHINGTON**

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

Respondents,

vs.

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

Petitioners,

and

POLLUTION CONTROL HEARINGS BOARD

Respondent Below

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**SUPPLEMENTAL BRIEF OF RESPONDENT SNOHOMISH  
COUNTY**

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**TABLE OF CONTENTS**

	<b><u>Page</u></b>
TABLE OF AUTHORITIES .....	ii
I. INTRODUCTION.....	1
II. ASSIGNMENT OF ERROR .....	2
III. STATEMENT OF THE CASE .....	3
IV. ARGUMENT .....	3
A. The Court of Appeals Properly Held that the Stormwater Drainage Regulations that Phase I Permittees Must Enforce Within Their Jurisdictions are Subject to the Vesting Statutes. ....	3
1. Purpose of Regulation is Not Controlling. ....	4
2. There is No Legislative Direction to Exclude Stormwater Drainage Regulations from Vesting. ....	6
B. There is No Federal Preemption Here. ....	9
C. To Fully Clarify Permittee Obligations Under State Law and the Phase I Permit, This Court Should Address Finality in the Event of Reversal of the Court of Appeals' Decision. ....	13
V. CONCLUSION.....	16

**TABLE OF AUTHORITIES**

<b><u>Cases</u></b> .....	<b><u>Page(s)</u></b>
<i>Arkansas v. Oklahoma</i> , 503 U.S. 91, 101, 112 S.Ct. 1046 (1992).....	10
<i>Chelan County v. Nykreim</i> , 146 Wn.2d 904, 932-33, 52 P.3d 1 (2002) .....	14, 15
<i>City of Abilene v. U.S. Environmental Protection Agency</i> , 325 F.3d 657, 659 (5 <sup>th</sup> Cir. 2003).....	10, 11
<i>Defenders of Wildlife v. Browner</i> , 191 F.3d 1159, 1164-66 (9 <sup>th</sup> Cir. 1999).....	11
<i>Friends of Snoqualmie Valley v. King County Boundary Review Bd.</i> , 118 Wn.2d 488, 496-97, 825 P.2d 300 (1992) .....	8
<i>Habitat Watch v. Skagit County</i> , 155 Wn.2d 397, 406, 120 P.3d 56 (2005) .....	14
<i>Lauer v. Pierce County</i> , 173 Wn.2d 242, 258, 267 P.3d 988 (2011) .....	4
<i>National Ass'n of Homebuilders v. Defenders of Wildlife</i> , 551 U.S. 644, 650, 127 S.Ct. 2518 (2007) .....	11
<i>New Castle Investments v. City of LaCenter</i> , 98 Wn. App. 224, 237, 989 P.2d 569 (1999), review denied, 140 Wn.2d 1019 (2000).....	2, 4, 5
<i>Noble Manor Co. v. Pierce County</i> , 133 Wn.2d 269, 275, 943 P.2d 1378 (1997).....	4
<i>Northwest Wholesale, Inc. v. Pac. Organic Fruit, LLC</i> , 184 Wn.2d 176, 184, 357 P.3d 650 (2015).....	12
<i>Phillips v. King County</i> , 136 Wn.2d 946, 963, 968 P.2d 871 (1998).....	4, 8
<i>PUD No. 1 of Jefferson County v. Washington Dept. of Ecology</i> , 511 U.S. 700, 703-04, 114 S.Ct. 1900 (1994) .....	10
<i>Residents Opposed to Kittitas Turbines v. State Energy Facility Site Evaluation Council</i> , 165 Wn.2d 275, 309, 197 P.3d 1153 (2008).....	9
<i>Riehl v. Foodmaker, Inc.</i> , 152 Wn.2d 138, 147, 94 P.3d 930 (2004).....	8

<i>Snohomish County, et al v. Pollution Control Hearings Bd., et al.,</i> 192 Wn. App. 316, 368 P.3d 194 (2016) .....	1, 5, 13, 14
<i>State v. Norris</i> , 157 Wn. App. 50, 73, 236 P.3d 225 (2010), <i>review denied</i> , 170 Wn.2d 1017 (2011) .....	10
<i>Stevedoring Services of America, Inc., v. Eggert</i> , 129 Wn.2d 17, 24, 914 P.2d 737 (1996).....	10
<i>Westside Business Park, LLC v. Pierce County</i> , 100 Wn. App. 599, 607, 5 P.3d 713, <i>review denied</i> , 141 Wn.2d 1023 (2000).....	2, 4, 5, 8
<i>Yousoufian v. Office of Ron Sims</i> , 152 Wn.2d 421, 437, 98 P.3d 463 (2004) .....	5

<b><u>Statutes</u></b> .....	<b><u>Page(s)</u></b>
33 U.S.C. §1251 .....	1
33 U.S.C. §1251(b).....	10, 11
33 U.S.C. §1342(p)(3)(B)(iii) .....	10, 11
RCW 19.27.095 .....	2, 4, 7, 14, 15
RCW 36.70B.180 .....	2, 4, 7, 14, 15
RCW 36.70C .....	14, 15
RCW 58.17.033 .....	2, 4, 7, 14, 15
RCW 58.17.140.....	14, 15
RCW 58.17.170.....	14, 15
RCW 90.48.....	1, 10
RCW 90.48.010.....	10
RCW 90.48.260(1)(a)(i).....	8
RCW 90.48.260(3)(b)(i) .....	6, 7
RCW 90.48.520.....	10

<b><u>Other Authorities</u></b> .....	<b><u>Page(s)</u></b>
RAP 13.7.....	13
RAP 13.7(b) .....	13

## I. INTRODUCTION

Clear guidance is needed on the appropriate application of state land use law in light of an inconsistent mandate in Special Condition S5.C.5.a.iii of the 2013 – 2018 Phase I Municipal Stormwater Permit (“Phase I Permit”) issued by the Washington Department of Ecology (“Ecology”) under the Federal Water Pollution Control Act, 33 U.S.C. §1251 *et seq.* (CWA) and chapter 90.48 RCW. A single sentence in the Phase I Permit is at issue. That sentence requires local jurisdictions subject to the Phase I Permit (“permittees”) to apply newly adopted stormwater drainage regulations required under the Phase I Permit retroactively to certain pending project applications and development permits already issued if such projects do not start construction by a date selected by Ecology. That sentence is problematic because it directs permittees to act in a manner contrary to state law.

The Court of Appeals in *Snohomish County, et al v. Pollution Control Hearings Bd., et al.*, 192 Wn. App. 316, 368 P.3d 194 (2016) provided clear guidance on how to navigate this quandary when it reversed the Pollution Control Hearings Board (“the Board”) and held that the disputed sentence improperly obligates permittees to apply stormwater drainage regulations that exert a “restraining or directing influence of land

use”<sup>1</sup> and “affect the physical aspects of development”<sup>2</sup> in a manner contrary to RCW 19.27.095, RCW 58.17.033 and RCW 36.70B.180, the vesting statutes. The Court of Appeals also held that federal law does not preempt the vesting statutes, noting the strong presumption against preemption and concluding that compliance with state vesting law does not present an obstacle to the achievement of congressional CWA objectives. The Court of Appeals’ decision is consistent with case law, harmonizes relevant statutes, interprets those statutes consistent with their plain language, and provides clarity to permittees on the application of new stormwater drainage regulations to development projects within their jurisdictions. Snohomish County asks this Court to affirm the Court of Appeals’ clear decision reversing the Board’s October 2, 2013, Order on Summary Judgment.

## II. ASSIGNMENT OF ERROR

The County does not assign any error to the Court of Appeals’ decision. The County restates its assignment of error to the Board’s October 2, 2013, Order on Summary Judgment and sets forth below the issues identified in its Opening Brief filed with the Court of Appeals:

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<sup>1</sup> *Westside Business Park, LLC v. Pierce County*, 100 Wn. App. 599, 607, 5 P.3d 713, review denied, 141 Wn.2d 1023 (2000).

<sup>2</sup> *New Castle Investments v. City of LaCenter*, 98 Wn. App. 224, 237, 989 P.2d 569 (1999), review denied, 140 Wn.2d 1019 (2000).

A. Did the Board err when it determined that the regulations permittees are required to adopt under Special Condition S5.C.5 of the Phase I Permit do not constitute “development regulations” or “land use controls” and are instead “environmental regulations” adopted under the direction and control of Ecology?

B. Did the Board err when it determined that the requirement in Special Condition S5.C.5 of the Phase I Permit that regulations adopted by permittees be applied to approved and pending project permit applications does not conflict with the land use doctrines of vested rights and finality?

### III. STATEMENT OF THE CASE

The County respectfully refers the Court to the statement of the case in its Answer to Ecology’s and Puget Soundkeeper Alliance’s, Washington Environmental Council’s, and Rosemere Neighborhood Association’s (collectively, PSA) Petitions for Review (pages 3-7).

### IV. ARGUMENT

**A. The Court of Appeals Properly Held that the Stormwater Drainage Regulations that Phase I Permittees Must Enforce Within Their Jurisdictions are Subject to the Vesting Statutes.**

The vested rights doctrine provides property owners the right to have certain development project permit applications evaluated under the land use control ordinances or development regulations in effect on the

date a complete project permit application is submitted.<sup>3</sup> The Court of Appeals concluded that the stormwater drainage regulations that Phase I permittees must adopt and apply to development projects in their jurisdictions constitute such land use control ordinances or development regulations and are, therefore, subject to the vesting statutes, RCW 19.27.095, RCW 58.17.033, and RCW 36.70B.180. This determination is consistent with the plain language of the statutes and case law.

Ecology and PSA nevertheless characterize the Court of Appeals' decision as an expansion of vesting and offer a number of arguments for reversal. Each argument, however, requires this Court to disregard principles of statutory construction, the plain language of the statutes, and case law and should therefore be rejected.

*1. Purpose of Regulation is Not Controlling.*

Ecology and PSA ask this Court to begin and end its analysis of the vesting question by adopting a "purpose only" test that is unstated in law or the plain language of RCW 19.27.095, RCW 58.17.033 and RCW 36.70B.180 and disregards *New Castle, Westside Business Park*, and *Phillips v. King County*.<sup>4</sup> Petitioners' "purpose only" test would require this Court to write into the vesting statutes an environmental purpose

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<sup>3</sup> *Lauer v. Pierce County*, 173 Wn.2d 242, 258, 267 P.3d 988 (2011); *Noble Manor Co. v. Pierce County*, 133 Wn.2d 269, 275, 943 P.2d 1378 (1997).

<sup>4</sup> 136 Wn.2d 946, 963, 968 P.2d 871 (1998).

exception that is not there and has not been previously found by the courts.<sup>5</sup> But courts will not add language to clear statutes.<sup>6</sup> Further, Petitioners' proposed analysis, which would look only at whether an environmental purpose exists for a regulation, ignores the conclusion in *Westside Business Park* that "[s]torm water drainage ordinances are land use control ordinances."<sup>7</sup> It also ignores case law setting forth the proper analysis for what constitutes a "land use control ordinance" generally. That analysis determines whether the regulations exert a "restraining or directing influence of land use"<sup>8</sup> and "affect the physical aspects of development,"<sup>9</sup> not whether an environmental justification may exist for the regulations. The stormwater drainage regulations at issue here restrain and direct land use and affect physical aspects of development, as the County described in its Opening Brief filed with the Court of Appeals.<sup>10</sup>

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<sup>5</sup> See *Snohomish County*, 192 Wn. App. at 334 (noting several cases that "address the application of vested rights doctrine to regulations that can be classified as 'environmental'").

<sup>6</sup> *Yousoufian v. Office of Ron Sims*, 152 Wn.2d 421, 437, 98 P.3d 463 (2004).

<sup>7</sup> *Westside Business Park*, 100 Wn. App. at 606-608. This conclusion in *Westside Business Park* is not dicta, contrary to PSA's assertion. The court in *Westside Business Park* would not have reached the issue of application adequacy without first determining that the stormwater drainage ordinance was a land use control ordinance to which one could vest – an essential component of the controversy of that case.

<sup>8</sup> *Westside Business Park*, 100 Wn. App. at 607.

<sup>9</sup> *New Castle*, 98 Wn. App. at 237.

<sup>10</sup> Of importance to the court in *New Castle* when it held that transportation impact fees (TIFs) do not vest was the fact that TIFs "do not affect the physical aspects of development (i.e., building height, setbacks, or sidewalk widths ...." *New Castle*, 98 Wn. App. at 237. One "physical aspect of development" particularly noted in *New Castle* – setbacks – is addressed numerous times in the Phase I Permit, as incorporated by reference through the Stormwater Management Manual for Western Washington

There is no support in the plain language of the vesting statutes or case law for Ecology's and PSA's environmental purpose exemption from the applicability of statutory vesting.

2. *There is No Legislative Direction to Exclude Stormwater Drainage Regulations from Vesting.*

Further, there is no support elsewhere in the Revised Code of Washington for the exclusion of stormwater drainage regulations from vesting.

Ecology and PSA assert a legislative intent to reject vesting by pointing to a statute concerning the Phase II Permit (not at issue here) that does not even mention vesting – RCW 90.48.260(3)(b)(i).<sup>11</sup> That statute provides only that two different provisions of the Phase II Permit must be

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(Manual). For example, the design criteria for dispersion trenches state: "maintain a setback of at least 5 feet between any edge of the trench and any structure or property line." Certified Appeal Board Record (CABR) at 005661. Concerning detention ponds, the Manual provides: "[a]ll facilities must be a minimum of 50 feet from the top of any steep (greater than 15%) slope." CABR at 005675. Landscaping in stormwater tracts must follow these guidelines: "[t]he landscaped islands should be a minimum of six feet apart, and if set back from fences or other barriers, the setback distance should also be a minimum of 6 feet. Where tree foliage extends low to the ground, the six feet setback should be counted from the outer drip line (estimated at maturity)." CABR at 005676-77. Setbacks for presettling basins for pretreatment are as follows: "[a]ll facilities shall be a minimum of 20 feet from any structure, property line, and any vegetative buffer required by the local government. All facilities shall be 100 feet from any septic tank/drainfield (except wet vaults shall be a minimum of 20 feet)." CABR at 005927-28. *See also* the County's Opening Brief filed with the Court of Appeals at pages 13-16.

<sup>11</sup> RCW 90.48.260(3)(b)(i) provides:

Provisions of the updated permit issued under (b) of this subsection relating to new requirements for low-impact development and review and revision of local development codes, rules, standards, or other enforceable documents to incorporate low-impact development principles must be implemented simultaneously. These requirements may go into effect no earlier than December 31, 2016, or the time of the scheduled update under RCW 36.70A.130(5), as existing on July 10, 2012, whichever is later.

implemented simultaneously and not before a certain date. It is silent about statutory vesting generally or in relation to Phase I Permit stormwater drainage regulations specifically. And if Ecology thought that RCW 90.48.260(3)(b)(i) was direction to disregard vesting, it is surprising that Ecology then ignored that direction and attempted to make the Phase I Permit “generally consistent with state vesting requirements”<sup>12</sup> by creating a five year period for projects to start construction and avoid the new regulations.

Ecology’s contention that the Legislature gave direction to exclude stormwater drainage regulations from vesting by not affirmatively defining those regulations as subject to vesting also misses the mark. This assertion is contrary to the plain language of RCW 19.27.095, RCW 58.17.033, and RCW 36.70B.180, which provide that if a regulation is a “development standard or regulation” or a “land use control ordinance,” then statutory vesting applies. “[T]he Legislature is presumed to be aware of judicial interpretation of its enactments and where statutory language remains unchanged after a court decision, the court will not overrule clear

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<sup>12</sup> See Ecology’s Response to Comments on the Municipal Stormwater Permits, dated August 1, 2012, as attached to the Declaration of Bill Moore in Support of State of Washington Department of Ecology’s Response in Opposition to Snohomish County’s Motion for Partial Summary Judgment Regarding Phase I Issue No. 3. CABR at 001274 (“Ecology’s permit requirements are consistent with the accepted State approach to vesting. ... Five years to begin construction is generally consistent with state vesting requirements.”).

precedent interpreting the same statutory language.”<sup>13</sup> Here, the Legislature apparently found no fault with the decisions in *Westside Business Park* or *Phillips*, which control the outcome here.

Finally, RCW 90.48.260(1)(a)(i) does not express legislative direction to exclude stormwater drainage regulations from vesting. RCW 90.48.260(1)(a)(i) provides that Ecology has complete authority to establish and administer a comprehensive waste discharge or pollution discharge elimination permit program and that program elements may include “effluent treatment and limitation requirements together with timing requirements related thereto....” Given that the Board concluded that, “[u]nlike general permits that regulate other sectors (e.g. industrial), the municipal permits do not establish benchmarks or numeric or narrative effluent limits for stormwater discharges from individual outfalls”<sup>14</sup> the applicability of RCW 90.48.260(1)(a)(i) here is doubtful. Even assuming for the sake of argument that the “timing” referenced in RCW 90.48.260(1)(a)(i) encompasses the issue presented here, the vesting statutes are more specific. Ecology’s generic control over “timing” would yield to the vesting statutes because a specific statute

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<sup>13</sup> *Riehl v. Foodmaker, Inc.*, 152 Wn.2d 138, 147, 94 P.3d 930 (2004) (quoting *Friends of Snoqualmie Valley v. King County Boundary Review Bd.*, 118 Wn.2d 488, 496-97, 825 P.2d 300 (1992)).

<sup>14</sup> Board’s March 21, 2014, Findings of Fact, Conclusions of Law, and Order at 48, CABR at 004093.

prevails over a general one where the two cannot be harmonized.<sup>15</sup> The vesting statutes are specific because the question here is the manner in which permittees can be directed to apply stormwater drainage regulations under their land use project review authority. The vesting statutes specifically direct how that project review must occur.

The Court of Appeals ruled consistent with the plain language of the vesting statutes and case law when it held that the stormwater drainage regulations are subject to statutory vesting. The Court of Appeals did not expand vesting, provided clear guidance on the appropriate application of state land use law in light of an inconsistent mandate in Special Condition S5.C.5.a.iii of the Phase I Permit, and should be affirmed.

**B. There is No Federal Preemption Here.**

Ecology and PSA both assert that state land use laws are preempted and must give way because those state laws stand as obstacles to accomplishing the purposes and objectives of Congress under the CWA. Specifically, they assert that because compliance with state vesting statutes would not result in the immediate application of the Phase I

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<sup>15</sup> *Residents Opposed to Kittitas Turbines v. State Energy Facility Site Evaluation Council*, 165 Wn.2d 275, 309, 197 P.3d 1153 (2008):

It is a fundamental rule that where the general statute, if standing alone, would include the same matter as the special act and thus conflict with it, the special act will be considered as an exception to, or qualification of, the general statute, whether it was passed before or after such general enactment.

Permit stormwater drainage regulations, which the Board found to “constitute AKART and MEP,”<sup>16</sup> compliance with vesting must necessarily be an obstacle and preemption must be found. This argument is not well-taken for a number of reasons.

First, there is a strong presumption against preemption, especially in areas of the law that states traditionally regulate such as land use.<sup>17</sup> The plain text of the CWA provides that state laws regarding the development and use of land are not preempted.<sup>18</sup> This is consistent with the federal-state partnership established by Congress for implementing the CWA<sup>19</sup>

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<sup>16</sup> Board’s March 21, 2014, Findings of Fact, Conclusions of Law, and Order, CABR at 004094-004095. The Clean Water Act requires that municipal stormwater permits reduce the discharge of pollutants “to the maximum extent practicable” (MEP). 33 U.S.C. §1342(p)(3)(B)(iii). Chapter 90.48 RCW requires the inclusion in all state and federal discharge permits of conditions requiring “all known, available, and reasonable methods to control toxicants in the applicant’s wastewater” (AKART). RCW 90.48.520, RCW 90.48.010.

<sup>17</sup> *Stevedoring Services of America, Inc., v. Eggert*, 129 Wn.2d 17, 24, 914 P.2d 737 (1996) (“There is a strong presumption against preemption and ‘state laws are not superseded by federal law unless that is the clear and manifest purpose of Congress’”); *State v. Norris*, 157 Wn. App. 50, 73, 236 P.3d 225 (2010), *review denied*, 170 Wn.2d 1017 (2011).

<sup>18</sup> 33 U.S.C. §1251(b) reads, in pertinent part, as follows (emphasis added):

It is the policy of the Congress to *recognize, preserve, and protect the primary responsibilities and rights of States* to prevent, reduce, and eliminate pollution, *to plan the development and use* (including restoration, preservation, and enhancement) *of land and water resources*, and to consult with the Administrator in the exercise of his authority under this chapter.

<sup>19</sup> *PUD No. 1 of Jefferson County v. Washington Dept. of Ecology*, 511 U.S. 700, 703-04, 114 S.Ct. 1900 (1994) (discussing the different roles assigned to federal and state agencies under the CWA); *City of Abilene v. U.S. Environmental Protection Agency*, 325 F.3d 657, 659 (5<sup>th</sup> Cir. 2003) (quoting *Arkansas v. Oklahoma*, 503 U.S. 91, 101, 112 S.Ct. 1046 (1992)).

and the strong preference for state implementation generally of the CWA.<sup>20</sup>

Second, the federal standard at issue here – to reduce the discharge of pollutants to the “maximum extent practicable”<sup>21</sup> – was intended by Congress to create a more flexible type of NPDES permit for MS4s, in recognition of their complex nature and the difficulty of addressing polluted stormwater.<sup>22</sup> The disputed sentence in Special Condition S5.C.5.a.iii is not part of the CWA, nor is it required by it. Nothing in the plain language of the CWA addresses applications for land development permits, vested property rights or dates by which property owners must start construction of their development projects. It would be contrary to the cooperative CWA framework established by Congress and the strong presumption against preemption to read the phrase “maximum extent practicable”<sup>23</sup> as prohibiting consideration of the state law limitations

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<sup>20</sup> See 33 U.S.C. §1251(b) (“[i]t is the policy of Congress that the States...implement the [NPDES] permit progra[m]”); *National Ass’n of Homebuilders v. Defenders of Wildlife*, 551 U.S. 644, 650, 127 S.Ct. 2518 (2007).

<sup>21</sup> 33 U.S.C. §1342(p)(3)(B)(iii).

<sup>22</sup> *City of Abilene*, 325 F.3d at 659-660; *Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1164-66 (9<sup>th</sup> Cir. 1999).

<sup>23</sup> Black’s Law Dictionary defines the word “practicable” to mean “reasonably capable of being accomplished; feasible.” Black’s Law Dictionary 1191 (7<sup>th</sup> ed. 1999). The terms “feasible” and “reasonably capable of being accomplished” warrant an interpretation of MEP that can be achieved within the bounds of state law.

placed on the permittees that must implement the Phase I Permit requirements at issue here.<sup>24</sup>

Third, the reason that Ecology and PSA object to compliance with the vesting statutes and find an obstacle to CWA objectives – that some projects will be exempt from the Phase I Permit stormwater drainage regulations – is already built into Special Condition S5.C.5.a.iii by Ecology. Special Condition S5.C.5.a.iii gives projects reviewed or approved under prior stormwater drainage regulations until June 30, 2020, to start construction, at which point, if they have done so, they may proceed with the project under the older regulations; the stormwater drainage regulations in the Phase I Permit will not be applied. Ecology is already excusing some number of projects from the requirement to comply with the updated stormwater drainage regulations in the Phase I Permit, the very thing Ecology and PSA now contend is fundamentally problematic about compliance with state vesting law. Neither Ecology nor PSA explain, however, why this five year allowance is practicable and does not frustrate the objectives of Congress under the CWA but simply aligning the disputed sentence of Special Condition S5.C.5.a.iii with state

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<sup>24</sup> The presumption against preemption is so strong that even where there is an express preemption clause, which no party contends is the case here, courts will give even that express clause “a fair but narrow reading.” See *Northwest Wholesale, Inc. v. Pac. Organic Fruit, LLC*, 184 Wn.2d 176, 184, 357 P.3d 650 (2015) (citation omitted).

statutes governing local government review of development projects – the only approach that harmonizes the relevant statutes – triggers preemption.

The CWA does not preempt state vesting statutes where the “maximum extent practicable” standard reasonably accommodates compliance with both state and federal law. Petitioners have not meet their heavy burden of proving preemption here.

**C. To Fully Clarify Permittee Obligations Under State Law and the Phase I Permit, This Court Should Address Finality in the Event of Reversal of the Court of Appeals’ Decision.**

Having accepted review in this matter, one possible outcome is that this Court may reverse the decision of the Court of Appeals – a decision that “did not consider all issues raised which might support that decision....” RAP 13.7(b).<sup>25</sup> In the event of reversal, this Court “will either consider and decide those issues or remand the case to the Court of Appeals to decide those issues.” RAP 13.7. The County requests, as stated in its Answer to the Petitions for Review, that, as appropriate, this Court consider the undecided issue of finality to provide permittees with complete clarity as to the proper implementation of state law in light of the conflicting mandate in Special Condition S5.C.5.a.iii.

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<sup>25</sup> *Snohomish County*, 192 Wn. App. at 354, fn 10 (“Snohomish County also argues that compliance with condition S5.C.5.a.iii could require permittees to violate Washington’s doctrine of finality of land use decisions for land use applications actually approved before January 1, 2015. Because we reverse based on the vested rights doctrine, we do not address this issue.”).

Finality is not the same as the vesting statutes at RCW 19.27.095, RCW 58.17.033, and RCW 36.70B.180. Finality implicates both the duration of particular types of development permits *once issued*<sup>26</sup> and the mechanisms by which a permittee could act (or rather not act) as required in the Phase I Permit to impose new stormwater drainage regulations on an *already issued* development project permit.<sup>27</sup> The County briefed its finality concerns, including the independent sources of legal authority that express finality, in its Opening Brief and Reply Brief filed with the Court of Appeals and its Answer to the Petitions for Review to this Court.

The Court of Appeals' decision directed Ecology to modify Special Condition S5.C.5.a.iii to make the newly adopted stormwater drainage regulations applicable only to completed applications submitted after the adoption of those regulations.<sup>28</sup> The bases for this direction were: (1) the stormwater drainage regulations are subject to statutory vesting under RCW 19.27.095, RCW 58.17.033, and RCW 36.70B.180, and (2)

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<sup>26</sup> See e.g., RCW 58.17.140 and RCW 58.17.170.

<sup>27</sup> See e.g., chapter 36.70C RCW; *Habitat Watch v. Skagit County*, 155 Wn.2d 397, 406, 120 P.3d 56 (2005); *Chelan County v. Nykreim*, 146 Wn.2d 904, 932-33, 52 P.3d 1 (2002);

Leaving land use decisions open to reconsideration long after the decisions are finalized places property owners in a precarious position and undermines the Legislature's intent to provide expedited appeal procedures in a consistent, predictable and timely manner. As *amicus curiae* point out, if this court allows local government to rescind a previous land use approval without concern for finality, innocent property owners relying on a county's land use decision will be subject to change in policy whenever a new County Planning Director disagrees with a decision of the predecessor director.

<sup>28</sup> *Snohomish County*, 192 Wn. App. at 323.

there is no CWA preemption. The additional, unconsidered basis of finality would justify the same direction to Ecology: that the application of later adopted stormwater drainage regulations to already issued development permits is subject to chapter 36.70C RCW, RCW 58.17.140, and RCW 58.17.170 and that there is also no CWA preemption for the same reasons noted in Section IV.B above and in the County's Reply Brief filed with the Court of Appeals.

Determining whether vesting protects a pending development permit application from the application of newly adopted regulations is not the same issue, and involves different statutory provisions, than the question of whether, once issued, a development permit can be revoked, have new regulatory standards applied to it, and then re-issued consistent with state law concerning finality. The County's concern, which underscores its need for clarification of the relationship between the disputed sentence and state law, is that it cannot.<sup>29</sup> Accordingly, if this Court decides to reverse the decision of the Court of Appeals, this separate basis for affirming the decision should be considered and resolved so that permittees fully understand the proper implementation of state law in light of the conflicting mandate in Special Condition S5.C.5.a.iii of the Phase I Permit.

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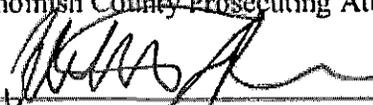
<sup>29</sup> See e.g., *Chelan County v. Nykreim*, 146 Wn.2d 904, 932-33, 52 P.3d 1 (2002).

## V. CONCLUSION

The County asks this Court to affirm the decision of the Court of Appeals, which provides clear guidance on extricating permittees from the quandary presented by the intersection of Special Condition S5.C.5.a.iii and state law. The County requests that the Court's decision provide clear direction on the controlling legal framework and a clear path forward for permittees to comply both with their Phase I Permit obligations and state law.

Respectfully submitted this 1<sup>st</sup> day of August, 2016.

**MARK K. ROE**  
Snohomish County Prosecuting Attorney



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Alethea Hart, WSBA #32840  
Laura C. Kisielius, WSBA #28255  
Deputy Prosecuting Attorneys  
Attorneys for Snohomish County

**CERTIFICATE OF SERVICE**

I, Cindy Ryden, hereby certify that I am an employee of the Civil Division of the Snohomish County Prosecuting Attorney and that on this 1<sup>st</sup> day of August, 2016, I served a true and correct copy of the Supplemental Brief of Respondent Snohomish County upon the persons listed herein and by the following method indicated:

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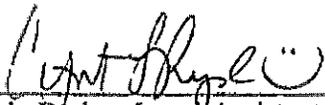
<p><b><u>Pollution Control Hearings Board:</u></b></p> <p>Diane L. McDaniel Sr. Assistant Attorney General Licensing &amp; Administrative Law Division P.O. Box 40110 Olympia, WA 98504-0110</p>	<p><input checked="" type="checkbox"/> <b>E-Service:</b> <i>dianem@atg.wa.gov</i> <i>amyp4@atg.wa.gov</i></p> <p><input type="checkbox"/> Facsimile: <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Messenger Service</p>
<p><b><u>Dept. of Ecology:</u></b></p> <p>Ronald L. Lavigne Phyllis J. Barney Attorney General of Washington Ecology Division P.O. Box 40117 Olympia, WA 98504-0117</p>	<p><input checked="" type="checkbox"/> <b>E-Service:</b> <i>ronaldd@atg.wa.gov</i> <i>ecyolyef@atg.wa.gov</i> <i>donnaaf@atg.wa.gov</i> <i>phyllish@atg.wa.gov</i></p> <p><input type="checkbox"/> Facsimile: (360) 586-6760 <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Messenger Service</p>
<p><b><u>King County:</u></b></p> <p>Devon Shannon Darren Carnell Joseph B. Rochelle Deputy Prosecuting Attorneys King County Prosecuting Attorney's Office 516 Third Ave., W400 Seattle, WA 98104</p>	<p><input checked="" type="checkbox"/> <b>E-Service:</b> <i>devon.shannon@kingcounty.gov;</i> <i>darren.carnell@kingcounty.gov</i> <i>joe.rochelle@kingcounty.gov</i> <i>mary.livermore@kingcounty.gov</i> <i>monica.erickson@kingcounty.gov</i> <i>nadla.rizk@kingcounty.gov</i></p> <p><input type="checkbox"/> Facsimile: (206) 296-0191 <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Messenger Service</p>

<p><b><u>Pierce County &amp; Coalition of Gov'l Entities:</u></b></p> <p>Lori Terry Gregory Foster Pepper PLLC 1111 Third Ave., Ste. 3400 Seattle, WA 98101-3922</p> <p>John Ray Nelson Foster Pepper PLLC U.S. Bank Bldg. West 422 Riverside Ave., Ste. 1310 Spokane, WA 99201-0302</p>	<p><input checked="" type="checkbox"/> <b>E-Service:</b> <i>terrl@foster.com</i></p> <p><input type="checkbox"/> Facsimile: (206) 749-2002</p> <p><input checked="" type="checkbox"/> <b>U.S. Mail</b></p> <p><input type="checkbox"/> Hand Delivery</p> <p><input type="checkbox"/> Messenger Service</p> <p><input checked="" type="checkbox"/> <b>E-Service:</b> <i>john.nelson@foster.com</i> <i>mccap@foster.com;</i> <i>toves@foster.com</i></p> <p><input type="checkbox"/> Facsimile: (509) 777-1616</p> <p><input checked="" type="checkbox"/> <b>U.S. Mail</b></p> <p><input type="checkbox"/> Hand Delivery</p> <p><input type="checkbox"/> Messenger Service</p>
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<p><b><u>BIA of Clark County:</u></b></p> <p>James D. Howsley Jordan Ramis PC 1499 SE Tech Center Pl., #380 Vancouver, WA 98664</p>	<p><input checked="" type="checkbox"/> <b>E-Service:</b> <i>jamie.howsley@jordanramis.com</i> <i>lisa.mckee@jordanramis.com</i> <i>joseph.schaefer@jordanramis.com</i></p> <p><input type="checkbox"/> Facsimile: (503) 598-7373</p> <p><input type="checkbox"/> U.S. Mail</p> <p><input type="checkbox"/> Hand Delivery</p> <p><input type="checkbox"/> Messenger Service</p>
<p><b><u>Intervenor City of Seattle:</u></b></p> <p>Theresa R. Wagner Sr. Assistant City Attorney Seattle City Attorney's Office 600 Fourth Ave., 4<sup>th</sup> Fl. P.O. Box 94769 Seattle, WA 98124-4769</p>	<p><input checked="" type="checkbox"/> <b>E-Service:</b> <i>theresa.wagner@seattle.gov</i> <i>cynthia.michelena@seattle.gov</i></p> <p><input type="checkbox"/> Facsimile: (206) 684-8284</p> <p><input type="checkbox"/> U.S. Mail</p> <p><input type="checkbox"/> Hand Delivery</p> <p><input type="checkbox"/> Messenger Service</p>

<p><b><u>Intervenor City of Tacoma:</u></b>  Jon Walker  Elizabeth A. Pauli  Jeff H. Capell  City Attorney  Tacoma City Attorney's Office  747 Market Street, Room 1120  Tacoma, WA 98402-3767</p>	<p><input checked="" type="checkbox"/> <b>E-Service:</b>  <i>jon.walker@ci.tacoma.wa.us</i>  <i>icapell@ci.tacoma.wa.us</i>  <i>epauli@ci.tacoma.wa.us</i>  <i>tkropelnick@ci.tacoma.wa.us</i>  <input type="checkbox"/> Facsimile: (253) 591-5755  <input checked="" type="checkbox"/> <b>U.S. Mail</b>  <input type="checkbox"/> Hand Delivery  <input type="checkbox"/> Messenger Service</p>
<p><b><u>Puget Soundkeeper Alliance, Washington Environmental Council and Rosemere Neighborhood Association:</u></b>  Jan Hasselman  Cathy Hendrickson  Janette K. Brimmer  Earth Justice  705 Second Ave., Ste. 203  Seattle, WA 98104-1711</p>	<p><input checked="" type="checkbox"/> <b>E-Service:</b>  <i>jbrimmer@earthjustice.org</i>  <i>chendrickson@earthjustice.org</i>  <i>jhasselman@earthjustice.org</i>  <i>chamborg@earthjustice.org</i>  <input type="checkbox"/> Facsimile: (206) 343-1526  <input type="checkbox"/> U.S. Mail  <input type="checkbox"/> Hand Delivery  <input type="checkbox"/> Messenger Service</p>
<p><b><u>Master Builders Association of King and Snohomish County:</u></b>  Randall P. Olsen  Nancy Bainbridge Rogers  Cairncross &amp; Hemplemann  524 2<sup>nd</sup> Avenue, Suite 500  Seattle, WA 98104-2323</p>	<p><input checked="" type="checkbox"/> <b>E-Service:</b> <i>rolsen@cairncross.com</i>  <i>nrogers@cairncross.com</i>  <input type="checkbox"/> Facsimile: (206) 343-1526  <input type="checkbox"/> U.S. Mail  <input type="checkbox"/> Hand Delivery  <input type="checkbox"/> Messenger Service</p>

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

SIGNED at Everett, Washington, this 1<sup>st</sup> day of August, 2016.

  
\_\_\_\_\_  
Cindy Ryden, Legal Assistant

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'jhasselman@earthjustice.org' <jhasselman@earthjustice.org>; 'chamborg@earthjustice.org'  
<chamborg@earthjustice.org>; 'Randall Olsen' <ROlsen@Cairncross.com>; 'nrogers@cairncross.com'  
<nrogers@cairncross.com>; Hart, Alethea <Alethea.Hart@co.snohomish.wa.us>; Kisielius, Laura  
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**Subject:** E-Filing for Snohomish County, et al. v. Wash. State DOE, et al.; Supreme Court #92805-3

Hello,

Attached please find Respondent Snohomish County's Supplemental Brief in the above matter. The following information is provided for ease of reference and upon the request of the Supreme Court:

Case Name: Washington State Department of Ecology, Puget Soundkeeper Alliance, Washington Environmental Council, and Rosemere Neighborhood Association (*Petitioners*) v. Snohomish County, King County, Building Industry Association of Clark County, and Pollution Control Hearings Board (*Respondents*)

Case No.: Supreme Court #92805-3

Attorney: Alethea M. Hart, WSBA #32840  
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Thank you.

Cindy Ryden, Legal Asst., Civil Div.  
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