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KING COUNTY SUPERIOR COURT

BSRE POINT WELLS, LP, a Delaware  
Limited Partnership  
  
Petitioner,  
  
v.  
  
SNOHOMISH COUNTY,  
  
Defendants.

No.: 18-2-57804-3 SEA  
  
ORDER ON BSRE POINT  
WELLS, LP'S LUPA PETITION  
REMANDING PER SCC  
30.34A.180 (2)(f) (2007)

**I. INTRODUCTION**

This matter is before the Court under the Land Use Petition Act, RCW 36.70C.030. Petitioner, Point Wells, BSRE LP, hereinafter "BSRE" asks the Court to reverse the Snohomish County Hearing Examiner's August 3, 2018 denial "without prejudice" of its "Urban Center Development" land use applications that were subsequently approved by the Snohomish County Council on October 9, 2018. In considering this matter, the Court is, in form, reviewing the Snohomish County Council's approval, but in substance reviewing the specific issues addressed by the Hearing Examiner in the lengthy record provided. The Court under RCW 36.70C.140 may affirm or reverse the land use

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1 decision under review or remand the decision for modification or further  
2 proceedings.

3 The Court considered the Opening Brief of Petitioner, Respondent  
4 Snohomish County's Response Brief, Intervenor, City of Shoreline's Response  
5 Brief and the Reply Brief of Petitioner along with all associated declarations and  
6 the entirety of the official record produced. Additionally, the Court heard oral  
7 argument on May 10, 2019.

## 8 II. FINDINGS OF FACT

9 1. This Land Use Petition Act ("LUPA") action arose from the denial of land  
10 use applications by the Snohomish County Hearing Examiner on August  
11 3, 2018 that were largely affirmed by the Snohomish County Council in a  
12 written decision of October 9, 2018.<sup>1</sup> The applications at issue were  
13 initially filed on February 14, 2011 and March 4, 2011. This project was to  
14 be developed under the Snohomish County Code, specifically, Chapter  
15 30.34 (the Urban Center Development) code.

16 2. The proposed development is on 61 acres of waterfront property at Point  
17 Wells in Snohomish County, Washington. The site was used previously  
18 as a petroleum facility and is reported to be currently in use as an asphalt  
19 processing plant.<sup>2</sup> As an "urban center" development, BSRE indicated  
20 that it would include approximately 3,000 residential units and provide

21 \_\_\_\_\_  
22 <sup>1</sup> Applications at issue were filed under numbers 11-01457 LU/VAR, 11-101461 SM, 11-101464  
RC, and 11-101007 SP.

23 <sup>2</sup> No evidence has been presented as to remediation work having been started on the property.

1 approximately 100,000 square feet of commercial space. BSRE has also  
2 indicated that its development would allow for large public beach access.

3 3. To the east of the property is a 200-foot bluff. The Town of Woodway and  
4 the City of Shoreline abut the property with primarily single-family homes.

5 4. From the beginning, it was clear to Snohomish County and to BSRE that  
6 the project was complex and that it faced many hurdles.<sup>3</sup> In fact, a major  
7 hurdle arose in 2010 and 2011 when the Town of Woodway and Save  
8 Richmond Beach, Inc. successfully challenged the county's designation of  
9 the Point Wells site as an "urban center" before the Growth Management  
10 Hearing Board as not compliant with the State Environmental Policy Act  
11 ("SEPA").

12 5. The Growth Management Hearing Board determination led to a second,  
13 significant hurdle when The Town of Woodway and Save Richmond  
14 Beach, Inc. filed an action in King County Superior Court seeking a  
15 declaration that BSRE's project permit applications had not vested  
16 because ordinances enacted within the "urban center" code were void  
17 under SEPA and the Growth Management Act. This litigation initiated in  
18 September, 2011 included an injunction that delayed processing of  
19 BSRE's applications as the case proceeded through the Washington State  
20 Court system. Division One of the Court of Appeals invalidated the  
21 injunction on January 7, 2013. The Washington State Supreme Court

22  
23 <sup>3</sup> BSRE references a predecessor in interest in the property, but this entity was unnamed. Accordingly, the Court will refer to BSRE as the interested developer throughout this order.  
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1 affirmed the Division One decision on April 14, 2014 and confirmed that  
2 BSRE had a vested right to permit applications that were filed under the  
3 Snohomish County Urban Center Code provisions even though the “urban  
4 center” regulations had been determined to be non-compliant with SEPA.

5 6. After the Court of Appeals decision, Snohomish County recommenced its  
6 review of BSRE’s applications and issued a 14-page review completion  
7 letter on April 12, 2013. This letter referenced not less than 42 issues of  
8 code noncompliance and requested that BSRE provide additional  
9 information to address the noted issues. BSRE responded in a letter  
10 dated March 21, 2014 in which it requested an extension to April 15, 2015,  
11 in part due to the above referenced then pending Washington State  
12 Supreme Court case. This request was granted.

13 7. On April 15, 2015, BSRE requested a second application extension to  
14 June 30, 2016. This request was also granted.

15 8. In a letter dated March 30, 2016, BSRE requested a third extension of two  
16 years. In this letter, BSRE “reserved” argument that it remained vested  
17 under the code provisions that were in effect when its applications were  
18 filed such that recently adopted code provisions would not apply to its  
19 applications. This extension request was granted in a letter of March 31,  
20 2016 through which the new application deadline was set for June 30,  
21 2018. In the letter granting this extension, Snohomish County responded  
22 to BSRE’s “reserved” vesting argument and directly informed BSRE of  
23 Snohomish County Amended Ordinance 16-004 which it asserted, applied

1 new application expiration regulations to pending applications, including  
2 BSRE's applications. Snohomish County clearly disagreed with BSRE's  
3 vesting argument.

4 9. On April 17, 2017, BSRE provided an application resubmittal, nearly a  
5 month ahead of a Snohomish County requested May 15, 2017 deadline.  
6 Snohomish County acknowledged receipt of the resubmittal by letter on  
7 May 2, 2017 and stated that if an additional extension was to be  
8 requested, that a request should be presented before May 30, 2018. A  
9 second letter acknowledging receipt of the resubmittal and providing  
10 preliminary comments was sent from Snohomish County on May 10,  
11 2017. This letter referenced the May 2, 2017 letter and reiterated that the  
12 project would expire on June 30, 2018 unless BSRE requested and the  
13 PDS director granted a further extension.

14 10. On October 6, 2017, Snohomish County provided a 389-page review  
15 completion letter to BSRE. In this letter, Snohomish County recognized  
16 that BSRE had resolved 13 issues, but noted that many of the deficiencies  
17 recognized in its April 2013 review letter had not been addressed. This  
18 detailed letter went through all applicable code provisions with direct  
19 reference to actions of BSRE. This letter again referenced the  
20 approaching, application expiration date of June 30, 2018 and indicated  
21 that it was possible that the applications could be transferred to the  
22 Hearing Examiner with a recommendation of denial if deficiencies were  
23

1 not addressed. At relevant part with regard to timing, this letter, at page 3,  
2 stated:

3 **Timing:** The current permit applications have previously been the  
4 subject of three previous requests for extension, all of which have  
5 been granted. The most recent was a 24-month extension  
6 extending the expiration date of the applications to June 30, 2018.  
7 Under County Code, no additional extensions are permitted absent  
8 extraordinary circumstances.

9 Accordingly, Snohomish County asks that the additional  
10 information/revisions set forth below be provided within a  
11 reasonable period of time to allow completion of SEPA review and  
12 submission of the applications for hearing or decision by June 30,  
13 2018. Even if the applicant does not wish to revise the application  
14 submittal, we would request that the applicant identify an  
15 "alternative" project proposal on the site capable of demonstrating  
16 compliance with the County's regulations, including those for critical  
17 areas, parking, and fire protection for purposes of SEPA review. If  
18 a revised submittal or alternative information addressing the above  
19 is not received on or before January 8, 2018, PDS will assume that  
20 the applicant wishes the County to proceed with concluding  
21 environmental review under SEPA and processing the permit  
22 applications for hearing or decision based on the current application  
23 submittals. Please be advised that this may result in a  
recommendation of denial without further preparation of an EIS in  
accordance with SCC 30.61.220, if PDS concludes that the permit  
applications as submitted evidence a substantial conflict with  
applicable County Code and development regulations.

11. A second one-page letter from Snohomish County was sent with the 389-  
page letter on October 6, 2017. This letter again referenced the June 30,  
2018 due date and directed BSRE to provide another application  
resubmittal by January 8, 2018.

The records indicate that BSRE continued to work to address issues  
referenced and in that direction, representatives of BSRE and Snohomish  
County met in person on November 13, 2017. In this meeting, BSRE

1 asserts that it indicated that it needed additional time beyond January 8,  
2 2018 to complete requested work and that Snohomish County  
3 representatives stated that the January 8, 2018 resubmission was a target  
4 and not a statutorily prescribed deadline. BSRE also contends that it was  
5 encouraged to submit a letter request for more time and that it was told  
6 that there was no reason to expect that an additional extension request  
7 would not be approved.

8 12. On December 29, 2017, BSRE wrote Snohomish County explaining that  
9 work was ongoing, but could not be finished by January 8, 2018 and that  
10 upon receipt of updates from consultants it would provide a new target  
11 date when materials would be submitted. In response, Snohomish County  
12 sent a letter of January 9, 2019 stating that supplemental materials had  
13 not been provided in time, and that the county intended to move onward to  
14 the Hearing Examiner for application review. At relevant part, this letter  
15 stated:

16 At this time, PDS will complete final review and processing of the  
17 application materials it has received. Further, PDS will make a  
18 recommendation to the Hearing Examiner on the Applications and  
19 schedule a public hearing on the Applications with enough time for  
20 the Hearing Examiner to render a decision by June 30, 2018.  
21 Please note that if PDS concludes that the Applications as  
22 submitted substantially conflict with the applicable plans,  
23 ordinances, regulations or laws, this process may result in a  
recommendation of denial without further preparation of an EIS  
under SCC 30.61.220.

13. In response, BSRE wrote Snohomish County on January 12, 2018  
and January 24, 2018 requesting reconsideration of the decision to

1 proceed ahead and an additional 18-month extension. BSRE also  
2 wrote Snohomish County on January 19, 2018 indicating that  
3 supplemental materials would be provided by April 30, 2018.

4 14. Despite these letters from BSRE, Snohomish County proceeded  
5 onward on the path to Hearing Examiner consideration. A hearing  
6 was scheduled to begin on May 16, 2018.

7 15. On April 17, 2018, Snohomish County issued a staff  
8 recommendation to the Hearing Examiner recommending denial of  
9 the applications under SCC 30.61.220. The staff recommendation  
10 was based on eight separate issues of "substantial conflict" with  
11 Snohomish County Code requirements.

12 16. BSRE provided additional materials to Snohomish County on April  
13 27, 2018. Snohomish County conducted an expedited review of  
14 these materials and on May 9, 2018 submitted a supplemental staff  
15 recommendation to the Hearing Examiner in which it concluded that  
16 three of the eight areas of "substantial conflict" had been resolved,  
17 but that five remaining areas of "substantial conflict" remained upon  
18 which it recommended denial.

19 17. The Snohomish County Hearing Examiner commenced an open  
20 record hearing on May 16, 2018. At the beginning of the hearing,  
21 Snohomish County informed the Hearing Examiner that BSRE had  
22 submitted additional materials the day beforehand and requested a  
23 week-long continuance. The request was denied and the hearing

1 moved onward a seven-day hearing. The parties submitting closing  
2 briefs and proposed findings of fact and conclusions of law after  
3 testimony concluded.

4 18. On June 29, 2018, the Hearing Examiner issued a Decision  
5 Denying Extension Request and Denying Applications Without an  
6 Environmental Impact Statement per SCC 30.61.220.

7 19. On July 9, 2018, BSRE filed a motion for reconsideration and  
8 clarification of the Hearing Examiner's decision.

9 20. On August 3, 2018, the Hearing Examiner issued two decisions:  
10 (1) a Decision Granting in Part and Denying in Part BSRE's Motion  
11 for Reconsideration and Clarification ("Reconsideration Decision")  
12 and (2) an Amended Decision Denying Extension and Denying  
13 Applications Without an Environmental Impact Statement  
14 ("Amended Decision").

15 21. The "Reconsideration Decision" confirmed that the denial of the  
16 applications was "without prejudice" per SCC 30.72.060(3) (2013)  
17 and further indicated that as a "Type 2 decision" the next appellate  
18 step appeared to be consideration by the Snohomish County  
19 Council rather than through appeal to the Snohomish County  
20 Superior Court. Other than addressing these issues, the Hearing  
21 Examiner denied the overall motion for reconsideration because he  
22 believed his initial decision was correct and that reconsideration  
23 was futile because the expiration period expired.

1 22. BSRE appealed the Hearing Examiner's Decision of August 3,  
2 2018 to the Snohomish County Council. A closed record hearing  
3 was held on October 3, 2018 and the Council adopted Motion No.  
4 18-360 which affirmed the Hearing Examiner's Amended Decision  
5 with minor modifications on October 8, 2018.

6 23. On October 9, 2018, an official Notice of Council Decision was  
7 signed by the Clerk of the Council indicating that upon a unanimous  
8 vote, the County Council approved a motion affirming the August 3,  
9 2018 Amended Decision of the Hearing Examiner with  
10 modifications, as set forth in Council Motion No. 18-360. From this  
11 decision, BSRE timely appealed to this Court under the Land Use  
12 Petition Act, Chapter 36.70C RCW.

### 13 III. ANALYSIS

#### 14 A. BSRE has a vested right to reactivate its applications under SCC 15 30.34A.180 (2)(f) (2007).

16 The Court carefully examined the record and applicable code provisions to  
17 assess whether BSRE's application materials as submitted were in "substantial  
18 conflict" with code provisions in the five areas at issue. However, upon broad  
19 review of the history of this project through the record presented, the paramount  
20 issue became whether BSRE has a vested right under the vested rights doctrine  
21 to proceed under Title 30.34A of the Snohomish County Code which relates to  
22 "Urban Center Development" in the form in which it existed when BSRE's  
23

1 applications were deemed to have been properly presented on February 14,  
2 2011 and March 4, 2011.

3 The vested rights doctrine generally provides that certain land  
4 development applications must be processed under the land use regulations in  
5 effect when the application was submitted, regardless of subsequent changes to  
6 those regulations. *Town of Woodway v. Snohomish County*, 180 Wn.2d 165,  
7 172- 173, 222 P.3d 1219 (2016). Development rights “vest” on a date certain—  
8 when a complete development application is submitted. *Id.* The purpose of the  
9 vested rights doctrine is to provide certainty to developers and to provide some  
10 protection against fluctuating land use policy. *Noble Manor Co. v. Pierce County*,  
11 133 Wn.2d.2d 269, 278, 943 P.2d 1378 (1997). The doctrine recognizes that  
12 development rights are valuable property interests and ensures that new land  
13 use regulations do not interfere with those rights. *Town of Woodway*, 180 Wn. 2d  
14 at 173.

15 The critical vesting issue before the Court is whether BSRE has a vested  
16 right to the process set forth in SCC 30.34A.180(2)(f) (2007) which was in place  
17 when the applications were submitted. SCC 30.34A.180(2)(f) (2007) at pertinent  
18 part provides:

19 The hearing examiner may deny an urban center development  
20 application without prejudice pursuant to SCC 30.72.060. If denied  
21 without prejudice, the application may be reactivated under the  
22 original project number without additional filing fees or loss of  
project vesting if a revised application is submitted within six  
months of the date of the hearing examiner’s decision. In all other  
cases a new application shall be required.

23

1 It is undisputed that SCC 30.34A.180(2)(f) (2007) was repealed in 2013  
2 per Amended Ordinance No 13-007, made effective October 3, 2013 and that  
3 developer rights vesting is now addressed in the Snohomish County Code at  
4 SCC 30.70.300 which does not allow for a six-month reactivation option.

5 Snohomish County relies on this repeal and argues that BSRE lost the ability to  
6 reactivate its applications within six months of the hearing examiner's "without  
7 prejudice" decision even though it has a vested right to rely on other provisions of  
8 SCC 30.34A. Snohomish County asserts that developer vested rights only apply  
9 to ordinances that exercise a restraining of directing influence over land use,  
10 such as regulations about sidewalk widths, structure height restrictions or types  
11 of uses allowed, i.e. residential, commercial or industrial. See *New Castle*  
12 *Investments v. City of LaCenter*, 98 Wn. App. 224, 232-233, 989 P.2d 569  
13 (1999); *Snohomish County v. Pollution Control Hearings Board*, 187 Wn.2d 346.  
14 361, 386 P.3d 1064 (2016); *Westside Business Park, LLC. v, Pierce County*, 100  
15 Wn. App. 599, 607, 5 P.3d 713 (2000) and *Graham Neighborhood Association v.*  
16 *F.G. Associates*, 162 Wn. App. 98, 252 P.3d 898 (2011).

17 Snohomish County correctly relies on these cases to support its position.  
18 However, the record indicates that Snohomish County specifically informed  
19 BSRE that the above referenced six-month reactivation process was available to  
20 BSRE in its critically important 389 Review Completion letter dated October 6,  
21 2017. This letter, signed by Paul MacCready, the Principal Planner/Project  
22 Manager handling the project at page 79 included the following language:

1           **Urban Center Development (Chapter 30.34A SCC)**

2           Review of Chapter 30.34A SCC refers to the Land Use permit for  
3           an urban center site plan, 11-101457 LU, unless otherwise noted.  
4           **The review is per the code in effect when 11-101457 LU was  
            submitted, i.e. the March 4, 2011, version of code, unless  
            explicitly identified otherwise.<sup>4</sup>**

5           The letter goes on in great detail addressing all provisions of SCC 30.34A  
6           as they relate to BSRE's application submissions. Discussion of the Urban  
7           Center Development code provisions of Chapter 30.34A continued onward from  
8           page 79 to page 98 where it specifically addressed SCC 30.34A.180(2)(f) (2007)  
9           and states:

10           **Subsection (2)(f)** allows the Hearing Examiner to deny the project  
11           without prejudice and, if this happens, allows the applicant to  
            reactivate the project.

12           It is perplexing that Snohomish County now argues that SCC  
13           30.34A.180(2)(f) (2007) reactivation is unavailable because the letter of October  
14           6, 2017 was written four years after the repeal upon which it relies and nowhere  
15           in the letter did Snohomish County "explicitly identify" that this provision of SCC  
16           30.34A was no longer applicable.

17           Moreover, the record indicates that Snohomish County supported BSRE in  
18           establishing its vested rights throughout the litigation process in *Town of*  
19           *Woodway v. Snohomish County and BSRE, Point Wells, LP*, all the way through  
20           consideration by the Washington Supreme Court. Although the Washington  
21           Supreme Court's consideration in *Town of Woodway* addressed BSRE's vested  
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            <sup>4</sup> Emphasis added for clarity.  
            ORDER ON BSRE POINT WELLS, LP'S  
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1 rights in the context of whether BSRE and Snohomish County could proceed with  
2 application processing despite a determination that Snohomish County's Urban  
3 Center plans and regulations were not compliant with SEPA, BSRE and  
4 Snohomish County remained allied in asserting the importance of vested  
5 developer rights. Like the situation in *Town of Woodway* in which our  
6 Washington Supreme Court determined that BSRE's development rights were a  
7 valuable property right for which BSRE was entitled to have its applications  
8 processed under the law in place at the time when its applications were  
9 completed, BSRE's development rights in 2019 remain sufficiently valuable.

10 The Court understands Snohomish County's reliance on *Graham*  
11 *Neighborhood Association*. However, the facts differentiate its holding from the  
12 situation at bar. Unlike the situation at bar, in *Graham Neighborhood*  
13 *Association*, Pierce County did not oppose utilization of the vested rights doctrine  
14 after indicating clearly in writing to the developer that the code provisions in effect  
15 at the time of application submission would remain in effect throughout the  
16 review process. Additionally, in *Graham Neighborhood Association*, the  
17 developer appeared neither sincere nor serious in its initial application, and even  
18 inappropriately and flippantly answered application questions in submission  
19 documentation. Inappropriate, joking responses to serious application questions  
20 indicated that the submission was merely a placeholder designed to secure a  
21 development right position five days before regulations were to change that were  
22 to prohibit certain commercial uses. Additionally, the *Graham Neighborhood*

1 Association developer appeared disinterested in pursuing the project for thirteen  
2 years before submitting an additional environmental review worksheet.

3 In determining that the *Graham Neighborhood Association* developer did  
4 not have a vested right, the Court of Appeals looked to *Erickson and Associates*  
5 *v. McLerran, et al.* 123 Wn.2d 864, 872 P.2d 1090 (1994) and referenced the  
6 need to balance the private property and due process rights of a developer  
7 against the public interest by selecting a vesting point which prevents permit  
8 speculation and which demonstrates substantial commitment by the developer  
9 such that good faith of the applicant is generally assured. Despite delays here,  
10 evidence indicates that BSRE is substantially committed to the Point Wells  
11 project and there is no evidence of bad faith on the part of BSRE.

12 *Graham Neighborhood Association* also relies on *Erickson* in recognizing  
13 that while development rights are a valuable and protected property right,  
14 protection of these rights come at a cost to the public interest. The detrimental  
15 effect on the public interest occurs when vested rights are granted too easily, as  
16 the public interest can be subverted through sanctioning of non-conforming uses.  
17 See *Graham Neighborhood Association* at 112 – 113 citing *Erickson* at 873 –  
18 874.

19 Here balancing the property and due process rights of BSRE against the  
20 public interest, the Court must consider Snohomish County's October 6, 2017  
21 letter providing BSRE with written confirmation that reactivation remained an  
22 option if a Hearing Examiner denial was "without prejudice" and BSRE's reliance  
23 on this provision as shown through BSRE's pursuit of a denial "without prejudice.

1 The Court is aware of the significant public interest in the outcome of this  
2 application process. The record is beyond replete with demonstrated public  
3 interest through submitted comments and testimony in opposition to the  
4 development and great public interest was demonstrated in the briefing and  
5 eloquent oral argument presented by the City of Shoreline as an intervening  
6 party. Presented public interest carries great weight in the balance of vested  
7 right consideration, but BSRE also carries great weight in the form of its property  
8 interest and in its right to due process in the consideration of its applications.

9 The heavy weight of due process is felt in BSRE's receipt of the October  
10 6, 2017 letter indicating that review will be "per the code in effect when 11-  
11 101457 LU was submitted, i.e. the March 4, 2011, version of code, unless  
12 explicitly identified otherwise" and in seeing no evidence that Snohomish County  
13 ever "explicitly identified otherwise." In conclusion, the Court sees the public  
14 interest as still well protected in the continuation of the application review  
15 process, if BSRE opts to reactivate is applications to address the five issues of  
16 "substantial conflict" brought to its attention by Snohomish County. The Court  
17 has no doubt that public interest and input will continue to be presented.

18 **B. BSRE did not miss its window to reapply under SCC 30.34A.180(2)(f).**

19 Snohomish County argues that even if the six-month reactivation process  
20 was available, BSRE missed its window of opportunity by not taking steps to  
21 reactivate within six-months of the Hearing Examiner's decision. However, the  
22 record indicates that there was no way for BSRE to reactivate its applications  
23 after the Hearing Examiner issued his Decision Granting in Part and Denying in

1 Part BSRE's Motion for Reconsideration and Clarification. In this decision, the  
2 Hearing Examiner explained clearly that while he had the authority to deny the  
3 application without prejudice under SCC 30.72.060(3), he did not believe he had  
4 the authority to deny the application without prejudice under SCC  
5 30.34A.180(2)(f) (2007) because his authority to do so had been revoked by the  
6 adoption of Ord. 13-007 Section 28 (adopted September 11, 2013, eff. October  
7 3, 2013). Additionally, reactivation was not possible after the Snohomish County  
8 Council's October 9, 2018 approval of the Hearing Examiner's August 3, 2019  
9 decisions because the Council approved the Hearing Examiner's conclusion as  
10 to his authority despite argument from BSRE before Council regarding its  
11 asserted vested right to reactivate its applications. Moreover, taking expensive  
12 reactivation steps when faced with decisions that indicated that there was no  
13 authority to allow for reactivation would have been futile. BSRE appropriately  
14 addressed this issue with the Court as part of its LUPA appeal.

#### 15 **IV. CONCLUSIONS OF LAW**

16 Based on the above analysis, the Court enters the following Conclusions  
17 of Law.

- 18 1. BSRE had a vested right to proceed under SCC 30.34A, in its entirety  
19 in the form and substance of its language in place at the time of its  
20 application submissions on February 14, 2011 and March 4, 2011.
- 21 2. BSRE's vested right includes the right to proceed under SCC  
22 30.34A.180(2)(f) (2007) which allows for reactivation of applications  
23

1 within six months of the Hearing Examiner's denial of its applications  
2 without prejudice.

3 3. The Hearing Examiner erred in determining that he did not have the  
4 authority to allow BSRE to reactivate its applications as authorized in  
5 SCC 30.34A.180(2)(f) (2007) because BSRE had a vested right to  
6 proceed under SCC 30.34A.180(2)(f) (2007).

7 4. BSRE was unable to reactivate its applications as authorized by SCC  
8 30.34A.180(2)(f) (2007) after the Hearing Examiner rendered his  
9 Decision Granting in Part and Denying in part BSRE's Motion for  
10 Reconsideration and Clarification and after approval of this decision by  
11 the Snohomish County Council on October 8, 2018.

12 5. BSRE relied on Snohomish County's October 6, 2017 letter in  
13 asserting that it had the ability to reactivate its applications as  
14 authorized under SCC 20.34A.180(2)(f) (2007).

15 6. Based on the Court's decision regarding BSRE's ability to reactivate its  
16 applications, consideration of the grounds for denial and failure to grant  
17 an extension of the application process is unnecessary because  
18 through this decision the Court is affording BSRE an opportunity to  
19 reactivate its applications. It is possible that the issues of substantial  
20 conflict and failure to grant an extension may come before the Court in  
21 the future depending on what happens with the reapplication process  
22 allowed by this ruling.

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**V. ORDER**

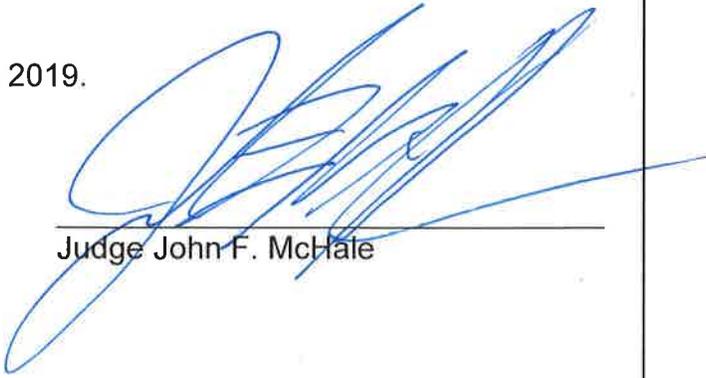
1. This matter is remanded to Snohomish County to proceed with consideration of BSRE's reactivation of its applications previously denied "without prejudice" by the Hearing Examiner on August 3, 2018 and approved by the Snohomish County Council on October 8, 2018.<sup>5</sup>

2. BSRE has six-months from the date of entry of this Order on June 18, 2019 to reactivate its applications, if it chooses to pursue reactivation.

3. The parties are to act diligently, in good faith and in accord with the Snohomish County Code and all other applicable statutory provisions in completing the application review process.

4. The Court sees reactivation as allowed by SCC 30.34A.180(2)(f) (2007) as a one-time reactivation opportunity rather than as an avenue for future reactivation requests.

DATED this 18th day of June, 2019.



\_\_\_\_\_  
Judge John F. McHale

<sup>5</sup> This assumes that BSRE will pursue reactivation as requested.  
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