



Snohomish County Council

## **NEWS RELEASE**

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### **Court Rules in Snohomish County's Favor on Brightwater Council Appeal Results in Growth Board Reversals**

[Everett, Wash.] The Snohomish County Council had its day in Thurston County Court last week regarding litigation with King County over its Essential Public Facilities (EPF) ordinance. The Growth Managements Hearings Board (Growth Board) had invalidated Snohomish County's EPF's (ordinances 03-006 & 04-019), giving King County a victory at the administrative hearing level. The Snohomish County Council appealed the Growth Board's ruling to the Thurston County Superior Court, where earlier this week Judge Casey heard the Council's case.

"Ruling from the bench, Judge Casey, whose final written decision is expected soon, verbally ruled in favor of Snohomish County on several very key points," stated Councilman Jeff Sax. "Due to the complexity of the case and the ruling, we are cautiously optimistic that the outcome will be positive for Snohomish County and its citizens."

Recently, the Snohomish County Council has authorized Executive Aaron Reardon, to enter into negotiations with regard to the facility. This authorizes the Executive to discuss potential mitigation if the facility is forced upon us by the courts and is a formality. Final acceptance of any mitigation plans must be adopted by the Council.

By law, adopted by the King County Council, mitigation dollars are expected to be 10% of the total project cost. The current reported cost of the facility is now nearing \$1.5 billion, which should require close to \$150 million in mitigation costs. King County came to the table and proposed \$18 million, with their Executive holding final say over where those dollars are spent.

"King County's proposed process is an affront to representative democracy and I am happy that Judge Casey chose to side with us on this critical piece in her decision, overruling the Growth Board," added Sax. "Judge Casey agreed with us that our county does have a role in the process for siting an essential public facility, including the legal authority to impose reasonable conditions on King County, including mitigation."

Judge Casey further ruled that the Growth Board was wrong in stating that Snohomish County could not revisit the issue of whether or not King County had engaged in adequate public participation. She reversed the board and found that it is reasonable for Snohomish County to look into the issue for the benefit of the public.

"The events that have led to Brightwater extend back to 1957 and were intended to abate water pollution and help regulate the flow of sewage," continued Sax. "I am still not convinced that today's decisions made by highly political Growth Board who point to archaic laws truly do allow one county to site such a facility in another county without their input or consent."

Snohomish County Council has passed ordinance no. 03-006, which regulates essential public facilities, such as Brightwater and requires local support and consent of such facilities and No. 04-019 which established new regulations dealing with essential public facilities.

One recent development involves the discovery of a seismic fault on the proposed site of Brightwater. The original siting criteria King County used, eliminating five other sites, stated repeatedly that if such a fault were discovered, they would move the site.

Sax will be encouraging King County to amend their final environmental impact statement (FEIS), based on the King County Hearing Examiner's ruling on this issue, to truly reflect the conditions of the land where they are proposing to site this facility. Sax believes based on Judge Casey's recent ruling and the fact that faults exist on the Hwy 9 site that it is time for the King County Council to instruct Executive Ron Sims to cut his losses at Hwy 9 and move this plant to the Point Wells location, where the community has expressed support and the final cost will be less to future rate payers.

““We have combed over fifty years of contracts, local legislation and case law and let me assure you that we will continue to pursue every opportunity that we have available to demand that you and your elected representatives on the Snohomish County Council have a role in the siting and regulations of essential public facilities, like Brightwater,” concluded Sax.

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