

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
CENTRAL REGION
STATE OF WASHINGTON

PORT OF SEATTLE,

Petitioner,

v.

CITY OF SEATTLE,

Respondent,

and

BNSF RAILWAY COMPANY,

Intervenor.

Case No. 25-3-0009

FINAL DECISION AND ORDER

I. INTRODUCTION

The Port of Seattle (Port) and BNSF Railway Company (BNSF) challenged the City of Seattle's (City) adoption of Ordinance 127191 which amended the City's code to permit new residential development within the City's Stadium Transition Area Overlay District (STAOD)¹ in an area zoned Urban Industrial (UI).² Previously within the STAOD the City had permitted housing for caretakers and artist studios, but excluded other residential development, and with this amendment now authorizes residential development at a density of fifty-dwelling units per acer.

The STAOD has existed as an overlay district since 2000 and includes approximately 93 acres of land in the South of Downtown (SODO) neighborhood of Seattle, 40 acres of which includes Lumen Field and T-Mobile Park.³ Between 2019 and 2021, the City undertook review of its Industrial and Maritime Lands resulting in the adoption of the City's Industrial

¹ The Parties refer to this as both the Stadium Transition Area Overlay District ("STAOD") and the Stadium District. For brevity and clarity this Board refers to this as the STAOD.

² Amending Chapter 23.74 SMC.

³ See Ex. 128 at 10 (providing a visual representation).

1 and Maritime Strategy. In order to adopt this legislation, the City necessarily undertook
2 environmental review which included the adoption of a Final Environmental Impact
3 Statement (FEIS) on September 29, 2022, which studied, among other things, the inclusion
4 of up to 990 industry-supportive housing units in the STAOD.⁴ The City adopted legislation
5 creating the new UI zone throughout the City which permitted residential uses as a
6 conditional use subject to several restrictions, including setbacks from the City's Major Truck
7 Streets,⁵ however, residential uses remained prohibited in the STAOD with the exception of
8 artist studios and caretaker's quarters.⁶

10 In January 2025, the City initiated consideration of CB 120933⁷ (the initial draft of the
11 Ordinance at issue) and began its public review process which included a public hearing at
12 the Committee level on February 24, 2025, and final adoption by the full City Council on
13 March 18, 2025.

14 The Port claims the Ordinance was adopted without adequate public notice and
15 participation, without consideration of the City's obligations under the State Environmental
16 Policy Act (SEPA), in contradiction to the City's Comprehensive Plan, policies, and code,
17 and was contrary to the goals established in the Growth Management Act (GMA).⁸

19 BNSF also asserted the City failed to conduct adequate SEPA review.

20 The City countered that it followed its public participation process, any amendments
21 to the initially proposed Ordinance where within the scope of the originally noticed Ordinance
22 such that the City was not obligated to conduct further public hearings, and that the City
23 acted to comply with the notice requirements to the Washington State Department of
24 Commerce (Commerce) and is therefore compliant with procedural requirements.⁹ Further,
25

27 ⁴ City's Br. at 6, citing *RIN* 6 (Agenda February 24, 2025, Public Hearing, draft Ordinance, Seattle Industrial &
28 Maritime Strategy Final Environmental Impact Statement).

29 ⁵ A "Major Truck Street" is a City designation for streets that carry more than 1,500 trucks a day and are
30 significant for freight movement.

31 ⁶ Port's Br. at 4-5, referring *Ex* 42, City staff report on Industrial/Maritime Legislation.

32 ⁷ The Ordinance was initially proposed as CB 120933. The City refers to the initial Ordinance as a Bill and
once passed as an Ordinance. The Board does as well.

⁸ Port's Br. at 10.

⁹ City's Br. at 13, 16, 19.

1 that its Ordinance was not a project action and authorized no site-specific development and
2 was, therefore, categorically exempt from SEPA, but even if it was not exempt from SEPA
3 review, that any environmental impacts were adequately studied and harmonized with the
4 City's Comprehensive Plan and GMA planning goals or was harmless error.¹⁰ Also that, any
5 SEPA challenge was precluded by recent legislation which prohibited a SEPA challenge
6 where a local jurisdiction acts to increase housing.¹¹
7

8 The Board concluded the City failed to follow its established public participation
9 program, failed to provide 60 days' notice to Commerce, and failed to conduct SEPA review.
10 The Board also found several inconsistencies with the City's Comprehensive Plan.
11 Accordingly, the Board determined the Ordinance was noncompliant with the City's code and
12 the GMA and remanded the matter to the City for resolution of the deficiencies. Further,
13 because the City did not conduct SEPA review, and because the Ordinance substantially
14 interfered with the GMA's goals, the Board invalidated the Ordinance.
15

16 Procedural matters not otherwise addressed by an earlier Order are detailed in
17 Appendix A.

18 **II. BOARD STATUTORY AUTHORITY**

19 The Board finds the Petition for Review was timely filed.¹² The Board finds the
20 Petitioner has standing to appear before the Board.¹³ The Board also finds it has statutory
21 authority over the subject matter of the Petition.¹⁴
22

23 **III. STANDARD OF REVIEW**

24 Comprehensive plans and development regulations, and amendments to them, are
25 presumed valid upon adoption.¹⁵ This presumption creates a high threshold for challengers
26 as the burden is on the Petitioner to demonstrate that any action taken by the local jurisdiction
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29 ¹⁰ City's Br. at 1-2.

30 ¹¹ *Id.* at 19.

31 ¹² RCW 36.70A.290 (2).

32 ¹³ RCW 36.70A.280(2)(b).

¹⁴ RCW 36.70A.280(1).

¹⁵ RCW 36.70A.320(1).

1 was not in compliance with the Growth Management Act (GMA).¹⁶ The Board is charged with
2 adjudicating GMA compliance and, when necessary, invalidating noncompliant plans and
3 development regulations.¹⁷

4 The scope of the Board's review is limited to determining whether a local jurisdiction
5 has achieved compliance with the GMA only with respect to those issues presented in a
6 timely Petition for Review.¹⁸ The Board is directed to find compliance unless it determines
7 that the challenged action is clearly erroneous in view of the entire record before the Board
8 and in light of the goals and requirements of the GMA.¹⁹ In order to find the City's action was
9 clearly erroneous, the Board must be "left with the firm and definite conviction that a mistake
10 has been committed."²⁰

12 IV. ANALYSIS AND DISCUSSION

13 The Port combines issues 3, 4, and 5.

14 **Issue No. 3. Did the City violate the GMA's requirements at RCW 36.70A.020(11) and**
15 **140 by failing to provide for early and continuous public participation and**
16 **reconciliation of conflicts during the Council's consideration and adoption of the**
17 **Ordinance?**

18 **Issue No. 4. Did the City violate the GMA's requirement at RCW 36.70A.035 by failing**
19 **to provide adequate notice and an opportunity for public review and comment**
20 **regarding the final terms of the Ordinance?**

21 **Issue No. 5. Did the City violate the GMA's requirement at RCW 36.70A.106 by failing**
22 **to provide adequate notice to the State Department of Commerce regarding its intent**
23 **to adopt the Ordinance?**

24 Local jurisdictions must encourage the involvement of citizens in the planning
25 process.²¹ The public participation requirement includes the requirement that notice of
26 governmental action must be reasonably calculated to provide notice to, *inter alia*, property
27

28 ¹⁶ RCW 36.70A.320(2).

29 ¹⁷ RCW 36.70A.280, RCW 36.70A.302.

30 ¹⁸ RCW 36.70A.290(1).

31 ¹⁹ RCW 36.70A.320(3).

32 ²⁰ *Dep't of Ecology v. PUD 1*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993).

²¹ RCW 36.70A.020(11) (Citizen Participation and coordination).

1 owners and other affected and interested individuals, government agencies, and
2 businesses.²² Local jurisdictions must also establish and broadly disseminate to the public a
3 public participation program identifying procedures that provide for early and continuous
4 public participation and provide the opportunity for written comments, public meetings after
5 effective notice, provisions for open discussion, communication programs, information
6 services, and consideration of and response to public comments.²³ Errors in exact
7 compliance with the established program and procedures shall not render the action invalid
8 if the spirit of the program and procedures are observed.²⁴
9

10 The Port claims the City adopted its Ordinance without adequate public notice and
11 participation in violation of both the GMA and the City's code. Specifically, the Port indicates
12 the City was obligated to provide a report for this type of decisions, and that it "ordinarily
13 require a report on the proposed legislation and thirty days' notice prior to hearing."²⁵ The
14 Port indicates there was no report prepared, nor did the City provide written notice to the
15 Commerce as required.²⁶
16

17 The City responds that it "... complied with the GMA's notice and public participation
18 requirements when, after a thorough environmental review and lengthy public legislative
19 process, it adopted the Ordinance," and suggest the evidence in support of this can be found
20 in the "thousands of pages of written comment both for and against the Bill...."²⁷
21
22

23 ²² RCW 36.70A.035.

24 ²³ RCW 36.70A.140. The City adopted Resolution 32096 which provides: Amendments to Bills and
25 Resolutions shall not be presented at a City Council meeting unless previously reviewed by the Law
26 Department and circulated via email to all CMs, the Central Staff Director, and the City Clerk at least two
27 hours before the meeting. In cases, including but not limited to, amendments to development regulations
28 subject to the Growth Management Act, a statute may require additional public notice and opportunity for
29 public comment before an amended Bill may be passed (See
30 [https://seattle.legistar.com/View.ashx?M=F&ID=12205123&GUID=80438E23-6CC9-48CA-AC5B-
31 B1397CD3580A](https://seattle.legistar.com/View.ashx?M=F&ID=12205123&GUID=80438E23-6CC9-48CA-AC5B-B1397CD3580A)).

32 ²⁴ RCW 36.70A.140.

²⁵ Port's Br. at 10, citing SMC 23.72.062(C)-(D). It appears the correct citation is SMC 23.76.062(C)-(D).
23.76.006.C.2.c, d, f, and g and SEPA decisions integrated with such Type II decisions as set forth in
Section 23.76.006.C.2. l.

²⁶ Port's Br. at 10, citing RCW 36.70A.106; .020(11); .140.

²⁷ City's Br. at 13-14.

1 The City divides its land use decisions into five categories. Relevant here, Type V
2 decisions are legislative decisions made by the Council in its capacity to establish policy and
3 manage public lands.²⁸ The Council is required to conduct a public hearing for each Type V
4 Council land use decision....²⁹ To conduct a public hearing, the City was obligated to provide
5 notice of the hearing "at least 30 days prior to the hearing" by inclusion in the Land Use
6 Information Bulletin and Publication in the City's official newspaper.³⁰

7
8 The Board finds that on January 23, 2025, notice of a public hearing was issued which
9 indicated the City would "hold a public hearing on February 24, 2025, at 9:30 AM on Council
10 Bill 120933, which would allow residential uses as a conditional use in the Stadium Transition
11 Area Overlay District (STAOD)."³¹ The Board also finds that notice was published in the
12 newspaper of record and noticed on the Land Use Information Bulletin.³² The notice informed
13 the public that the proposal would "allow residential uses in the Urban Industrial (UI) zones
14 within the STAOD as a conditional use pursuant to criteria that apply to UI zones in the rest
15 of the City."³³ This included removing the prohibition that housing not be located within 200
16 feet of a Major Truck Street, and specifically remove the requirement that housing not be
17 located within the STAOD.³⁴ Lastly, the notice indicated that the proposed environmental
18 impacts were "considered under the Seattle Industrial & Maritime Strategy Final
19 Environmental Impact Statement from September 2022."³⁵ Accordingly, the Board finds the
20 Ordinance was properly noticed.
21

22
23 The Council is required to "consider the oral and written testimony presented at the
24 public hearing, as well as any required report of the Director."³⁶ "The Director shall prepare
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26
27 ²⁸ SMC 23.76.004.C.

28 ²⁹ SMC 23.76.062.B.

29 ³⁰ SMC 23.76.062.C.1.

30 ³¹ *RIN* 6 at 944.

31 ³² *RIN* 59; *RIN* 60.

32 ³³ *RIN* 6 at 944.

33 ³⁴ *Id.*

34 ³⁵ *Id.*

35 ³⁶ SMC 23.76.062 D.

1 a written report” which “shall be submitted to the Council and shall be made available to the
2 public at least 15 days before the Council hearing.”³⁷

3 The City indicates “the Director’s Report included a detailed discussion of housing in
4 the STAOD concluding that ‘(S)ome limited amount of housing would be compatible with the
5 surrounding use pattern and would not cause additional adverse impacts on nearby industrial
6 activities outside of the [STAOD] if carefully implemented.”³⁸ The link was displayed in the
7 slideshow as follows:³⁹

- 9 ● OPCD [Director’s Report](#) (pgs. 43 – 45):
 - 10 ○ “A district with a variety of small businesses and makers combined with businesses supporting events at the stadiums
11 and entertainment venues would be supported by the UI zone.”
 - 12 ○ “(S)ome limited amount of housing would be compatible with the surrounding use pattern and **would not cause
13 additional adverse impacts on nearby industrial activities** outside of the [Stadium District] if carefully
14 implemented.”

14 The City contends this incorporated the Director’s Report into the public process.⁴⁰ However,
15 the imbedded link is to the Director’s Report from 2023 for the Seattle Industrial & Maritime
16 Strategy,⁴¹ and not a Director’s Report related to the Ordinance adopted two years later.

17 The Director’s Report is to include a written recommendation or comments of any
18 affected City departments and other governmental agencies having an interest in the
19 application or request; response to written comments from the public; an evaluation based
20 on applicable City standards and policies; all environmental documentation; and a
21 recommendation to approve, approve with conditions, or deny a specific proposal.⁴² No
22 report was produced or considered in this matter beyond the 2023 Industrial & Maritime
23 Director’s Report.

24 Accordingly, as to **Issue No. 3**, the Board is left with the firm and definite conviction
25 that the City’s failure to produce and consider the required Director’s Report before adopting
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29 ³⁷ SMC 23.76.050 A, and F.

30 ³⁸ City’s Br. at 15, citing *RIN* 12 p.3.

31 ³⁹ *RIN* 12 at 3.

32 ⁴⁰ City’s Br. at 15.

⁴¹ *RIN* 42, Seattle Industrial & Maritime Strategy Director’s Report and Recommendation.

⁴² SMC 23.76.050.B.1 through 5.

1 this Ordinance was clearly erroneous and therefore concludes that the City did not comply
2 with its code and, as a result, the GMA's public participation requirements.⁴³

3 The Port also contends that the City, after holding a hearing, offered amendments
4 which were so substantially different as to render any notice under that version of
5 insufficient.⁴⁴ That the amendment failed to provide a renewed comment period as required,
6 and, the Port asserts, members of the Council were not aware of the proposed amendments
7 until the night before the final vote and they were not published on the City's website until
8 the day of the final vote.⁴⁵

9
10 The City indicated "the Bill was introduced to the public on January 13, 2025, upon
11 publication of the agenda packet for the January 14 Council meeting that included the
12 Introduction and Referral Calendar ("IRC"), wherein the Ordinance at issue was referred to
13 a City Council Committee.⁴⁶ The City indicates the Bill was first considered on January 24,
14 2025, and that the Office of Planning and Community Development (OPCD) Director
15 "presented to the Committee on the Industrial Strategy adoption process, the FEIS process,
16 answered questions related to the Bill, and discussed the ongoing stakeholder consultation
17 on planning issues in the STAOD and SODO area."⁴⁷

18
19 On February 24, 2025, the Governance, Accountability & Economic Development
20 Committee held a public meeting to consider the Ordinance.⁴⁸ The Council President
21 presented a slideshow which discussed allowing housing in the district as "the preferred
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23

24 ⁴³ See SMC 23.76.062 D; SMC 23.76.050 A, and F; RCW 36.70A.020(11); RCW 36.70A.140.

25 ⁴⁴ Port's Br. at 10-11 (referencing *Ex. 26 (RIN 26)*); (citing *Master Builders Ass'n of Pierce County. v. Pierce*
26 *County*. CPGMHB Case No. 02-3-0010 (Final Decision and Order, February 4, 2002) at 9).

27 ⁴⁵ *Id.*, citing RCW 36.70A.035(1)(a)-(b).

28 ⁴⁶ City's Br. at 14, referencing *RIN 2*, p. 1 of Introduction and Referral Calendar. CB 120933: AN
ORDINANCE relating to land use and zoning; amending Sections 23.74.002 and 23.74.008 of the Seattle
Municipal Code to allow residential uses in the Stadium Transition Area Overlay District.

29 ⁴⁷ City's Br. at 15, citing *RIN 6* (which is the February 24, 2025, Governance, Accountability & Economic
30 Development Committee Agenda). *RIN 7*, however, indicates the City discussed (though it is unclear what
31 may have been discussed) the Bill at the January 24, 2025, Governance, Accountability & Economic
Development Committee meeting.

32 ⁴⁸ City's Br. at 15, referencing *RIN 6*, the Agenda for a Special Public Meeting of the City's Governance,
Accountability, and Economic Development Committee for Monday, February 24, 2025.

1 alternative already studied in the FEIS..."⁴⁹ The Committee received testimony in support
2 and opposition and voted 3-2 to recommend the Bill be passed by the City Council.⁵⁰

3 On March 18, 2025, the Port submitted additional written comments on the proposed
4 Ordinance. Also on March 18, 2025, the City's webpage was apparently updated to include
5 nine, what the City describes as, "technical" amendments to the Ordinance which were
6 publicly discussed at that day's City Council meeting.⁵¹ Proposed amendments included,
7 among others, a 990 residential unit cap for the STAOD, addressed below, as well as
8 notification to future owners of the liquification dangers, and noise abatement
9 requirements.⁵²

11 Because the 990 residential unit figure is discussed at several places in the Port's
12 brief, the Board takes this opportunity to address it. The Board takes issue with the Port's
13 claim that the effect of the Ordinance will result in 990 residential units. The Board finds it
14 more likely that the number of new residential units will actually be 375 and arrives at this
15 finding by considering the City's housing projections in RIN 125.

17 RIN 125 consists of housing projections that the City calculated as part of the 2022
18 FEIS. The housing projections *per se* did not appear in the 2022 FEIS but were part of the
19 City's data underlying the analysis in the 2022 FEIS. Because the 2022 FEIS did not analyze
20 the Ordinance, the projections in RIN 125 are not perfectly calibrated to show the housing
21 effects of the Ordinance. The housing effects of the Ordinance can be calculated by
22 considering subareas B through E of the first box in RIN 125. Summing the acreage of
23 subareas B through E yields a total of 7.5 developable acres. Assuming full buildout at 50
24

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28 ⁴⁹ City's Br. at 15, referencing *RIN 12* (the slideshow) which indicates for the 2 blocks immediately South of T-
29 Mobile Park, on 1st Ave S and Occidental S., up to 990 housing units, half affordable (60-90%AMI- Area
Median Income) and FEIS shows freight travel times remain the same.

30 ⁵⁰ City's Br. at 16.

31 ⁵¹ City's Br. at 16 referencing *RIN 28*- transcript from the March 18, 2025, City Council meeting; Port's Br. at
32 6, referencing Amendments to CB 120933, Ex. 26, at 975-989. The Council approved 8 of the proposed
amendments. See also *RIN 26*- Agenda for March 18, 2025, City Council Meeting.

⁵² Port's Br. at 6. The Port also discussed emails exchanges (PCB00318, PCB000327, PCB00223).

dwelling units per acre, 375 dwelling units could be built as a result of the Ordinance.⁵³ Accordingly, from the Board's perspective, the record supports the addition of 375 residential units "for the 2 blocks immediately South of T-Mobile Park, on 1st Ave S. and Occidental S.." ⁵⁴ It is worth noting that under the Maritime and Marine Strategy FEIS, the City evaluated the impact of up to 646 residential units (subareas A through E) across the STAOD. Again, the discrepancy in unit count comes about because the FEIS was looking at a different proposal than the Ordinance. The 990-unit figure was for all developable lands with UI zoning, not just those in the STAOD, and not just those likely to be generated by the Ordinance.⁵⁵ Exhibit 128 (below) depicts the land covered by the Ordinance and is included for a visual of the impacted area (purple lines denote Major Truck Streets, the blue shading is zoned UI, the red outlined is the STAOD, and the yellow hashed area is the area impacted by the challenged Ordinance).



⁵³ The City's brief correctly sums the acreage of subareas B through E to find 7.5 developable acres, but the City's brief then erroneously calculates that 350 units can be built on those 7.5 acres at a density of 50 units per acre. By the Board's calculations, however, 7.5 acres times 50 units per acre is 375 units, not 350 units.

⁵⁴ *RIN* 12 p. 4.

⁵⁵ City's Br. at 26.

1 The Port further contends that the City cut off public comments at the March 18, 2025,
2 full Council meeting and that the Council failed to discuss any of the comments it received
3 (abruptly closing comments and initiating a vote).⁵⁶ Not surprisingly, the Port and BNSF feel
4 the City failed to meaningfully engage with the concerns raised when the Council moved from
5 accepting comments and began to vote without any discussion over the written or public
6 comments the City just received.
7

8 If a local jurisdiction chooses to consider a change to an amendment to a
9 comprehensive plan or development regulation, and the change is proposed after the
10 opportunity for review and comment has passed, an opportunity for review and comment on
11 the proposed change shall be provided before the local legislative body votes on the
12 proposed change unless an environmental impact statement has been prepared for the
13 pending ordinance and the proposed change is within the range of alternatives considered
14 in the environmental impact statement, which is not the case here, or, relevant here, the
15 proposed change is within the scope of the alternatives available for public comment.⁵⁷ The
16 City imposes its own restrictions as well:
17

18 Amendments to Bills and Resolutions shall not be presented at a City Council
19 meeting unless previously reviewed by the Law Department and circulated via
20 email to all CMs, the Central Staff Director, and the City Clerk at least two hours
21 before the meeting. In cases, including but not limited to, amendments to
22 development regulations subject to the Growth Management Act, a statute may
23 require additional public notice and opportunity for public comment before an
amended Bill may be passed.⁵⁸

24 The City believes “the opportunity for public comment of the proposed amendments at the
25 March 18 meeting was adequate because the proposed revisions were straightforward and
26 minor in scope and were within the scope of the initial proposal.”⁵⁹ Posting the amendments
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29 ⁵⁶ Port’s Reply at 3, citing *R/N* 28 at 66:20-24 and 97:16-18 (CM Nelson closing comments and initiating
discussion and votes).

30 ⁵⁷ RCW 36.70A.035(2)(a); (b)(i)-(ii).

31 ⁵⁸ Resolution 32096.

32 ⁵⁹ City’s Br. at 18, citing *Jack and Pamela Revocable Living Tr. v. City of Covington*, CPSGMHB No. 02-03-
0005 (Final Decision and Order, September 27, 2002) at 12.

1 on the City's webpage on the day of the vote for a 2:00 PM City Council Meeting, the City
2 argues, "met the spirit of the GMA's public participation requirements throughout the adoption
3 process of the Ordinance."⁶⁰

4 The Board finds the initial notice in this matter informed the public that the proposal
5 would allow residential uses in the UI zones within the STAOD as a conditional use pursuant
6 to criteria that apply to UI zones in the rest of the City, that it was contemplating removing
7 the restriction that housing not be located within 200 feet of a major truck street, and that it
8 was specifically contemplating removing the requirement that housing not be located within
9 the STAOD. The nine "technical" amendments offered were, in the Board's view, within
10 scope of the original notice such that the City was not required by the GMA to conduct a new
11 hearing.⁶¹ The Board does not believe the City offended its own Resolution either, as the
12 City merely requires two-hours' notice. The Board finds the amendments reduced the scope
13 and impact of what was initially publicly noticed. Accordingly, the Board is not convinced it
14 was clearly erroneous to act on any of the nine amendments with or without accepting public
15 comments on the March 18, 2025, Council meeting.⁶² That is because the notice in this
16 matter was sufficient, and because the amendments were within the scope of what was
17 noticed. Thus, **Issue No. 4 is dismissed.**

18 The Port also asserts the County failed to timely notify Commerce of the proposed
19 amendments prior to adoption.⁶³

20 Amendments for permanent changes to a local jurisdictions comprehensive plan or
21 development regulations "shall be" submitted to Commerce at least sixty days prior to final
22

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24
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26 ⁶⁰ City's Br. at 18.

27 ⁶¹ RCW 36.70A.035(2)(b)(ii).

28 ⁶² See *City of Shoreline, Town of Woodway, et al, v. Snohomish County*, Nos. CPSGMHB No. 09-3-0013c
29 and 10-3-0011c (Order on Dispositive Motions, January 18, 2011) at 16-19 (The Board's decisions recognize
30 that a proposal may be modified during the course of public debate without necessarily requiring publication
31 of a new notice), citing *Halmo v. Pierce County*, CPSGMHB No. 07-3-0004c (Final Decision and Order,
32 September 28, 2007) at 14-15; *Cave/Cowan v. City of Renton*, CPSGMHB No. 07-3-0012(Final Decision and
Order, July 30, 2007) at 12-13; *NENA v. City of Everett*, CPSGMHB No. 08-3-0005 (Final Decision and
Order, April 28, 2009) at 16-17.

⁶³ Port's Br. at 10, citing RCW 36.70A.106.

1 adoption.⁶⁴

2 The City indicates that it “timely complied” with these requirements while
3 simultaneously acknowledging it did not provide 60 days’ notice to Commerce prior to
4 adopting its Ordinance on March 18, 2025, when it indicates the City sent “the required notice
5 to Commerce, albeit retroactive, and asked for expedited review.”⁶⁵ The City transmitted its
6 amended and adopted Ordinance to Commerce on April 7, 2025, which is a separate
7 requirement to send adopted amendments within 10 days to Commerce.⁶⁶ This appears, in
8 the Board’s view, to be what the City did after discovering it failed to send the initial Ordinance
9 for Commerce’s review.
10

11 Local jurisdictions may request expedited review for any amendments for permanent
12 changes to development regulations, and Commerce:

13 may grant expedited review if the department determines that expedited review
14 does not compromise the state's ability to provide timely comments related to
15 compliance with the goals and requirements of this chapter or on other matters
16 of state interest. Cities and counties may adopt amendments for permanent
17 changes to a development regulation immediately following the granting of the
18 request for expedited review by the department.⁶⁷

19 In a June 3, 2025, email from Commerce granting expedited review, Commerce
20 states: “... you have met the Growth Management notice to state agency requirements in
21 RCW 36.70A.106 for this submittal.”⁶⁸ Citing *Joshua Corning and Building North Central*
22 *Washington v. Douglas County*,⁶⁹ the City contends that because it has taken action to
23 comply, which has been acknowledged by Commerce, Issue 5 must be dismissed.⁷⁰ The City
24

25 _____
26 ⁶⁴ RCW 36.70A.106.

27 ⁶⁵ City’s Br. at 19.

28 ⁶⁶ City’s Br. at 19, referencing *RIN 33* (Affidavit of Publication- April 7, 2025), 34 (Notice of Final Adoption-
29 April 7, 2024), and 35 (Notice of Submittal to Commerce- April 7, 2025). RCW 36.70A.106(2) requires local
jurisdictions to transmit a complete and accurate copy of its comprehensive plan or development regulations
to the department *within ten days after final adoption*. (emphasis added). See RCW 36.70A.106(2).

30 ⁶⁷ RCW 36.70A.106(3)(b)

31 ⁶⁸ *RIN 39*, page 1.

32 ⁶⁹ *Joshua Corning and Building North Central Washington v. Douglas County*, GMHB No. 13-1-0001 (Final
Decision and Order, August 26, 2013) at 7.

⁷⁰ City’s Br. at 19.

1 is incorrect. In *Joshua Corning and Building North Central Washington*, the County adopted
2 a new Ordinance to settle a previous Eastern Washington Growth Management Hearings
3 Board Case and believed its adoption of the new Ordinance was part of an ongoing process
4 of amending the County's development regulations for the previous code changes which
5 were in dispute, and, largely, what the appropriate remedy for such a violation should be:
6 non-compliance or invalidity. In that matter the Board reasoned that while the initial notice
7 was not made, the County's subsequent actions taken by properly filing the 60-day notice,
8 receiving and considering comments from two state agencies, and considering the
9 comments in its final decision was sufficient, and that requiring more would be "a duplicative
10 and futile act to remand this case to Douglas County so that the County could notify
11 Commerce yet again."⁷¹ However, this Board has repeatedly ruled the requirement that local
12 jurisdictions submit their proposed amendments to Commerce is "an unambiguous
13 requirement of the statute."⁷² That, "even if there is no other violation to be corrected, non-
14 compliance with Section 106 requires a remand to the City or County."⁷³ That is because the
15 statute is clear, "immediately following the granting of the request for expedited review by
16 the department," a local jurisdiction may adopt amendments for permanent changes to a
17 development regulation. Commerce is without authority to waive the requirements of the
18 statute and may only permit expedited review and only then may a local jurisdiction adopt or
19 amend its comprehensive plan or development regulations. That is because Commerce's
20 authority to act, like this Board's, is strictly statutorily limited. Commerce may only act on the
21 authority granted to it by the Legislature.
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25 The Board finds the City failed to submit Ordinance 127191 to Commerce 60 days
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28 ⁷¹ *Joshua Corning and Building North Central Washington v. Douglas County*, EWGMHB No. 13-1-0001
(Final Decision and Order, August 26, 2013) at 9.

29 ⁷² *Your Snoqualmie Valley, et al., v. City of Snoqualmie*, CPSGMHB No. 11-3-0012 (Final Decision and Order,
30 May 8, 2012) at 11-12 (citing *McNaughton v Snohomish County*, CPSGMHB No. 06-3-0027 (Final Decision
and Order January 29, 2007) at 25).

31 ⁷³ *Your Snoqualmie Valley*, GMHB No. 11-3-0012 at 11 (citing *Cameron Woodard Homeowners Ass'n v*
32 *Island County*, WWGMHB No. 02-2-0004 (Order on Dispositive Motion, June 10, 2002) at 2; *Bauder v City of*
Richland, EWGMHB No. 01-1-0005 (Final Decision and Order August 16, 2002) at 6).

1 prior to the adoption of the challenged Ordinance. Commerce's statement that it granted
2 expedited review merely permitted the City to then move forward and adopt an Ordinance,
3 but that did not cure the defect with the Ordinance the City authorized. Accordingly, as to
4 **Issue No. 5**, the Board is left with a firm and definite conviction that the City's failure to submit
5 its proposed amendment to Commerce prior to adopting the Ordinance was clearly
6 erroneous and concludes that the City's adoption of the challenged Ordinance did not comply
7 with the requirements of the GMA.⁷⁴
8

9
10 **The Port and BNSF combine issues 11, 12, 13, 14, 15, and 16.**

11 **Issue No. 11. Did the City violate the requirements of Chapter 43.21C RCW (SEPA) by**
12 **failing to disclose or analyze the probable adverse environmental impacts of the**
13 **Ordinance in a detailed Environmental Impact Statement (EIS) pursuant to RCW**
14 **43.21C.030(2)(c)(i) before formally adopting it into law?**

15 **Issue No. 12. Did the City violate the requirements of SEPA by adopting the Ordinance**
16 **without issuing a threshold determination for the proposal pursuant to RCW**
17 **43.21C.033 and SMC 25.05.310?**

18 **Issue No. 13. Did the City violate the requirements of SEPA by adopting the Ordinance**
19 **without first issuing a supplement or addendum to the FEIS, pursuant to RCW**
20 **43.2C.034 and SMC 25.05.620 or .625?**

21 **Issue No. 14. Did the City violate SEPA's requirements at RCW 43.21C.034 by relying**
22 **on the FEIS when considering the environmental impacts of the Ordinance and**
23 **possible mitigation measures to address said environmental impacts?**

24 **Issue No. 15. Did the City violate SEPA's requirements at RCW 43.21C.060 by**
25 **unlawfully exercising its substantive SEPA authority by including mitigation**
26 **measures in the Ordinance that were not based on formally adopted SEPA documents**
27 **or policies?**

28 **Issue No. 16. Did the City violate SEPA's requirements at RCW 43.21C.060 by failing**
29 **to exercise its substantive SEPA authority to mitigate the known probable adverse**
30 **environmental impacts of the Ordinance?**

31
32 ⁷⁴ RCW 36.70A.106.

1 Citing legislative changes in 2022 to address the State's housing crisis, the City
2 contends there is a "broad prohibition on administrative and judicial SEPA appeals in
3 RCW 36.70A.070(2) and RCW 43.21C.495—which were adopted together—[and was]
4 expressly intended to "promot[e] housing construction in cities by limiting appeal
5 opportunities for both residential and mixed-use projects as well as legislative actions that
6 further housing-related goals."⁷⁵ The City claims this Ordinance is not subject to a SEPA
7 appeal because it increased housing capacity, increased housing affordability, and mitigated
8 displacement.⁷⁶ Though, the City asserts, incorrectly, that the Ordinance does not have to
9 satisfy each, that is it sufficient to satisfy any one, as the "and" within this statute is read in
10 the disjunctive (i.e., "or").⁷⁷ Lastly, that this area is "outside of a critical areas," and that "there
11 is no evidence that the legislation would allow development in critical areas,"⁷⁸ thus ensuring
12 it is exempt from SEPA appeal.⁷⁹

13
14 The Port counters that this area is within "a City-designated liquefaction-prone critical
15 area"⁸⁰ and proposed amendments to the Ordinance support the conclusion that the area
16 contains liquefaction zones.⁸¹ The City, while acknowledging that "some maps indicate
17 portions of the STAOD may contain liquefaction areas, which could be a type of
18 Environmentally Critical Area," explains that it enacted a Director's Rule which provides "the
19 liquefaction potential of mapped liquefaction hazard areas would be confirmed during the
20 design stage of proposed development."⁸² However, according to the FEIS prepared for the
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24 ⁷⁵ City's Br. at 20. RCW 36.70A.070(2)(h) and citing *City of Olympia v. W. Washington Growth Mgmt.*
25 *Hearings Bd.*, 27 Wn. App. 2d 77, 78, 531 P.3d 816, 821 (2023). (Quotations in the original).

26 ⁷⁶ City's Br. at 19-20.

27 ⁷⁷ City's Br. at 21 fn 89, citing *Bullseye Distrib. LLC v. State Gambling Comm'n*, 127 Wn. App. 231, 239
28 (2005); *State v. Keller*, 98 Wn.2d 725, 729 (1983) (interchange of "or" and "and" in statutory interpretation
29 may be necessary to avoid absurd results).

30 ⁷⁸ An irreconcilable assertion considering Amendment C to the Ordinance explicitly requires warnings in
31 perpetuity related to the liquefaction prone zone.

32 ⁷⁹ City's br. at 22.

⁸⁰ Port's Br. at 18; Port's Reply at 4. See also FEIS 2022 Maritime Strategy for ample evidence supporting
this as a liquification prone area, which is a critical area.

⁸¹ *Id.* see also Amendment C to the Ordinance regarding liquefaction zone.

⁸² City's Br. at 22, citing *RIN* 115, *RIN* 6.

1 Seattle Industrial & Maritime Strategy Final Environmental Impact Statement, upon which
2 this Ordinance asserts it relied, the SODO/Stadium indicates “all of this subarea is prone to
3 liquefaction and both known and potential landslide areas are located along the east and
4 west edges.”⁸³

5 Accordingly, the Board finds this is an area which contains critical areas and
6 concludes it has the statutory authority to consider this SEPA challenge.
7

8 BNSF asserts the City was required to conduct SEPA review but failed to do so prior
9 to enacting the Ordinance.⁸⁴ BNSF also complains the reliance on a FEIS prepared in 2022
10 for the City’s Industrial and Maritime Strategy legislation, which Ordinance 127191 amends,
11 is insufficient to rely upon for this new ordinance, and would have only served as a starting-
12 point, as that FEIS analyzed new industrial zones and land use policies and not residential
13 uses.⁸⁵ As to the City’s assertion that its procedural determinations are afforded substantial
14 weight, BNSF indicates no process occurred and the City is therefore entitled to no
15 deference.⁸⁶ Further, that the burden would be on the City to first demonstrate *prima facie*
16 compliance with SEPA’s procedural requirements before it is entitled to deference.⁸⁷ That is
17 because the City must “meaningfully engage in the SEPA process when making a threshold
18 determination.”⁸⁸ The result, BNSF says, caused the City to pass an Ordinance that failed to
19 sufficiently consider the environmental impacts. By way of example, BNSF’s directs the
20 Board to certain sound requirements, specifically that dwellings must have sound-insulating
21 windows sufficient to maintain interior levels below 45 decibels (dB), but without analyzing
22 the federal requirement that train horns must be blow every 15 to 20 seconds at 96 to 110
23 dB, which will sound ten times more intense and twice as loud to the human ear, the
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28 ⁸³ RIN 6, p. 13-14, 127, 197-198, 200 exhibit 3.1-1, 203-204, 207. The FEIS is replete with statements that
29 support this area as a liquification zone.

30 ⁸⁴ BNSF’s Br. at 1.

31 ⁸⁵ BNSF’s Br. at 2.

32 ⁸⁶ BNSF’s Br. at 3.

⁸⁷ *Id.*

⁸⁸ *Id.* quoting *King County v. Friends of Sammamish Valley*, 3 Wn.3d 793 (2024); referencing *Wild Fish
Conservancy v. Dep’t of Fish & Wildlife*, 198 Wn.2d 846, 866–67, 502 P.3d 359 (2022).

1 imposition of this condition is insufficient to mitigate the impact and imposed without
2 analysis.⁸⁹ This, and other impacts on potentially 900 residential units were not analyzed,
3 according to BNSF, nor did the City sufficiently consider the impacts of this Ordinance on
4 BNSF as an Essential Public Facilities (EPF).⁹⁰

5 The Port asserts the City violated procedural and substantive SEPA safeguards by
6 failing to study the probable impacts of 990 units adjacent to Major Truck Streets⁹¹ and
7 industrial uses.⁹² The Port also contends the City demonstrated, through comments it made,
8 that it had sufficient detail about the a specific project to mandate and trigger SEPA review.⁹³
9 Further, that the City's reliance on a 2022 FEIS (which considered residential units across
10 the entire SODO/Stadium Subarea) was erroneous because it studied caretakers' quarters
11 and makers' studios across the entirety of the subarea, and even the preferred alternative
12 limited affordable housing to 644 units over the entire subarea, rather than considering the
13 impact of 990 residential units in a three-block tract in SODO.⁹⁴ The Port also argues, in a
14 footnote, that the impacts are likely greater because housing will be allowed in other parts of
15 SODO/Stadium subarea.⁹⁵

16 Specific to Issues 12 and 13, the Port contends the City's decision to undertake no
17 SEPA review is inconsistent with its own practice with respect to the 2022 Strategy FEIS and
18 its code.⁹⁶ That the City was obligated to issue a threshold determination to address the
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22 ⁸⁹ BNSF's Br. at 3-4.

23 ⁹⁰ *Id.*

24 ⁹¹ Major Truck Streets are primary routes to connect major freight traffic generators, including heavy haul
25 routes. See City Transportation Plan Ex. 56, at F-8.

26 ⁹² Port's Br. at 13.

27 ⁹³ Port's Br. at 13-14.

28 ⁹⁴ Port's Br. at 13.

29 ⁹⁵ Port's Br. at 14.

30 ⁹⁶ Port's Br. at 15, citing SMC 25.05.310(A) which provides, "A threshold determination is required for any
31 proposal which meets the definition of action and is not categorically exempt, subject to the limitations in
32 Section 25.05.600 C concerning proposals for which a threshold determination has already been issued. A
threshold determination is not required for a planned action (refer to Sections 25.05.164 through 25.05.172)
and SMC 25.05.784 which defines proposal as, "Proposal means a proposed action. A proposal includes
both actions and regulatory decisions of agencies as well as any actions proposed by applicants. A proposal
exists at that state in the development of an action when an agency is presented with an application, or has a
goal and is actively preparing to make a decision on one or more alternative means of accomplishing that

1 impacts of the Ordinance it was proposing.⁹⁷ And, that the City failed to issue a SEIS or
2 addendum to the FEIS it was relying upon.⁹⁸

3 The goals of SEPA are to (1) create harmony between people and the environment,
4 (2) prevent damage to the environment, (3) stimulate the health and welfare of humans, and
5 (4) enrich understanding of natural resources and systems.⁹⁹ Under SEPA, an EIS is
6 required and must be prepared for any proposals and actions with a probable, significant,
7 adverse environmental impact.¹⁰⁰ SEPA is an environmental full disclosure law that require
8 local jurisdictions to identify and analyze the environmental effects of proposed actions in
9 order to achieve good land use decision making by involving and informing both the public
10 and decision-makers about the environmental consequences of proposed actions.¹⁰¹ The
11 procedural duties imposed by SEPA--full consideration to environmental protection--are to
12 be exercised to the fullest extent possible to ensure that the "attempt by the people to shape
13 their future environment by deliberation, not default" will be realized.¹⁰² SEPA's purpose is
14 to provide consideration of environmental factors at the earliest possible stage to allow
15 decisions to be based on complete disclosure of environmental consequences.¹⁰³ For every
16 proposals for legislation and other major actions significantly affecting the quality of the
17 environment, a detailed statement by the SEPA responsible official is required addressing:

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21 goal, and the environmental effects can be meaningfully evaluated. (See Section 25.05.055 and Section
22 25.05.060 C. A proposal may therefore be a particular or preferred course of action or several alternatives.
23 For this reason, these rules use the phrase "alternatives including the proposed action." The term "proposal"
24 may therefore include "other reasonable courses of action," if there is no preferred alternative and if it is
25 appropriate to do so in the particular context."

26 ⁹⁷ Port's Br. at 15, referencing RCW 43.21C.033 and SMC 25.05.310.

27 ⁹⁸ *Id.*, referencing RCW 43.2C.034 and SMC 25.05.620 or .625.

28 ⁹⁹ *King Cnty. v. Friends of Sammamish Valley*, 3 Wn.3d 793, 814, 556 P.3d 132 (2024); RCW 43.21C.010.

29 ¹⁰⁰ RCW 43.21C.031.

30 ¹⁰¹ *Moss v. City of Bellingham*, 109 Wn. App. 6, 16, 31 P.3d 703, 709 (2001) rev. den'd, 1Wn. 2d 1046 17.
31 (2002).

32 ¹⁰² *Eastlake Cmty. Council v. Roanoke Assocs., Inc.*, 82 Wn.2d 475, 490, 513 P.2d 36, 46 (1973), quoting
Stemple v. Dep't of Water Res., 82 Wn. App. 2d 109, 118, 508 P.2d 166, 172(1973).

¹⁰³ *King Cty. v. Washington State Boundary Rev. Bd. for King Cty.*, 122 Wn. 2d 648, 664, 860 P.2d 1024,
1033 (1993). See also RCW 43.21C.030; WAC 197-11-055(2) (The lead agency shall prepare its threshold
determination and environmental impact statement (EIS), if required, at the earliest possible point in the
planning and decision-making process, when the principal features of a proposal and its environmental
impacts can be reasonably identified).

1 the environmental impact of the proposal, any adverse environmental effects which cannot
2 be avoided; alternatives; relationship between local short-term uses of the environment and
3 the maintenance and enhancement of long-term productivity; and any irreversible and
4 irretrievable commitments of resources which would be involved in the proposed action
5 should it be implemented.¹⁰⁴ SEPA, and the City, mandate that for any “action” that is not
6 “categorically exempt,” the SEPA Responsible Official shall issue a “threshold
7 determination.”¹⁰⁵ “Actions” include, relevant here, legislative proposals, and fall into two
8 categories: “project actions,” such as an agency decision to licenses, fund, or undertake an
9 activity, and “nonproject actions” which involve decision on policies, plans, or programs,
10 including among other things, the decision to adopt or amend legislation, ordinances,
11 comprehensive plans or zoning ordinances. The City categorically exempts small-scale
12 development or routine activities that do not significantly affect the environment; however,
13 legislative actions are not categorically exempt. Accordingly, and as the City agrees,¹⁰⁶
14 environmental review was required. However, the City did not make an independent
15 threshold determination in this matter and instead indicates it relied upon “existing
16 documents,” specifically the 2022 FEIS.¹⁰⁷ That is because, from the City’s perspective, the
17 2022 FEIS “for housing was the same as the preferred alternative in the FEIS.” As noted
18 above, the Board has found and concluded the 2022 Maritime and Marine Strategy FEIS did
19 not study the same proposal and instead evaluated the impact of up to 646 residential units
20 (subareas A through E) across the entire STAOD. The Preferred Alternative projected 1,475
21 housing units (66% being located in SODO/Stadium and Georgetown/SouthPark subareas)
22 in the UI zones (across the entirety of the City).¹⁰⁸ While these proposals did both involve
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28 ¹⁰⁴ RCW 43.21C.030(c).

29 ¹⁰⁵ “Action” SMC 25.05.704.A.3; “Categorically exemptions” SMC 25.05.800 and SMC 25.05.305; “Threshold
30 determination” SMC 25.05.797.

31 ¹⁰⁶ City’s Br. at 26. “the Council properly relied on the Maritime and Industrial EIS to meet its SEPA obligation
32 before adopting Ordinance 127191 since the proposal for housing was the same as the preferred alternative
in the FEIS.”

¹⁰⁷ City’s Br. at 22.

¹⁰⁸ Seattle Industrial & Maritime Strategy at 1-31.

1 housing in some way, the Board finds they are otherwise markedly dissimilar.

2 Even if it were different, the City says, “[a]n action which does not have an
3 environmental impact substantially different from an earlier proposed action does not require
4 either a new threshold determination or a new supplemental draft or final environmental
5 impact statement.”¹⁰⁹ However, the Director’s Report, discussing the environmental and
6 recommending adoption of the 2022 Industrial & Maritime Strategy, specifically noted as to
7 housing in the Stadium Area, “OPCD’s analysis in the EIS and other studies reviewed the
8 potential for some limited amount of housing in the stadium area overlay district,” but in
9 consideration of a number of other factors, recommended against allowing housing in the
10 STAOD.¹¹⁰ Further, the Director’s Report called out the need for stronger policy protections
11 for industrial lands:
12

13 In recent years, several annual amendment proposals have sought to remove
14 land from manufacturing industrial centers. Industrial land is finite in supply and
15 consideration of any one proposal to remove land from an MIC should occur
16 through a comprehensive review of the city’s industrial land use needs. The
17 proposed Comprehensive Plan amendments include a new policy to establish
18 higher thresholds for when such an amendment can be considered. This policy
19 will send a clear market signal that will deter the type of speculation that deters
investments in industrial activity.¹¹¹

20 From the Board’s perspective, collectively, this alerted the City that legislation which
21 sought to place additional housing, especially in a concentrated area, required further
22 environmental review.
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25 ¹⁰⁹ City’s Br. at 26, citing *Thornton Creek Legal Def. Fund v. City of Seattle*, 113 Wn. App. 34,
26 49, 52 P.3d 522, 529 (2002), *as amended on denial of reconsideration* (Sept. 25, 2002), citing *SEAPC v.*
Cammack II Orchards, 49 Wn. App. 609, 613, 744 P.2d 1101 (1987). (quotation in the original).

27 ¹¹⁰ Director’s Report and Recommendation, Seattle Industrial & Maritime Strategy at 46. “In consideration of
28 all these factors and the totality of the information, the proposed legislation does not allow housing in the
29 stadium overlay. A specific provision in the overlay regulations would prohibit any new housing in the
STAOD.”

30 ¹¹¹ RIN 42, page 18, referencing: LU 10.3 Ensure predictability and permanence for industrial activities in
31 industrial areas by limiting removal of land from a designated manufacturing / industrial center. There should
32 be no reclassification of industrial land to a non-industrial land use category except as part of a City-initiated
comprehensive study and review of industrial land use policies or as part of a major update to the
Comprehensive Plan.

1 The City asserts that “Petitioner’s theory rests on erroneous presumptions that the
2 Ordinance approves a project that would allow 990 housing units. The Ordinance does no
3 such thing, and Petitioner’s speculation as to the impacts of this fictitious project approval
4 have no merit.”¹¹² That is, the City says, “because no property owner has taken the first step
5 to apply for a project permit application to the Seattle Department of Construction and
6 Inspections (“SDCI”) seeking to build any project in the STAOD with residential use.”¹¹³ And
7 that any renderings that were presented were merely hypothetical and conceptual
8 opportunities should the Ordinance pass.¹¹⁴ On this point the Board agrees with the City,
9 renderings and conceptual drawings do not amount to a project. However, that does not
10 absolve the City of its obligation to conduct adequate environmental review. Adequate
11 environmental review, for a nonproject action, requires consideration of the consequences
12 of the maximum potential development of the property under the contemplated action.¹¹⁵
13 There is no evidence in the record that the City considered the maximum potential
14 development of property impacted by this Ordinance, let alone in a concentrated area. Nor
15 is there evidence in the record that would demonstrate the City considered the environmental
16 impact of placing 375 residential units in a liquefaction prone zone. That is because the City
17 did not conduct separate environmental review of the challenged Ordinance.
18

19
20 In response to Port and BNSF’s claim that the City violated substantive and procedural
21 SEPA requirements “by not preparing a new environmental determination for Ordinance
22 127191,” the City contends, in addition to the fact that it was not required to conduct SEPA
23 review, which the Board disagrees with,¹¹⁶ that the Port’s position “conflicts with the plain
24 language of SEPA, which authorizes reviewers to use ‘existing documents’ to meet their
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28 ¹¹² City’s Br. at 2.

29 ¹¹³ *Id.*

30 ¹¹⁴ City’s Br. at 2.

31 ¹¹⁵ *Spokane County v. E. Wash. Growth Mgmt. Hr’gs Bd*, 176 Wn. App. 555, 579, 309 P.3d 673 (2013);
32 *Ullock v. Bremerton*, 17 Wn. App. 573, 581, 565 P.2d 1179 (1977).

¹¹⁶ City’s Br. at 1. This Board disagrees as RCW 43.21C.031(1) provides “an environmental impact statement . . . shall be prepared on proposals for legislation and other major actions having a probable significant, adverse environmental impact. That is the case here. Further, RCW 43.21C.450 does not apply in this matter.

1 SEPA obligations.”¹¹⁷ The City also contends that the City utilized an existing document,
2 specifically the FEIS for the 2022 Industrial and Maritime Strategy, which studied as a
3 preferred alternative permitting residential housing in the STAOD, and that served as the
4 City’s basis for environmental review.¹¹⁸ However, the Board concludes that the City did not
5 adopt the EIS in a way its code recognized.

6 The City says it was not required to adopt the EIS it relied upon.¹¹⁹ That is because
7 “SEPA requires an EIS to be adopted if a proposal differs from the proposal analyzed in the
8 EIS,” and that “agencies acting on the same proposal for which an environmental document
9 was prepared are not required to adopt the document.”¹²⁰

10 Lead agencies are authorized to use in whole or in part existing environmental
11 documents for new project or nonproject actions, if the documents adequately address
12 environmental considerations.¹²¹ The lead agency shall independently review existing
13 documents and determine that the information and analysis to be used is relevant and
14 adequate.¹²² Existing documents may be used for a proposal by either adoption,
15 incorporation by reference, by addendum, or by preparing a Supplement Environmental
16 Impact Statement (SEIS).¹²³ The City requires the same.¹²⁴

17 The City’s code provides criteria for determining whether an environmental document
18 must be used unchanged and describes when existing documents may be used to meet all
19 or part of an agency’s responsibilities under SEPA. For the City, agencies may use
20 environmental documents that have previously been prepared to evaluate proposed actions,
21 alternatives, or environmental impacts, provided that the information in the existing
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27 ¹¹⁷ City’s Br. at 22, citing RCW 43.21C.034, WAC 197-11-600(4)(a).

28 ¹¹⁸ City’s Br. at 23.

29 ¹¹⁹ City’s Br. at 29, citing SMC 25.05.600 D.1.

30 ¹²⁰ *Id.*

31 ¹²¹ RCW 43.21C.034; WAC 197-11-600(2). Projects or actions need not be identical but must have similar
32 elements that provide a basis for comparing their environmental consequences.

¹²² *Id.*

¹²³ WAC 197-11-600(4)(a) through (d).

¹²⁴ SMC 25.05.600.D.

1 document(s) is accurate and reasonably up-to-date.¹²⁵ The proposals may be the same as,
2 or different than, those analyzed in the existing documents. If acting on the same proposal,
3 as the City asserts here, it shall use the document unchanged unless an EIS had been
4 previously prepared and there are substantial changes to the proposal with likely adverse
5 environmental impacts or new information indicates probable significant adverse impacts.¹²⁶

6
7 From that point the City's code directs "one or more" method for using existing
8 documents: adoption, incorporation by reference, addendum, or preparing a SEIS (if there
9 are substantial changes or new information).¹²⁷ The City did none of these in adopting the
10 challenged Ordinance and claims because it was acting on the same proposal it was not
11 required to.¹²⁸ This is not the same project. Instead, this project places 375 residential
12 housing units in a more concentrated density than was considered in the 2022 FEIS, in a
13 place that previously prohibited it, next to industry, rail, and Major Truck Streets that are in a
14 liquefaction prone zone. Accordingly, the City was obligated to choose one or more of the
15 methods of using the existing documents to ensure adequate environmental review.
16

17 The City's adoption procedures require the agency adopting an existing
18 environmental document to independently review the content of the document and determine
19 that it meets the adopting agency's environmental review standards and needs for the
20 proposal;¹²⁹ the agency shall then, using a specific form or in substantially the same form,
21 identify the document being relied upon and state why it is being adopted, sending the
22 document to others who have not received it and placing a copy in the SEPA Public
23 Information Center.¹³⁰ When an existing EIS is adopted and a supplemental environmental
24 impact statement or addendum is not being prepared, as was the case here, the agency
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28 ¹²⁵ SMC 25.05.600 B.

29 ¹²⁶ SMC 25.05.600.C.2.a. and b. See also subsection 3. For EIS's, the agency concludes that its written
30 comments on the DEIS warrant additional discussion for purposes of its action than that found in the lead
31 agency's FEIS (in which case the agency may prepare a supplemental EIS at its own expense).

32 ¹²⁷ SMC 25.05.600D.1. through 5.

¹²⁸ City's Br. at 29, citing SMC 25.05.600.D.1.

¹²⁹ SMC 25.05.630 A.

¹³⁰ SMC 25.05.630 B.

1 shall circulate its statement of adoption to “the Department of Ecology (Ecology), to agencies
2 with jurisdiction, to cities/counties in which the proposal will be implemented, to the SEPA
3 Public Information Center, and to local agencies or political subdivisions whose public
4 services would be changed as a result of implementation of the proposal.” That did not occur
5 in this matter. Further, the City directs that “no action shall be taken on the proposal until
6 seven days after the statement of adoption has been issued.”¹³¹ Yet, it acted without a
7 statement of adoption.
8

9 The City argues it was not required to prepare an addendum or SEIS because the
10 housing permitted under the Ordinance had previously been analyzed “within the bookend
11 of the FEIS preferred alternative.”¹³² And that adoption was unnecessary because the City
12 was acting on the same proposal.¹³³ But, as noted above, this is a different project.
13

14 The record fails to demonstrate any independent evidence, such as the required
15 statement of adoption, that the City independently reviewed the content of the 2022 Industrial
16 and Maritime FEIS to determine whether the information and analysis from the earlier EIS
17 remained relevant and adequate and met the adopting agency's environmental review
18 standards and needs for the proposal.¹³⁴ Nothing in the record demonstrates the City
19 circulated any documents related to the City's environmental review, besides the statement
20 contained in the City's notice of public hearing that the City was relying on the 2022 FEIS, to
21 Ecology or others, or that the City filed anything in the SEPA Public Information Center. The
22 Board finds the City did not follow its defined environmental review process. Accordingly, the
23 City has failed to meet its *prima facie* burden of establishing compliance with SEPA
24 procedures and is afforded no deference. Furthermore, because the City failed to follow its
25 administrative adoption procedures, the Board is left with a firm and definite conviction that
26 a mistake has been made in the adoption of the challenged Ordinance.
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29 ¹³¹ SMC 25.05.630 C.1.

30 ¹³² City's Br. at 29.

31 ¹³³ *Id.*

32 ¹³⁴ SMC 25.05.630. The hearing notice identifies that the City relied on the 2022 FEIS for the adoption of this Ordinance, but that fails to meet the City's self-imposed procedural requirements.

1 Despite the failure, the City's nevertheless says any error was harmless because "the
2 Council clarified that the FEIS was being used for the environmental review of Ordinance
3 127191," as stated in the notice of hearing; because "the FEIS was attached in full to the
4 Summary and Fiscal Note included on the agenda for the January 24 meeting;" and because
5 the OPCD Director "attended the January 24th meeting and presented to the Committee on
6 the Industrial Strategy adoption process, the FEIS process, answered questions related to
7 the Bill, and discussed the ongoing stakeholder consultation on planning issues in the SODO
8 area." The City argues that the failure to explicitly state that it was incorporating the FEIS by
9 reference was likewise harmless.¹³⁵ The City contends where the public received adequate
10 notice of, and was afforded ample opportunity to be heard, on the environmental issues
11 raised, any procedural error was rendered harmless.¹³⁶ And then counters that it was the
12 Port's obligation "to establish the housing authorized in the Ordinance would result in any
13 new significant environmental impacts requiring issuance of a Supplemental EIS."¹³⁷ This
14 Board disagrees.

15
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17 Harmless error is an error which is trivial, or formal, or merely academic, and was not
18 prejudicial to the substantial rights of the party assigning it, and in no way affected the
19 outcome of the case.¹³⁸

20 Here, the failure to follow the City's defined process deprived the Port and others of
21 their ability to challenge the City's SEPA determinations, which the Board finds to be a
22 substantive right. Had the City issued a threshold determination, as it was required to do,
23 that determination could have been administratively challenged.¹³⁹ The City, also, failed to
24

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26 ¹³⁵ City's Br. at 29-30.

27 ¹³⁶ City's Br. at 32, citing *Thornton Creek Legal Def. Fund v. City of Seattle*, 113 Wn. App. 34, 50, 52 P.3d
28 522, 530 (2002), as amended on denial of reconsideration (Sept. 25, 2002). Affirming error was harmless
29 where the City failed to prepare and circulate a "statement of adoption," just as in this case, but unlike this
30 case, the Director in that matter testified that an addendum to the FEIS was sent to all who would have
31 otherwise received a statement of adoption.

32 ¹³⁷ City's Br. at 31.

¹³⁸ *City of Bellevue v. Lorang*, 140 Wn.2d 19, 32, 992 P.2d 496 (2000), quoting *State v. Smith*, 131 Wn.2d
258, 263-64, 930 P.2d 917 (1997); see also *Ellensburg Cement Prods., Inc. v. Kittitas County*, 179 Wn.2d
737, 317 P.3d 1037 (2014) (holding it was not harmless error to follow an unlawful procedure).

¹³⁹ SMC 25.05.680.

1 develop a record related to its review, which deprived challengers of a record as well. Here,
2 because the City did nothing, there was nothing to challenge, except the failure to follow the
3 City's process. From the Board's perspective, the City's failure to follow its defined process
4 was not trivial or merely academic, and far from harmless. As we noted in *Dartford Austin*
5 *Neighborhood*, "failure to follow SEPA procedures in properly issuing the determination of
6 nonsignificance and allowing for an administrative appeal is a significant shortcoming
7 warranting a finding of noncompliance by this Board."¹⁴⁰ Accordingly, the Board finds the
8 City's adoption of Ordinance 127191 was noncompliant with the City's SEPA obligations.
9

10 Specific to Issues 15 and 16, the Port asserts the City attempted to exercise its
11 substantive SEPA authority to mitigate the impacts by adding, what it describes as, several
12 last-minute, arbitrary amendments such as "prohibiting residential uses West of First Avenue
13 South to limit impact of housing on the Port's activities and vice versa," but that no SEPA
14 document exists to support the choice of mitigation measures.¹⁴¹ Such conditions, the Port
15 contends, must be based on SEPA analysis and based on appropriate governmental
16 policies.¹⁴² That assuming, arguendo, the City relied upon the 2022 Strategy FEIS to impose
17 any conditions, such reliance provided no basis for mitigation and instead emphasized the
18 importance of preserving designated freight corridors and avoid conflicting uses.¹⁴³ That
19 there are dangers from land use conflicts in the STADO, noting "the SODO area accounted
20 for more than half of the serious injuries and fatalities that occurred within the study area"
21 and that the areas on-street parking demand already exceeded existing supply.¹⁴⁴
22

23 The City counters that the amendments "had nothing to do with SEPA," that any
24 governmental action may be conditioned or denied pursuant SEPA.¹⁴⁵ That the amendments
25
26

27 ¹⁴⁰ *Dartford Austin Neighborhood v. Spokane Cnty.*, GMHB No. 21-1-0004 (Final Decision and Order,
28 September 14, 2021) at 6 (citing *State ex rel. Friend & Rikalo Contractor v. Grays Harbor Cty.*, 122 Wn. 2d
29 244, 255-56, 857 P.2d 1039,1046 (1993)).

30 ¹⁴¹ Port's Br. at 15-16.

31 ¹⁴² *Id.*

32 ¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ Citing RCW 43.21C.060 and SMC 25.05.660.A. ("Any governmental action on public or private proposals that are not exempt may be conditioned or denied under SEPA. . .").

1 were to address concerns raised during the hearing, and “in an attempt to reach a
2 compromise legislation.”¹⁴⁶

3 Based on the record before the Board, as to **Issue Nos. 11, 12, 13, and 14**, we are
4 left with a firm and definite conviction that a mistake has been committed. The City should
5 have either properly adopted the 2022 FEIS as defined by the City’s process, supplemented
6 or issued an addendum, or separately conduct SEPA review. That, in addition to the failure
7 to issue a threshold determination, resulted in the City’s failure to analyze the probable
8 adverse environmental impacts of the Ordinance as required by its code and SEPA.
9 Accordingly, the Board finds the City’s adoption of Ordinance 127191 was clearly erroneous
10 and concludes that the City’s adoption of the challenged Ordinance did not comply with
11 SEPA.
12

13 Because the Board has found and concluded the City’s adoption of the challenged
14 Ordinance was procedurally inadequate, the Board does not reach the remaining SEPA
15 issues and defers consideration of Issues Nos. 15 and 16.
16

17 **The Port combines issues 1, 9, and 10.**

18 **Issue No.1. Does the Ordinance fail to comply with the GMA’s requirements because**
19 **it allows development that will interfere with the planning goals enumerated at**
20 **RCW 36.70A.020(3) (Transportation), (5) (Economic Development), or (12) (Public**
21 **Facilities and Services)?**

22 **Issue No. 9. Did the City violate the GMA’s requirements at RCW 36.70A.172 by failing**
23 **to include the best available science in its decision to adopt the Ordinance and permit**
24 **residential development on the Rezoned Property, which contains liquefaction-prone,**
25 **environmentally critical areas?**

26 **Issue No. 10. Does the Ordinance fail to comply with the GMA’s requirements at**
27 **RCW 36.70A.200 by precluding the siting of essential public facilities?**

28 The Port asserts that the Ordinance substantial interferes with the GMA’s goals
29 regarding transportation, economic development, and public facilities and services.¹⁴⁷

30
31 ¹⁴⁶ City’s Br. at 31. It is unclear to this Board how removing the 200-foot separation requirement between
32 residential uses and Major Truck Streets was a compromise with the Port.

¹⁴⁷ Port’s Br. at 19-22.

1 With respect to transportation, the City is obligated to “*encourage efficient multimodal*
2 *transportation systems that will reduce greenhouse gas emissions* and per capita vehicle
3 miles traveled, and *are based on regional priorities and coordinated with county and city*
4 *comprehensive plans*.”¹⁴⁸ The Port claims the City has failed to consider or address the
5 impacts of residential development, and the traffic conflicts that necessarily result, along
6 Major Truck Streets and that the increased traffic demands will exacerbate ongoing
7 challenges for industrial and maritime uses and decrease freight mobility and operational
8 efficiencies.¹⁴⁹ Further, there are numerous intermodal facilities within this neighborhood,
9 and the roads are used for trucking, heavy hauling, seaport, and rail yards that contribute to
10 the City’s economic vitality that will be impacted.¹⁵⁰ The Port points to its opposition letter to
11 the Governance, Accountability and Economic Development Committee,¹⁵¹ letter from the
12 Seattle Freight Advisory Board (SFAB),¹⁵² and Port’s letter to the Council¹⁵³ as support for
13 the impacts it sees as inherent in the Ordinance.
14
15

16 The City counters that Petitioner has failed to meet its burden because it did not
17 “present its own independent analysis or study of the Ordinance’s impacts to refute the
18 findings of the FEIS,”¹⁵⁴ which “analyzed the impacts of adding housing units in the STAOD
19 as proposed in the Ordinance and it found minimal impacts on truck and vehicle travel times
20 within the STAOD.”¹⁵⁵ Further, that the Ordinance addressed potential impacts by requiring
21 that “any new residential use must demonstrate it is located, designed, and configured in a
22
23

24 ¹⁴⁸ RCW 36.70A.020(3). Italics from the Port. See Port Br. at 19.

25 ¹⁴⁹ Port’s Br. at 19-20.

26 ¹⁵⁰ Port’s Br. at 20.

27 ¹⁵¹ Ports Br. at 19, citing PCA00231, indicating “residential development in the . . . (STAOD) that would
28 exacerbate ongoing challenges for industrial and maritime uses. . . .[and] erode[] the foothold in the
29 Duwamish Manufacturing/Industrial Center (MIC) for industrial and maritime development that is essential to
30 the regional and state economy.”

31 ¹⁵² Port’s Br. at 19, citing PCA00047, indicating the Ordinance “will add additional stress on the transportation
32 system in the STAOD.”

¹⁵³ Port’s Br. at 19, citing PCA00683, indicating that “Adding hundreds of housing units in the . . . Stadium
District only decreases freight mobility and operational efficiencies and guarantees increased traffic and
opportunities for conflict between residential and freight use of these Major Truck Streets”).

¹⁵⁴ Referencing the BERK Consulting transportation analysis.

¹⁵⁵ City’s Br. at 37, 40-41.

1 manner to reduce potential conflict with adjacent existing industrial business operations . .
2 ..”¹⁵⁶ That the Port’s claims of “obvious impacts” do not reflect the record and are inconsistent
3 with the “2016 EIS was looking at the impacts of adding another stadium in the area, which
4 would generate thousands of vehicles for basketball and other stadium events”¹⁵⁷

5 While it is evident that intermodal rail facilities as well as truck traffic accessing the
6 Port facilities rely on the City’s Major Truck streets within the STAOD, there is an absence of
7 evidence which would demonstrate the Ordinance, by its terms, fail to encourage or
8 otherwise thwarts the goal of efficient multimodal transportation systems or that it is contrary
9 to regional priorities or not coordinated with county and city comprehensive plans. Instead,
10 the record contains conclusory statements regarding what the Port see as self-evident. This,
11 as the City points out, is insufficient to demonstrate the Ordinance substantially interferes
12 with the GMA’s transportation goals. As such, the Board agrees with the City that the Port
13 has failed to meet its burden as to the GMA transportation goal.¹⁵⁸

14
15
16 With respect to economic development, the City must:

17 *Encourage economic development throughout the state that is consistent with*
18 *adopted comprehensive plans*, promote economic opportunity for all citizens of
19 this state, especially for unemployed and for disadvantaged persons, *promote*
20 *the retention and expansion of existing businesses and recruitment of new*
21 *businesses*, recognize regional differences impacting economic development
22 opportunities, and encourage growth in areas experiencing insufficient
23 economic growth, all within the capacities of the state’s natural resources,
24 public services, and public facilities.¹⁵⁹

25 The Port asserts the City erred because it myopically focused on a residential proposal rather
26 than properly balancing any purported benefits against the potential degradation to Port
27 operations, and without ensuring it was consistent with the City’s Comprehensive Plan, or
28 whether it interfered with countervailing economic development considerations, specifically

29
30 ¹⁵⁶ City’s Br. at 42, citing SMC 23.50A.062.F (though it appears the correct citation is SMC 23.50A.062.C.6),
SMC 23.50A.060 (Criteria for all conditional uses) and SMC 23.50A.062 (Administrative conditional uses).

31 ¹⁵⁷ *Id.*

32 ¹⁵⁸ RCW 36.70A.020(3).

¹⁵⁹ RCW 36.70A.020(5). Italics from the Port. See Port Br. at 20.

1 the benefits relating to the Port's EPF's.¹⁶⁰ Further, that the City failed to address impacts to
2 "the Port's longstanding industrial/maritime business, or how it would impact the other
3 businesses within the MIC that are dependent on the Port's continued operation for their
4 survival."¹⁶¹

5 The City counters that many uses can co-exist without substantial impairment of the
6 GMA economic development goal and the Port's assertion "that the Ordinance will impair
7 their operation due to increased traffic" is contradicted by the EIS and is offered without
8 supporting evidence.¹⁶² Instead, the City suggests, the Ordinance will advance "economic
9 opportunity by increasing housing to support industry and to support low-income residents,
10 thus reducing commute times and supporting workforce retention."¹⁶³ That is because
11 "mixed-use development diversifies the local economy and attracts investment . . . while
12 preserving and supporting industrial uses,"¹⁶⁴ according to the City. Further that "the STAOD
13 draws approximately 7 million people per year, many of whom attend sporting events, which
14 also supports economic development," and that ultimately the Port has failed to meet its
15 burden.¹⁶⁵

16 The Board agrees with the City and finds that the Port has failed to meet its burden of
17 demonstrating the Ordinance will substantially interfere with the GMA's economic
18 development goal.

19 With respect to ensuring adequate public facilities and services, the City must:

20 *Ensure that those public facilities and services necessary to support*
21 *development shall be adequate to serve the development at the time the*
22 *development is available for occupancy and use without decreasing current*
23 *service levels below locally established minimum standards.*¹⁶⁶

24 ¹⁶⁰ Port's Br. at 20-21.

25 ¹⁶¹ Port's Br. at 21.

26 ¹⁶² City's Br. at 43.

27 ¹⁶³ *Id.*

28 ¹⁶⁴ *Id.*

29 ¹⁶⁵ *Id.* referencing PCB00003 (comment from Washington State Major League Baseball Stadium Public
30 Facilities District and the Washington State Public Stadium Authority on the Industrial and Maritime Strategy).

31 ¹⁶⁶ RCW 36.70A.020(12). Italics from Port. The Port incorrectly references 020(5), but otherwise correctly sets
32 out the proper GMA goal. See Port's Br. at 21.

1 The Port says the Ordinance authorizes dense, residential development in the STAOD
2 without providing adequate public facilities such as parks, fire,¹⁶⁷ police, schools, libraries,
3 grocery stores, or retail stores.¹⁶⁸ The Port finds support for this assertion in the Arena
4 FEIS¹⁶⁹ which indicated that:

5 In addition to the main factor that residential uses may be incompatible with
6 existing industrial uses in the SoDo study area, the SoDo neighborhood also
7 lacks the amenities and services, such as grocery stores, retail, neighborhood
8 services and parks/open space, that are desirable to new residents.¹⁷⁰

9 The City contends the “2022 EIS found no significant avoidable adverse impacts to fire and
10 emergency medical services, police or schools or libraries are expected for the alternatives
11 in the FEIS with application of mitigation measures.”¹⁷¹ The Board agrees, as the FEIS found:
12 “Ongoing City operational and capital facilities planning efforts are anticipated to address
13 incremental increases and other changes in demand for fire [& Emergency Medical]
14 services.”¹⁷² This is also true for law enforcement services.¹⁷³ And, according to the City, the
15 FEIS also analyzed impacts to schools under each alternative.¹⁷⁴ While the City did not
16 specifically explain the FEIS findings, the Board and Port both observe that “there are no
17 public or private schools or libraries in the subarea.”¹⁷⁵ However, the FEIS contemplated
18 residential development at this location, as well as several other locations, and it concluded
19 over the 20-year planning period, the entire area would see an increase of 437 students
20 (SODO, under the preferred alternative seeing 94 students) which is mitigated by ongoing
21 Seattle School District capital facilities management planning which was anticipated to be
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26 ¹⁶⁷ According to the Port there is one fire station in the area.

27 ¹⁶⁸ Port’s Br. at 21.

28 ¹⁶⁹ Noticeably relying a 2016 report, rather than the more comprehensive and recent 2022 Seattle Industrial &
29 Maritime Strategy.

30 ¹⁷⁰ *Id.*, referencing Arena FEIS Ex. 62, App. F. at 121.

31 ¹⁷¹ City’s Br. at 44, citing Exhibit 26, p. 151-152.

32 ¹⁷² FEIS 3-598.

¹⁷³ *Id.* “Ongoing City of Seattle capital improvement planning and budgeting efforts are anticipated to address
police facility needs, including potential needs for future improvements.”

¹⁷⁴ City’s Br. at 44, citing Exhibit 26 p. 152-153.

¹⁷⁵ Port’s Br. at 22, citing See FEIS Ex. 26 at 788.

1 sufficient to address increases in student population.¹⁷⁶ Likewise for libraries. The Board is,
2 therefore, not convinced that, at the time of development, there will be insufficient public
3 services as it relates to schools, libraries, fire and EMS, or law enforcement.

4 The Port also takes issue with a lack of parks and open space,¹⁷⁷ but the City indicates
5 there are 59.13 acres of parks and 6.3 miles of trails and “while increased population may
6 require more parks to be acquired to maintain the 8 acres of park for 1,000 people, the EIS
7 concluded that ‘no significant unavoidable adverse impacts to open space and recreation are
8 anticipated.’”¹⁷⁸ The Board agrees.

9
10 From the Board’s perspective, the Port has failed to show that “at the time the
11 development” there would be inadequate public services for occupancy and use without
12 decreasing current service levels below locally established minimum standards. That is
13 because, as the City indicates and the Board agrees, “the 2022 FEIS did analyze whether
14 housing in the STAOD would impact public services and concluded it would not.”¹⁷⁹ The Port
15 has failed to present contrary evidence sufficient to convince the Board that at the time of
16 development there will be inadequate public facilities. Because the Port has failed to meet
17 its burden, **Issue No. 1 is dismissed.**

18
19 The Port also asserts the City failed to include or incorporate “best available science”
20 (BAS) by permitting residential development within the City’s designated liquefaction-prone
21 critical area in disregard of its critical areas ordinance.¹⁸⁰ The City counters that it did not
22 amend its critical areas ordinance and as a result it was not required to include BAS in
23 adopting the challenged Ordinance.¹⁸¹ The Board agrees with the City. The City was neither
24 adopting nor amending its critical areas ordinance, and, as such, was not required to include
25 BAS in adopting the Ordinance at issue.¹⁸² Because the Port has failed to convince the Board
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28 ¹⁷⁶ Seattle Industrial & Maritime Strategy FEIS 3-590, Exhibit 3.13-19; 3-598.

29 ¹⁷⁷ Port’s Br. at 22.

30 ¹⁷⁸ *Id.*; City’s Br. at 44.

31 ¹⁷⁹ *Id.* quotations in the original, citing *R/N* 6, FEIS p. 3-540, p. 3-542 and 3-543.

32 ¹⁸⁰ Port’s Br. at 18, citing SMC 25.09.065(C)(2).

¹⁸¹ City’s Br. at 10-11.

¹⁸² RCW 36.70A.172(1).

1 that the City was required to include BAS in adopting this Ordinance, **Issue No. 9 must be**
2 **dismissed.**

3 With respect to Essential Public Facilities (EPFs), the Port asserts adoption of the
4 challenged Ordinance precludes the siting or more specifically the expansion of an EPF
5 through the impairment of the road network that is used for the deepwater port.¹⁸³ That the
6 “siting of 990 residential units in the middle of the Port’s EPF will render future use and
7 expansions (both in intensity and physical footprint) impracticable.”¹⁸⁴ And that the Ordinance
8 will burden the Port’s road network in a way that will make future expansions impossible or
9 impracticable.”¹⁸⁵

11 This City does not address whether the Ordinance makes expansion impossible or
12 impracticable, and instead requests dismissal of Issue 10, “because the Ordinance has
13 nothing to do with the imposition of conditions or costs related to the mitigation of adverse
14 impacts directly caused by construction or operation of EPFs, nor does it have anything to
15 do with the timely issuance of permits related to the construction or expansion of an EPF.”¹⁸⁶
16 The City misses the Ports argument and instead identifies the Port’s facilities as separated
17 by SR 99/Alaskan Way and indicates a “state roadway separates the Port facilities from
18 SODO to the east” and that the Port failed to present “evidence that it sought to construct a
19 new facility or expand existing facilities east of SR 99/Alaskan Way and was otherwise
20 precluded from doing so by conditions or costs imposed by the City to mitigate adverse
21 impacts caused by the construction or operation of the EPF.”¹⁸⁷ While permit denial or costs
22
23
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25 ¹⁸³ Port’s Br. at 17-18, citing RCW 36.70A.115 (sufficient land for development); RCW
26 36.70A.200(5)(prohibition against precluding the siting of essential public facilities), and WAC 365-196-
27 550(3)(a)(May no preclude the siting of an essential public facility if their combined effects would make the
siting of an essential public facility impossible or impracticable). See also Port’s Reply at 8-9.

28 ¹⁸⁴ Port’s Br. at 17, citing *Port of Shelton v. City of Shelton*, GMHB No. 10-2-0013 (Final Decision and Order,
29 October 27, 2010) at 23. The City asserts this case is fact dependent and specific to airports. The Board
disagrees. In the *Port of Shelton* matter, the Board considered RCW 36.70A.200(5) and *Des Moines v.*
30 *PSRC*, 108 Wn. App. 836, 845 (1999)(affirmatively addressed that siting EPF’s includes expansion or
improvement, and activities necessary for expansion).

31 ¹⁸⁵ Port’s Reply at 8-9.

32 ¹⁸⁶ City’s Br. at 11, citing RCW 36.70A.200(5)(b).

¹⁸⁷ City’s Br. at 11.

1 is not the point here, nevertheless, the Port fails to convince this Board or point to evidence
2 in the record that the support its position. First, the Board, as discussed above, disagrees
3 that this will result in 990 residential units and believes the true number of units capable of
4 being placed in the limited footprint is 375. Further, while traffic remains an issue, perhaps
5 everywhere in western Washington, the Port fails to demonstrate any specific traffic impacts
6 in a way that would persuade the Board that the City's adoption was clearly erroneous. Thus,
7 the Port has failed to carry its burden on this point. Accordingly, **Issue 10 is dismissed.**
8

9 **The Port combines issues 2, 6, 7, and 8.**

10 **Issue No. 2. Does the Ordinance fail to comply with the GMA's requirements because**
11 **it allows development that will interfere with the planning goals enumerated at RCW**
12 **36.70A.020(15) and RCW 90.58.020?**

13 **Issue No. 6. Does the Ordinance violate the GMA's requirements at RCW 36.70A.040**
14 **and RCW 36.70A.130 because its terms are inconsistent with and fail to implement the**
15 **Comprehensive Plan, including the Land Use Element, the Transportation Element,**
16 **the Container Port Element, the Parks and Open Space Element, the Community Well-**
17 **Being Element, the Growth Strategy Element, the Shoreline Areas Element, and the**
18 **Greater Duwamish MIC Neighborhood Plan?**

19 **Issue No. 7. By adopting the Ordinance, has the City failed to comply with the GMA's**
20 **requirements at RCW 36.70A.115 requiring cities to provide sufficient land capacity**
21 **for future development of industrial facilities?**

22 **Issue No. 8. Does the Ordinance fail to comply with the GMA's requirements at RCW**
23 **36.70A.040 and RCW 36.70A.130 due to its inconsistencies with, or failure to**
24 **implement, the goals and policies described in King County's Comprehensive Plan,**
25 **and Countywide Planning Policies incorporated into the City's Comprehensive Plan**
26 **pursuant to RCW 36.70A.100 and .210?**

27 The Port claims this Ordinance creates an inconsistency with the City's
28 Comprehensive Plan, which incorporates the Shoreline Management Act (SMA), because
29 "the Ordinance's impacts will disrupt Port operations, within and outside of shoreline areas,
30 further diminish scarce industrial lands, and permanently harm the regional and state
31
32

1 economy in the interest of a local, short-term housing gain . . .”¹⁸⁸ The City argues the SMA
2 is inapplicable as the STAOD is outside of the Shoreline District and the SMA only applies
3 to shorelines of the state.”¹⁸⁹ Further, that “the City’s mapped Shoreline District stops west
4 of SR 99 and does not extend to the STAOD.”¹⁹⁰ The Board agrees with the City. The STAOD
5 is outside the reach of the SMA and the Port and failed to convince the Board otherwise.
6 Accordingly, **Issue No. 2 is dismissed.**
7

8 The Port contends the Ordinance is inconsistent and fails to implement the City’s
9 Comprehensive Plan Land Use element and calls the Board’s attention to what it describes
10 an incongruity in the Ordinance’s recitals which expressly call for the perseverance of
11 industrial lands, key infrastructure, and a restriction on residential development, yet the result
12 of the Ordinance fails to do so by permitting residential development on industrial lands next
13 to Major Truck Streets thereby impairing both.¹⁹¹ That the City conflates “workforce housing”
14 with “dwellings for workers that are related to the industrial area and that would not restrict
15 or disrupt industrial activity.”¹⁹² And, that the Ordinance violates King County’s
16 Comprehensive Plan Goals, incorporated into the City’s Comprehensive Plan by the
17
18

19 ¹⁸⁸ Port’s Br. at 29-30.

20 ¹⁸⁹ City’s Br. at 12-13, citing RCW 36.70A.020(15). Shorelines of the state include state water bodies and
21 adjacent shorelines within 200 feet of the ordinary high-water mark, associated floodways, floodplains,
22 wetlands, and deltas, as well as designated coastal and riparian waters of statewide significance. RCW
23 90.50.030(d)-(f).

24 ¹⁹⁰ *Id.*

25 ¹⁹¹ Port’s Br. at 22, citing Comp Plan Ex. 41, p.58 (Goal LU G10—Provide sufficient land with the necessary
26 characteristics to allow industrial activity to thrive in Seattle and protect the preferred industrial function of
27 these areas from activities that could disrupt or displace them), RCW 36.70A.040 (development regulations
28 must implement the comprehensive plan), and 36.70A.130(1)(e) development regulations shall be consistent
29 with and implement the comprehensive plan. See *a/so* LU 10.2 (Preserve industrial land for industrial uses,
30 especially where industrial land is near rail- or water-transportation facilities, in order to allow marine- and rail-
31 related industries that rely on that transportation infrastructure to continue to function in the city.); LU 10.3
32 (Ensure predictability and permanence for industrial activities in industrial areas by limiting changes in
industrial land use designation. There should be no reclassification of industrial land to a non-industrial land
use category except as part of a City-initiated comprehensive study and review of industrial land use policies
or as part of a major update to the Comprehensive Plan); and LU 10.8 (Prohibit new residential development
in industrial zones, except for certain types of dwellings, such as caretaker units and in urban industrial
zones, dwellings for workers that are related to the industrial area and that would not restrict or disrupt
industrial activity.).

¹⁹² Port’s Br. at 23, citing LU 10.8.

1 requirement of coordination and consistency with other comprehensive plans¹⁹³ and
2 countywide planning policies,¹⁹⁴ by permitting dense residential development in an area
3 incompatible with residential uses which also results in industrial land conversion.¹⁹⁵
4 Additionally, that the Ordinance violates the City's land use planning and growth strategies
5 because it fails to maintain industrial areas that have critical supporting infrastructure and
6 fails to provide transitions between industrial areas and less intensive areas.¹⁹⁶ And that it
7 does not "apply the general industrial zones mostly within the designated
8 manufacturing/industrial centers (MIC's) where impacts from industrial activity are less likely
9 to affect residential or commercial uses.¹⁹⁷ Lastly, that the Ordinance is inconsistent with the
10 City's growth strategy as it relates to MIC's because it doesn't promote manufacturing,
11 warehousing, and distributions uses and discouraging uses that pose conflicts with the
12 industrial area.¹⁹⁸
13
14

15 ¹⁹³ RCW 36.70A.100.

16 ¹⁹⁴ RCW 36.70A.210, referencing U-255 (Within the Urban Growth Area, properties with existing industrial
17 uses shall be protected); ED-211 (King County should support programs and strategies to preserve and plan
18 for an adequate supply of industrial and commercial land capacity); and U-227 (Industrial development should
19 have direct access from arterials or freeways. Access points should be combined and limited in number to
20 allow smooth traffic flow on arterials. Access through residential areas should be avoided.).

21 ¹⁹⁵ Port's Br. at 23-24.

22 ¹⁹⁶ Port's Br. at 24, citing LU 10.6 (Provide a range of industrial zones that address varying conditions and
23 priorities in different industrial areas. Those priorities include maintaining industrial areas that have critical
24 supporting infrastructure, leveraging investments in high-capacity transit service, providing transitions
25 between industrial areas and less intensive areas, and promoting high-quality environments attractive to
26 business expansion or to new industrial activities.).

27 ¹⁹⁷ Port's Br. at 24, citing LU 10.10. (Apply the general industrial zones mostly within the designated
28 manufacturing/industrial centers, where impacts from industrial activity are less likely to affect residential or
29 commercial uses. Outside of manufacturing/industrial centers, general industrial or the maritime,
30 manufacturing, and logistics zones may be appropriate along waterways used for maritime uses. Consider
31 applying the maritime, manufacturing, and logistics designation mostly within the designated
32 manufacturing/industrial centers and it may also be appropriate outside of manufacturing/industrial centers
along waterways used for maritime uses.).

¹⁹⁸ Port's Br. at 24, citing GS 1.15. Designate areas as manufacturing/industrial centers (MIC's) consistent
with the following characteristics and with the Countywide Planning Policies: Existing zoning that promotes
manufacturing, warehousing, and distribution uses; zoning that discourages uses that pose short- or long-
term conflicts with industrial uses, or that threaten to convert significant amounts of industrial land to
nonindustrial uses; zoning that strictly limits residential uses and discourages land uses that are not
compatible with industrial uses; buffers that protect neighboring, less intensive land uses from the impacts
associated with industrial activity (provided by generally maintaining existing buffers, including existing
industrial buffer zones); sufficient zoning capacity to accommodate a minimum of ten thousand jobs; relatively

1 The result, the Port says, strips the STAOD of its transition purposes between
2 commercial and residential uses and the heavy industrial uses in violation of land use
3 policy.¹⁹⁹ The City, the Port claims, has previously recognized the incompatibility of placing
4 residential uses adjacent to industrial uses and found:

5 [I]ndustrial uses are extremely limited geographically, with few options to
6 expand the existing industrial land base, making the preservation of this scarce
7 resource all the more imperative . . . [t]his resource cannot be duplicated if
8 marine lands are converted to nonindustrial uses (as has occurred elsewhere
9 in the region).²⁰⁰

10 As a result, the Port says, the Ordinance enables development with conflicting uses in
11 industrial lands.²⁰¹

12 The City counters, and the Board agrees, that local jurisdictions enjoy broad discretion
13 in comprehensive planning choices which are left to local policy makers and circumstances,
14 provided they are bound by the constraints contained within the GMA, and that the burden
15 rests with the Petitioner to demonstrate the challenge ordinance is inconsistent with, or will
16 thwart, the policy.²⁰² "Consistency," means that no feature of a plan or regulation is
17 incompatible with any other feature of a plan or regulation; consistency is indicative of a
18 capacity for orderly integration or operation with other elements in a system.²⁰³ A finding of
19 inconsistency requires a showing of actual conflict between competing provisions of a local
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24 flat terrain allowing for efficient industrial processes; reasonable access to the regional highway, rail, air,
25 and/or waterway systems for transportation of goods.

26 ¹⁹⁹ Port's Br. at 24-25, referencing LU 10.6, LU 10.22, and GS 1.15.

27 ²⁰⁰ Port's Br. at 24, referencing Ex 49.

28 ²⁰¹ Port's Br. at 23-25, citing LU G10, LU 10.6, LU 10.10, GS 1.15, U-255, ED-211, and U-227; MIC Plan Ex.
29 49, at 26-27; Arena FEIS Ex. 62, App. F, at 109; SMC 23.74.002(A). The Stadium Transition Area centers on
30 large sports facilities and allows uses complementary to them. It is intended to contribute to a safer
31 pedestrian environment for those attending events and permits a mix of uses, supporting the pedestrian-
32 oriented character of the area as well as the surrounding industrial zone, while minimizing conflicts with
industrial uses.

²⁰² City's Br. at 31-32.

²⁰³ WAC 365-196-210(9). The City incorrectly cites WAC 365-196-210(8), City's Br. at 32, but that reference
is to concurrency.

jurisdictions policy and regulation.²⁰⁴ As we noted in *Friends of San Juan*, the Board's determinations of inconsistencies are found when there is a direct conflict between the comprehensive plan goal or policy and the adopted development regulation.²⁰⁵ For example, in *Peranzi*, like in this matter, a comprehensive plan policy prohibited uses incompatible with industrial uses and the record established the proposed residential use was incompatible.²⁰⁶

The City says its Ordinance is in harmony with the comprehensive plan “to establish that the small amount of industrial lands identified as transitional areas zoned UI . . . that provide a buffer between heavier industry and residential mixed-use areas are appropriate places to allow industry-supportive housing in a limited capacity as an administrative conditional use.”²⁰⁷ That the Ordinance is consistent with Comprehensive Plan Land Use Goals, Policies, and Strategy, and that the Port ignores the 2023 Industrial Strategy which the City claims strengthened protections of industrial lands while providing for some “limited new residential use ancillary to a non-residential mixed-use development” that would “provide needed affordable housing for both industrial workers and the community, and the need to spur redevelopment allowing for the creation of light manufacturing maker spaces and other non-residential uses appropriate for the industrial zone, and specifically here, the STAOD.”²⁰⁸

The City’s Industrial Areas Land Element goal is to “provide sufficient land with the necessary characteristics to allow industrial activity to thrive in Seattle and protect the preferred industrial function of these areas from activities that could disrupt or displace them.” Through the Maritime and Marine Strategy, the City zoned 376 acres into a new UI zone, a portion of which is at issue here.²⁰⁹ The City then adopted specific policies, relevant here, to

²⁰⁴ *Leenstra v. Whatcom County*, WWGMHB No. 03-2-0011 (Final Decision and Order, September 26, 2003) at 15.

²⁰⁵ *Friends of the San Juans, et al, v. San Juan County*, GMHB No 13-2-0012c (Final Decision and Order, September 6, 2013) at 24.

²⁰⁶ *Peranzi v. City of Olympia*, GMHB. No. 11-2-0011 (Final Decision and Order, May 4, 2012) at 21, 22.

²⁰⁷ City’s Br. at 32.

²⁰⁸ City’s Br. at 33, referencing LUG 10, LU 10.6, LU 10.10, LU 10.22, GS 1.15.

²⁰⁹ City’s Br. at 33, citing *RIN* 6, FEIS, p. 1-32-33. (see also Exhibit 128 at page 10 of this decision for a visual).

1 ***“preserve industrial land for industrial uses, especially where industrial land is near***
2 ***rail- or water-transportation facilities, in order to allow marine- and rail-related***
3 ***industries that rely on that transportation infrastructure to continue to function in the***
4 ***city;***²¹⁰ “ensure predictability and permanence for industrial activities in industrial areas by
5 limiting changes in industrial land use designation. There should be ***no reclassification of***
6 ***industrial land to a non-industrial land use category except as part of a City-initiated***
7 ***comprehensive study and review of industrial land use policies or as part of a major***
8 ***update to the Comprehensive Plan;***²¹¹ “provide a range of industrial zones that address
9 varying conditions and priorities in different industrial areas. ***Those priorities include***
10 ***maintaining industrial areas that have critical supporting infrastructure,*** leveraging
11 investments in high-capacity transit service, providing transitions between industrial areas
12 and less intensive areas, and promoting high-quality environments attractive to business
13 expansion or to new industrial activities’.²¹² ***Prohibit new residential development in***
14 ***industrial zones, except for certain types of dwellings, such as caretaker units and in***
15 ***urban industrial zones, dwellings for workers that are related to the industrial area and***
16 ***that would not restrict or disrupt industrial activity;***²¹³ and that the City is to “***apply the***
17 ***general industrial zones mostly within the designated manufacturing/industrial***
18 ***centers, where impacts from industrial activity are less likely to affect residential or***
19 ***commercial uses.....***”²¹⁴

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22
23 To support industrial development and ensure compatibility with adjacent land uses,
24 the King County Countywide Planning Policies call for the ***protection of properties with***
25 ***existing industrial uses within the Urban Growth Area.***²¹⁵ That the County, and by
26 extension the City, should support programs and strategies to ***preserve and plan for an***
27

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29 ²¹⁰ LU 10.2 (emphasis added).

30 ²¹¹ LU 10.3 (emphasis added).

31 ²¹² LU 10.6 (emphasis added).

32 ²¹³ LU 10.8 (emphasis added).

²¹⁴ LU 10.10 (emphasis added).

²¹⁵ U--225 (Within the Urban Growth Area, properties with existing industrial uses shall be protected).

1 **adequate supply of industrial and commercial land capacity**, including participating in
2 the Puget Sound Regional Council's Industrial Lands Analysis, actively apply for resources,
3 promote redevelopment and infill, **and prevent the encroachment of nonindustrial uses**
4 **on industrially zoned land and the rezoning of industrial land to other uses.**²¹⁶ Lastly,
5 that **industrial development should have direct access from arterials or freeways . . .**
6 **and access through residential areas should be avoided.**²¹⁷
7

8 Each of these policies, as the City correctly notes, strengthens protections of industrial
9 lands. Perhaps the most significant among them was the policy prohibiting the
10 reclassification of industrial lands to non-industrial uses except as part of a major update to
11 the comprehensive plan. The Board finds the City's adoption of Ordinance 127191 was not
12 part of a major update to the City's Comprehensive Plan and that the Ordinance permitted
13 the reclassification of industrial lands to non-industrial use which was contrary to the City's
14 policy.²¹⁸ The Board further finds the Ordinance permits residential dwellings in the UI zone
15 which are neither restricted to caretaker units, nor are they restricted to dwellings for workers
16 that are related to the industrial area. Instead, the only restrictions related to affordability,
17 and then only that half of the "units must be at or below 60% of median income for SEDUs,
18 80 percent of median income for studio and one bedroom units, and 90 percent of median
19 income for two-bedroom and larger units."²¹⁹ While the Ordinance does permit a developer
20 to elect to make all units industrial or caretaker quarters, which is limited to 3 units per single
21 business, they may also elect to make half of the units "affordable" with the other half leasing
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26 ²¹⁶ ED-211 (King County should support programs and strategies to preserve and plan for an adequate
27 supply of industrial and commercial land capacity, including but not limited to participating in the Puget Sound
28 Regional Council's Industrial Lands Analysis, Actively apply for resources, promote redevelopment and infill,
29 prevent the encroachment of nonindustrial uses on industrially zoned land and the rezoning of industrial land
to other uses.)

30 ²¹⁷ and U-227 (Industrial development should have direct access from arterials or freeways. Access points
31 should be combined and limited in number to allow smooth traffic flow on arterials. Access through residential
areas should be avoided).

32 ²¹⁸ LU 10.3.

²¹⁹ City's Br. at 22, citing SMC 23.50A.062.C.9.

1 at market rate.²²⁰ This is directly contrary to the City's policy to restrict residential
2 development in this area. It is also contrary to the Countywide Planning Policy to protect
3 properties with existing industrial uses within the Urban Growth Area and prevent the
4 encroachment of nonindustrial uses on industrially zoned land and the rezoning of industrial
5 land to other uses, as well as avoiding accessing industrial development through residential
6 development. Placing residential dwellings which are unrelated to the industry, adjacent to
7 Major Truck Streets while simultaneously removing a 200-foot buffer disrupts associated
8 industrial activity and restricts industry access.²²¹ The Board also finds Ordinance 127191
9 failed to preserve industrial land for industrial uses by encroaching on and removing the
10 200- foot buffer which protected and preserved the City's Major Truck Streets for the rail and
11 water-dependent operations that rely on them, specifically the Port and BNSF. This is
12 particularly concerning because the City failed to conduct comprehensive review as required
13 by its policy, and as demonstrated in the brevity of the public process in this matter, failed to
14 "ensure predictability and permanence for industrial activities in industrial areas by limiting
15 changes in industrial land use designation."²²²

16
17
18 **As to Issue Nos. 6 and 8,** the Board is left with a firm and definite conviction that
19 Ordinance 127191 is inconsistent with the City's policies and the Countywide Planning
20 Policies noted above and is therefore inconsistent with the City's Comprehensive Plan Land
21 Use element. Accordingly, Ordinance 127191 is non-compliant with the GMA.²²³

22
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24
25 ²²⁰ SMC 23.50A.062.C.9. The City permits developers to select between limiting occupancy to either: a. "All
26 dwelling units are live-work units in which the commercial activity qualifies as industrial, or are caretakers'
27 quarters associated with a business on the same site provided no single business shall have more than three
28 associated caretakers' quarters; or b. A minimum of 50 percent of the dwelling units are made available at
29 affordable rent or affordable sale price for a period of 75 years beginning January 1 of the year following final
30 certificate of occupancy to eligible households with annual incomes at or below 60 percent of median income
31 for SEDUs, 80 percent of median income for studio and one bedroom units, and 90 percent of median income
32 for two-bedroom and larger units. Standardized procedures and definitions established by the Office of
Housing for administration of Chapter 5.73 shall apply. Dwelling units eligible for the multifamily housing tax
exemption may be counted towards the minimum 50 percent.

²²¹ LU 10.8.

²²² LU 10.3.

²²³ RCW 36.70A.040, RCW 36.70A.130, RCW 36.70A.100, and RCW 36.70A.210.

1 The Port also asserts the Ordinance is inconsistent and does not implement the City's
2 Transportation Element because it fails to implement goal 5 (Improve mobility and access
3 for the movement of goods and services to enhance and promote economic opportunity
4 throughout the City) and goal 8 (Maintain and renew existing transportation assets to ensure
5 the long-term viability of investments, reduce ongoing costs, and promote safe conditions.)
6 Further that the Ordinance is contrary to policy T 5.2 (Develop a truck freight network in the
7 Freight Master Plan that connects the city's manufacturing/industrial centers, enhances
8 freight mobility and operational efficiencies, and promotes the city's economic health),²²⁴ T
9 5.3 (Ensure that freight corridors are designed, maintained, and operated to provide efficient
10 movement of truck traffic), and T 7.5 (Plan for the city's truck freight network, developed as
11 part of the Freight Master Plan, to connect to the state and regional freight network, and to
12 continue providing good connections to regional industrial and warehouse uses). The Port
13 asserts by removing the 200-foot separation between residential uses and Major Truck
14 Streets, and permitting multi-family development of up to 990 units adjacent to major truck
15 streets, the Ordinance permits and will lead to additional pedestrian, cycle, truck, and other
16 traffic accidents, undoubtedly detracting from the safe operation of those routes.²²⁵ Further,
17 that permitting residential development in this area directly contradicts the City's policy to
18 improve intermodal freight connections involving Port container terminals and support the
19 efficient movement of truck traffic from the Port to regional and state transportation
20 networks.²²⁶

21 The City counters the impacts have been analyzed and vehicle travel, including freight
22 with "no measured difference in travel times compared to the "no action" alternative.²²⁷ That
23 the City has the only analysis of transportation, which did study up to 990 housing units, and
24 it found no measured difference in travel times.²²⁸ That because the overlay already calls for
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29 _____
30 ²²⁴ Port's Br. at 26, citing Policy 5.2, but it should be referenced as T 5.2.

31 ²²⁵ *Id.*

32 ²²⁶ *Id.*

²²⁷ City's Br. at 41-42.

²²⁸ City's Br. at 37.

1 configuration that reduces potential conflicts, along with other measures, the Port has failed
2 to establish the Ordinance substantially interference with the City's transportation goal.²²⁹
3 Additionally, that "... limited residential use on First Ave S is not inconsistent with the
4 guidance for [M]ajor [T]ruck [S]treets," and that the City continues to improve mobility, and
5 maintain transportation assets through funding and on-going projects.²³⁰

6
7 Largely the City's goals and policies call for no specific actions and as the City
8 correctly notes, the only evidence before the Board, in terms of a study, fails to demonstrate
9 what the Port claims. From the Board's perspective, the Port has failed to meet its burden
10 with respect to an inconsistency with the City's transportation element.

11 The Port also asserts the Ordinance is contrary to the City's Container Port element
12 because it permits residential uses along Major Truck Streets and removes the 200-foot
13 separation requirement, and as a result, the City fails to provide sufficient land capacity for
14 development.²³¹ The Port claims this will lead to permanently convert industrial land to a
15 nonindustrial use.²³² And, that the City made no attempt to engage in a joint effort as
16 contemplated by the City's Container Policy.²³³

17
18 The City refutes this indicating CP 1.5 allows for a wider range of uses within this
19 transition area, and, that the City engaged with the Port during the adoption of 2023 Industrial
20 Maritime Strategy, as well as at the February 24, 2025, public meeting by permitting an
21 opportunity to present the Port's concerns, leading, in the City's view, to the "technical
22 amendments" as "compromised legislation."²³⁴ Lastly, that any impacts are speculative and
23

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25 ²²⁹ *Id.*

26 ²³⁰ City's Br. at 27-28.

27 ²³¹ Port's Br. at 27, citing RCW 36.70A.115, CP 1.3 (Discourage nonindustrial land uses, such as retail and
28 residential in industrial zoned areas to minimize conflicts and conversion of industrial lands), CP 1.7 (Provide
29 safe, reliable, efficient, and direct access between Port marine facilities and the ... interstate system, and
30 between Port terminals and railroad intermodal facilities), CP 1.11 (Continue joint City and Port efforts to
31 implement relevant Port recommendations, such as recommendations contained in the Container Terminal
32 Access Study").

²³² Port's Br. at 28.

²³³ Port's Br. at 28, citing CP 1.11, See Port's Br. Appendix 1 (Resolution 32097).

²³⁴ City's Br. at 38, referencing CP 1.5 (Consider the value of transition areas—which allow a wider range of
uses while not creating conflicts with preferred cargo-container activities and uses—at the edges of general

1 have been studied by the FEIS.²³⁵

2 As with the Transportation element, the Board is unpersuaded as there is a lack of
3 evidence to support the Port's claims.

4 The Port also indicates the Ordinance violates the City's Park and Open Space
5 Element because the City has not extended park services to the STAOD.²³⁶

6 The City counters that "the City-owned park and recreation system comprise about 11
7 percent of the total city land area and includes parklands throughout the City" and noted
8 many other City features, and suggests the Port's 2016 study is contrasted by recent
9 experiences from a public commenter from the neighborhood: "[W]e're half a block from the
10 streetcar, a block from the waterfront, two blocks from the ferry system, four blocks from
11 Uwajimaya where I shop. It's a really great neighborhood."²³⁷ It is unclear to this Board how
12 this addresses the Port's argument related to parks, though it does speak to whether there
13 is a grocery store in the area, but what is clear to this Board is that, aside from the level-of-
14 service requirement addressed elsewhere by this Order, the balance are aspirational goals
15 without specific requirements, and the Port has failed to demonstrate an inconsistency or
16 impairment by the adoption of this Ordinance.

17 Next, the Port asserts the Ordinance does not comport with the goals and policies of
18 the Greater Duwamish Manufacturing/Industrial Center (MIC) Neighborhood Plan.²³⁸ From
19

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21
22 industrial zones. In this context, zoning provisions such as locational criteria and development standards are
23 among the tools for defining such edge areas.).

24 ²³⁵ *Id.*, citing *RIN* 6, Seattle Industrial & Maritime FEIS, pp. 3-386 to 3-498.

25 ²³⁶ Port's Br. at 29, citing PG 1 (Provide a variety of outdoor and indoor spaces throughout the city for all
26 people to play, learn, contemplate, and build community); P 1.2 (Provide a variety of parks and open space to
27 serve the city's growing population consistent with the priorities and level-of-service standards identified in the
28 City's Parks and Open Space Plan); P 1.10 (Create healthy places for children and adults to play, as well as
29 areas for more passive strolling, viewing, and picnicking.).

30 ²³⁷ City's Br. at 39.

31 ²³⁸ Port's Br. at 30, referencing GD-G3 (Land in the Duwamish Manufacturing/ Industrial Center is maintained
32 for industrial uses including the manufacture, assembly, storage, repair, distribution, research about or
development of tangible materials and advanced technologies; as well as transportation, utilities, and
commercial fishing activities); GD-G8 (The Duwamish Manufacturing/Industrial Center remains a
manufacturing/industrial center promoting the growth of industrial jobs and businesses and strictly limiting
incompatible commercial and residential activities); GD-P5(Limit the location or expansion of nonindustrial
uses, including publicly sponsored nonindustrial uses, in the Duwamish Manufacturing/Industrial Center); GD-

1 the Port's perspective, "these policies all stand for the notion that lands within a designated
2 MIC should be reserved and preserved for industrial uses and the City must reject the
3 encroachment of incompatible uses within the MIC . . . by strictly limiting non-industrial
4 development in the UI zone."²³⁹ And here, "targets the portion of the MIC that is most critical
5 to the Port's operations," specifically the Major Truck Streets critical to freight movement.
6

7 The City counters that the Greater Duwamish MIC specifically contemplated actions
8 permitted by the Ordinance and was intended, since 2000, to permit stadium and stadium-
9 related uses within the STAOD.²⁴⁰

10 The Board agrees with the City. The actions contemplated by the Ordinance
11 harmonize several competing goals. As the Port notes, residential development and
12 encroachment is discouraged, but it is not prohibited, especially against the goal of creating
13 an overlay district limited to the area near the stadiums that discourages encroachment on
14 nearby industrial uses, creates a pedestrian connection from the stadiums north to
15 Downtown, and creates a streetscape compatible with Pioneer Square.
16

17 As to **Issue Nos. 6 and 8**, an inconsistency with or a failure to implement the
18 Comprehensive Plan as it relates to the Land Use element, and an inconsistency with the
19 Countywide Planning Policies, the Board finds Ordinance 127191 is inconsistent with the
20 City's Comprehensive Plan and the Countywide Planning Policies and is therefore not
21 compliant with the GMA.²⁴¹ However, the Board does not reach the same conclusion with
22 respect to the City's Transportation, Container Port, Parks and Open Space, Growth
23 Strategy, or Shoreline Areas elements, or the Greater Duwamish MIC Neighborhood Plan.
24 Because the Port has failed to convince the Board of an inconsistency with those elements,
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28 P8 (Strive to protect the limited and nonrenewable regional resource of industrial, particularly waterfront
29 industrial, land from encroachment by nonindustrial uses.).

239 Port's Br. at 30.

240 City's Br. at 40, referencing GD-P20 (Seek to integrate stadium and stadium-related uses into the
30 Duwamish MIC by creating an overlay district limited to the area near the stadiums that discourages
31 encroachment on nearby industrial uses, creates a pedestrian connection from the stadiums north to
32 Downtown, and creates a streetscape compatible with Pioneer Square).

²⁴¹ RCW 36.70A.040, RCW 36.70A.130, RCW 36.70A.100, and RCW 36.70A.210.

1 those matters are dismissed.

2 Furthermore, as discussed above, the Port has failed to convince the Board that the
3 Ordinance fails to provide sufficient land capacity for future development of industrial
4 facilities. Accordingly, **Issue No. 7 is dismissed.**²⁴²

5 **Invalidity Determination**²⁴³

6 The Board is charged with adjudicating GMA compliance and, when necessary,
7 invalidating non-compliant plans and development regulations.²⁴⁴ A determination of
8 invalidity may be issued if the Board finds the Ordinance failed to comply with SEPA, or that
9 continued validity would substantially interfere with the fulfillment of the GMA's goals.
10 Invalidity depends on the facts and before the Board. As we noted in *Friends of Sammamish*
11 *Valley*,²⁴⁵ a local jurisdiction's authority to act is qualified by the requirements of SEPA and
12 the failure to properly conduct the required environmental review could interfere with
13 fulfillment of the GMA's environmental goal and, upon such a finding, invalidate the relevant
14 ordinance.²⁴⁶ Invalidity requires three separate actions by the Board: a finding of
15 noncompliance with the Act, with an order of remand; a determination that continued validity
16 will interfere with the Act's goals; and identification of the specific part of the regulation, and
17 reason for invalidity.²⁴⁷ The Board has fully addressed, above, the areas of the City's
18 Ordinance which are noncompliant with the GMA and with this Order remanded the matter
19 back to the City for resolution, and below addresses why invalidity is warranted.

20 The Port claims it has demonstrated several GMA and SEPA violations in the adoption
21 of the Ordinance that substantial interfere with the goals and policies of the GMA such that
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27 ²⁴² RCW 36.70A.115.

28 ²⁴³ The Port frames this as an issue (Issue 17); however, the Board views invalidity as a remedy such that it is
29 not framed as an issue but separately briefed to explain whether it is warranted in the instant matter.

30 ²⁴⁴ RCW 36.70A.280, RCW 36.70A.302.

31 ²⁴⁵ *Friends of Sammamish Valley v. King Cnty.*, GMHB No. 20-3-0004c (Final Decision and Order, January 3,
32 2022) at 41.

²⁴⁶ *Id.*, citing *Davidson Serles & Assocs. v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 159 Wn. App.
148, 158 244 P.3d 1003, 1007 (2010).

²⁴⁷ RCW 36.70A.302(1).

1 invalidation is appropriate principally because there is a high risk of a project vesting.²⁴⁸
2 The Port indicates the City's code²⁴⁹ allows for a project applications to vest upon submission
3 or approval, depending on the application type, and in this matter there is a development and
4 owner group intending to develop residential development.²⁵⁰ The Board also finds the
5 effective date of the Ordinance is June 30, 2025.²⁵¹ From this finding, the Board concludes
6 the City has not delayed or suspended the effective date of the action subject to the Petition
7 before the Board until after the Board issues a final determination.²⁵²
8

9 The City does not directly respond to the Port's argument, and instead broadly argues
10 that the Port's claims of substantial interference with transportation, economic development,
11 and public facilities and service, are speculative and inconsistent with the evidence in the
12 record.²⁵³
13

14 The Board disagrees with the City. The failure to follow the City's public participation
15 plan deprived the City of a Director's Report that presumably would have observed the
16 several deficiencies found by the Board, including the failure to comply with the City's SEPA
17 obligations, and to seek Commerce's review prior to adoption. These failures were significant
18 in the Board's view.

19 Continued validity of the Ordinance substantially interferes with GMA Planning Goals
20 10 and 11 in RCW 36.70A.020, which are as follows:

21 (10) Environment. Protect the environment and enhance the state's high quality
22 of life, including air and water quality, and the availability of water.
23
24

25 ²⁴⁸ Port's Br. at 2-3, citing RCW 36.70A.302(1)(b); *Friends of Clark Cnty. v. Clark Cnty.*, GMHB No. 22-2-0002
26 (Final Decision and Order, March 22, 2023) at 23; and *Futurewise v. Whatcom Cnty.*, GMHB Nos. 11-2-
27 0010c, 05-2-0013 (Compliance Order and Order Following Remand on Issue of LAMIRDs, January
4, 2013) at 90. See also Port Reply at 3 and 10.

28 ²⁴⁹ SMC 23.76.026.

29 ²⁵⁰ Port's Br. at 4., referring to property owned by an owner's group controlling most of three contiguous
30 blocks in the Stadium District (the "WSA Property") that presented renderings, site plans, and other
information during the adoption of the Ordinance.

31 ²⁵¹ See Amendment G to CB 120933.

32 ²⁵² Per WAC 242-03-820(2)(b). However, the Parties have agreed to stay the effective date of the Ordinance
by order in King County Superior Court in Case No. 25-2-10758-2 SEA.

²⁵³ City's Br. at 40-41.

1 (11) Citizen participation and coordination. Encourage the involvement of citizens
2 in the planning process and ensure coordination between communities and
3 jurisdictions to reconcile conflicts.

4 The facts of this matter support a finding that the Ordinance substantially interferes
5 with GMA Planning Goal 10. As noted above, SEPA is an environmental full disclosure law²⁵⁴
6 that requires local jurisdictions to analyze the environmental effects of proposed actions in
7 order to achieve good land use decision-making by involving and informing both the public
8 and the decision-makers about the environmental consequences of proposed actions.²⁵⁵ The
9 Court of Appeals has stated that failure to comply with SEPA review can justify a finding of
10 invalidity:
11

12 On the appropriate facts, the Board could find that failure to properly
13 conduct the required environmental review for a city or county action
14 interfered with fulfillment of the GMA's environmental goal and, upon such
15 a finding, could invalidate the relevant ordinance.²⁵⁶

16 The City's authority to act is qualified by the requirements of SEPA. Completion of a
17 SEPA document is a legal prerequisite to the County's action. It is incumbent upon a
18 jurisdiction to establish *prima facie* SEPA compliance, which the City did not do in this matter.
19 This action interferes with GMA Planning Goal 10. As set forth in the briefing in this matter,
20 development authorized by the Ordinance could have impacts to surrounding land uses,
21 traffic, and noise. SEPA is intended to address, identify, analyze, disclose, and consider
22 mitigation of those impacts. Failure to follow the procedural requirements of SEPA fails to
23 meet that intent and substantially interferes with GMA Planning Goal 10.
24

25 Vesting of development in the area would render the SEPA procedures as ineffectual
26 and moot -- if such project vesting were to occur, then the remand of this case to the City
27 would be meaningless and there would be no practical way to address SEPA compliance.
28

29
30 ²⁵⁴ *Norway Hill Pres. & Prot. Ass'n v. King County Council*, 87 Wn.2d 267, 272, 552 P.2d 674 (1976).

31 ²⁵⁵ *Dartford Austin Neighborhood v. Spokane Cnty.*, GMHB No. 21-1-0004 (Final Decision and Order,
September 14, 2021) at 9.

32 ²⁵⁶ *Davidson Serles & Assocs. v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 159 Wn. App. 148, 158,
244 P.3d 1003, 1008 (2010).

1 This action also interferes with GMA Planning Goal 11. The failure to comply with
2 proper SEPA procedures also denied the public an opportunity to file an appeal and have an
3 open record hearing with the City Hearing Examiner, which in turn would develop a record
4 for subsequent consideration by this Board and a subsequent court - an element of public
5 participation. Again, subsequent public process would be ineffective and moot if vesting of a
6 project in the area were to occur.
7

8 The Board finds these deficiencies substantially interfered with goals and
9 requirements of the GMA and a determination of invalidity of the entirety of the Ordinance is
10 warranted. Accordingly, Ordinance 127191 is declared invalid.²⁵⁷
11

12 **V. ORDER**

13 Based upon review of the Petition for Review, the briefs and exhibits submitted by the
14 parties, the GMA, prior Board orders and case law, having considered the arguments of the
15 parties, and having deliberated on the matter, the Board finds:

- 16 • The City has failed to comply with SEPA's procedural requirements;
- 17 • The Board defers consideration of Issues 15 and 16;
- 18 • Ordinance 127191 is non-compliant with the GMA;
- 19 • Ordinance 127191 is remanded to the City for compliance pursuant to the
20 following schedule below; and
- 21 • Continued validity of Ordinance 127191 substantially interferes with the
22 fulfillment of GMA Planning Goals 10 and 11 and therefore declares it invalid.
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32 ²⁵⁷ RCW 42.31C.030(C); RCW 36.70A.300.

Item	Date Due
Compliance Due	May 11, 2026
Compliance Report/Statement of Actions Taken to Comply and Index to Compliance Record	May 25, 2026
Objections to a Finding of Compliance	June 8, 2026
Response to Objections	June 18, 2026
Telephonic Compliance Hearing Zoom link to be provided at a later date.	June 25, 2026 1:00 p.m.

Length of Briefs – A brief of 15 pages or longer shall have a table of exhibits and a table of authorities. WAC 242-03-590(3) states: “Clarity and brevity are expected to assist a board in meeting its statutorily imposed time limits. A presiding officer may limit the length of a brief and impose format restrictions.” **The City’s Compliance Report/Statement of Actions Taken to Comply shall be limited to 25 pages, 35 pages (Petitioner/Port) and 10 pages (BNSF/Intervenor) for the Objections to Finding of Compliance, and 20 pages for the Response to Objections.**

SO ORDERED this 10th day of November, 2025.



Mark McClain, Board Member



Rick Eichstaedt, Board Chair



Alex Sidles, Board Member

Note: This is a final decision and order of the Growth Management Hearings Board issued pursuant to RCW 36.70A.300.²⁵⁸

²⁵⁸ A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days as provided in RCW 34.05.514; RCW 36.01.050. See *also* RCW 36.70A.300(5); WAC 242-03-970. It is

Appendix A: Procedural matters

Hearing on the Merits

The Hearing on the Merits convened October 7, 2025. The Board initially addressed under Preliminary Matters the Board's October 3, 2025, Order Granting, in Part, the Port's request to supplement the Record. The City did not wish to provide argument against the Board's Order and did not object to the inclusion. However, the City raised objection to the Port's referencing matters which were not included in the Record. The Board did not consider matters which were not included within this record in reaching its decision and afforded no weight to any argument not supported by the Record.

incumbent upon the parties to review all applicable statutes and rules. The staff of the Growth Management Hearings Board is not authorized to provide legal advice.