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

NO. 882520
(linked with No. 882171)

JENNIFER GODFREY, an individual,

Petitioner-Appellant,

v.

OFFICE OF THE HEARING EXAMINER OF THE CITY OF SEATTLE, a Washington municipal corporation

Respondent.

AMICUS BRIEF OF ENVIRONMENTAL ADVOCATES AND EXPERTS

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INTRODUCTION

Amici submit that the dismissals of Godfrey's appeals by the Seattle Hearing Examiner and the King County Superior Court set a dangerous precedent. Removing the ability to have quasi-judicial administrative review of the City's SEPA[1] review of major Growth Management Act (GMA)[2] planning decisions makes it difficult to ensure that the City's compliance with SEPA and the GMA will include dependable, scientifically competent analyses of likely impacts at future stages of regulatory development and project permitting.

Amici argue that without a quasi-judicial appeal process to vet the City's SEPA review of plans and development regulations before they are adopted, little or no review of cumulative or project specific impacts is likely to occur during future non-project and project-level SEPA reviews. The result is likely to be significant unmitigated adverse impacts to both the

[1] State Environmental Policy Act, chapter 43.21C RCW.

[2] Chapter 36.70A RCW.

natural and built environments due to Seattle's increasing population and development over a period of years and decades.

STATEMENT OF THE CASE

Amici adopt and incorporate the statement of the case as set forth in Jennifer Godfrey's Opening Brief.

IDENTITY AND INTEREST OF THE AMICI

The amici are non-profit environmental advocacy groups and scientists. The advocacy groups have an interest in the impacts likely to result from the actions of Respondent City of Seattle. The scientists are experts in the management of the resources that are likely to be impacted. As a group the amici have a particularized interest in maintaining a healthful environment for the citizens of Washington. Because of their missions and expertise, the amici have a substantial interest in ensuring that government decisions made pursuant to the GMA fulfill the core purpose of SEPA "to inject environmental consciousness into governmental decisionmaking." *Columbia*

Riverkeeper v. Port of Vancouver, 188 Wn.2d 80, 392 P.3d 1025, 1030 (2017).

The identities of the amici are:

Birds Connect Seattle
Orca Conservancy
American Cetacean Society, Puget Sound Chapter
Thornton Creek Alliance
Captain Paul Watson Foundation
Orca Network
Oceanic Preservation Society
PlantAmnesty
Peter Knutson
David R. Montgomery
Geoffrey Donovan
Vivek Shandas

Amici's interests and relevant activities are described with more specificity in their Motion for Leave to File Amicus Brief.

ARGUMENT

The Growth Management Act requires the City of Seattle to periodically update its comprehensive plan every ten years. Each time the plan is updated, the City implements the new plan's policies with updated development regulations—zoning and building codes. Under SEPA, the City's legislative adoption of an updated comprehensive plan triggers the requirement for

an environmental impact statement (EIS), *see* RCW 43.21C.030(c), and SEPA itself provides a cause of action for challenging the adequacy of the EIS, *see* RCW 43.21C.075.

The Legislature has amended the GMA frequently, and in recent years those amendments have included new provisions to promote affordable housing in the face of escalating housing costs. The Legislature's mandate to municipalities to balance competing interests has led to restrictions on SEPA appeals of certain municipal actions, which the principal parties in this appeal have referred to as the "Appeal Prohibition Statutes."

Those restrictions on SEPA appeals are certainly real. But they should not be applied in a more sweeping manner than the Legislature intended, in ways that would undermine the core tenets of SEPA if taken beyond their plain language. In this case, Amici wish to inform the Court why it is important to retain challengeable SEPA review of the City's comprehensive plan and development regulation updates, consistent with the plain language of SEPA and the Appeal Prohibition Statutes.

A. In construing the scope of the Appeal Prohibition Statutes at issue in this case, it is important for this Court to consider the underlying purposes of SEPA and how those purposes advance the public's interest in environmental protection.

SEPA advances the public interest in two fundamental ways—one procedural, one substantive. Procedurally, SEPA ensures that government decisions are informed; that they are made through "deliberation, not default." *Norway Hill Pres. & Prot. Ass'n v. King Cnty. Council*, 87 Wn.2d 267, 272, 522 P.2d 674 (1976). Substantively, SEPA shapes the outcome of government decision-making by empowering agencies to make choices that would protect the public's interest in a healthful environment. *See, e.g., Polygon Corp. v. City of Seattle*, 90 Wn.2d 59, 63, 578 P.2d 1309 (1978) ("SEPA sets forth a state policy of protection, restoration and enhancement of the environment."); *Columbia Riverkeeper*, 188 Wn.2d at 91 ("The legislature enacted SEPA in 1971 to inject environmental consciousness into governmental decision-making."); Richard L. Settle, The Washington State

Environmental Policy Act: A Legal and Policy Analysis, §18-2 (SEPA review "expected to shape the substance of agency action.").

In turn, environmental review serves the purposes of SEPA only if the government has the freedom to impose mitigation, adopt more environmentally sensible designs, or even reject a proposal based on that review. Without that freedom, environmental review is no more than a papering over of decisions already made.

In cases involving SEPA timing issues, Washington courts have consistently asked whether governmental choice is preserved pending environmental review. *Int'l Longshore and Warehouse Union v. City of Seattle,* 176 Wn. App. 512, 524, 309 P.3d 654 (2013) (whether a Memorandum of Understanding would have a "coercive effect" on City of Seattle, not on the private actor, before environmental review); *Magnolia Neighborhood Planning Council v. City of Seattle*, 155 Wn. App. 305, 317, 230 P.3d 190 (2010) (considering whether the City of

Seattle bound its decision-making before review). To that end, the State SEPA regulations require environmental review to be undertaken at the "earliest possible time," WAC 197-11-055(1), a requirement that is also a hallmark of SEPA's federal counterpart, the National Environmental Policy Act (NEPA), 42 U.S. Code § 4321 et seq.[3]

When it comes to preserving governmental choice, the relevant question under SEPA is not simply whether the governmental actor has legally bound itself to a particular outcome. Rather, the "earliest possible time" requirement is meant to ensure that the government agency is still acting with

[3] See, e.g., *Pit River Tribe v. U.S. Forest Service*, 469 F.3d 768 (9th Cir. 2006) ("Federal regulations explicitly, and repeatedly, require that environmental review be timely."); *Metcalf v. Daley*, 214 F.3d 1135, 1142 (9th Cir. 2000) (NEPA review "must be taken objectively and in good faith, not as an exercise in form over substance, and not as a subterfuge designed to rationalize a decision already made."); *Conner v. Burford*, 848 F.2d. 1441, 1446 (9th Cir. 1988) ("The purpose of an EIS is to apprise decisionmakers of the disruptive environmental effects that may flow from their decisions at a time when they retain a maximum range of options."); *Save the Yaak Committee v. Block*, 840 F.2d 714, 718 (9th Cir. 1988) ("Proper timing is one of NEPA's central themes."); Cf. *Eastlake Community Council v. Roanoke Associates*, 82 Wn.2d 475, 488 n.5, 513 P.2d 36 (1973) (Washington courts look to NEPA for guidance in construing SEPA).

an open mind, not just that it technically has the ability to react to review. That is why "environmental review can be required even when the government has not made a definite proposal for actual development of the property at issue." *Magnolia*, 155 Wn. App. at 316 (citing *King County v. Washington State Boundary Review Bd. for King Cnty*., 122 Wn.2d 648 at 664, 860 P.2d 1024 (1993)).

Indeed, environmental review must come before governmental inertia and incremental decision-making takes on its own momentum and drives the project forward. *Boundary Review Bd*., *op. cit*. ("Even a boundary change, like this one, may begin a process of government action which can 'snowball' and acquire virtually unstoppable administrative inertia."). *See also* William H. Rodgers, *The Washington Environmental Policy Act*, 60 Wash. L. Rev. 33, 54 (1984) (postponing review risks "a dangerous incrementalism where the obligation to decide is postponed successively while project momentum builds.").

B. The City of Seattle's interpretation of the Appeal Prohibition Statutes would undermine the efficacy of administrative appeals of SEPA decisions for proposed government-sponsored GMA compliance actions.

The fundamental purpose of a SEPA appeal is to identify significant adverse impacts that an agency missed, or gaps and errors that undermine the reliability of its environmental impact analysis. Typically, when an agency is charged in a neutral capacity with reviewing a third-party proposal (such as an application for a private development permit), appeals may only be considered at the very end of the agency's decision-making process, and must be combined with any other hearing that may be held on the underlying permit. *See* RCW 43.21C.075(3)(b). However, when the agency itself is the project proponent—either of a project-level action or a non-project action such as the One Seattle Plan or implementing development regulations—SEPA specifically envisions that administrative appeals will be concluded *before* the agency acts. *Id*. at (3)(b)(ii–iii).

Although not stated in SEPA itself, Amici respectfully suggest that the obvious purpose of allowing pre-decisional

SEPA appeals when the agency itself is the project proponent is to ensure that the ultimate decisionmaker (here, the Seattle City Council) has the benefit of the decision of a neutral adjudicator before it decides how to proceed.

Administrative SEPA appeals can be important forums for ferreting out gaps and errors in the environmental review process, as judged by a neutral decisionmaker on the basis of competent (and often highly technical) evidence. When an agency acts in the neutral capacity of reviewing a third-party proposal, such as a project needing a City permit, it naturally has little or no "stake in the outcome," and so there is less risk that delaying the time for appeal will lead to administrative bias and inertia. But when an agency is reviewing the environmental impacts of its own, in-house proposal—for which the agency itself is an active proponent—the risk of bias and inertia are naturally greater, and thus it is especially important for SEPA appeals to be heard and decided before the agency acts.

In this case, Amici understand that the City of Seattle's position is that the One Seattle Plan FEIS can be challenged to the Growth Management Hearings Board after the plan is approved. *See* City of Seattle Resp. Br. at 20–23. Amici agree with Godfrey that forcing a delay in the appeal process is not required by the plain language of the Appeal Prohibition Statutes. Should the Court determine that those statutes are ambiguous, Amici ask the Court to consider the special need for pre-decisional SEPA appeals when the City itself is the project proponent and when the risk of bias and administrative inertia are the greatest.

C. The GMA, SEPA, and their respective rules require integrated and iterative implementation of the two statutes.

In addition to considering the unique role of SEPA appeals when the agency itself is an active project proponent (and the unique risks of delaying such appeals until after the agency acts on its proposal), this Court should also consider how delaying or

avoiding administrative appellate review can have far-reaching impacts on future actions affecting the environment.

As this Court is likely aware, over the past decades the Washington Legislature has passed several laws aiming to streamline the SEPA review process and to integrate SEPA with the GMA. The Department of Ecology has likewise adopted several administrative rules designed to "mesh" the two statutes together.

1. GMA and SEPA implementation both flow from broad non-project comprehensive plans and implementing development regulations through to project specific permitting and effectiveness monitoring.

SEPA is referenced over forty times in the GMA. The purposes of the GMA overlap with SEPA, including to "Protect and enhance the environment and enhance the state's high quality of life, including air and water quality, and the availability of water." RCW 36.70A.020(10). Public engagement requirements are numerous, including a goal to "reconcile conflicts" through

"[c]itizen participation and coordination." RCW 36.70A.020(11).

SEPA directs the Department of Ecology to promulgate

> Rules for utilization of a detailed statement for more than one action and rules improving environmental analysis of nonproject proposals and encouraging better interagency coordination and integration between this chapter and other environmental laws.

RCW 43.21C.110. To comply with this directive Ecology has promulgated a series of WAC sections that deal with many aspects of SEPA/GMA integration.[4]

SEPA also makes clear that OPCD's bootstrapping of development regulations into an EIS for the comprehensive plan is not appropriate:

> Amendments to development regulations that are required *to* ensure consistency with an *adopted*

[4] WAC 197-11-158 SEPA/GMA project review—Reliance on existing plans, laws, and regulations
WAC 197-11-210 SEPA/GMA integration
WAC 197-11-220 SEPA/GMA definitions
WAC 197-11-228 Overall SEPA/GMA integration procedures
WAC 197-11-230 Timing of an integrated GMA/SEPA process
WAC 197-11-232 SEPA/GMA integration procedures for preliminary planning, environmental analysis, and expanded scoping
WAC 197-11-235 SEPA/GMA integration documents
WAC 197-11-238 SEPA/GMA integration monitoring

> *comprehensive plan* pursuant to RCW 36.70A.040, where the comprehensive plan was *previously subjected to environmental review* pursuant to this chapter and *the impacts associated with the proposed regulation were specifically addressed* in the prior environmental review

RCW 43.21C.450(1) (emphasis added). Here, there is no evidence in the record that specific impacts of the proposed development regulations were addressed with the level of data and analyses needed to accurately project likely impacts, let alone to enable adequate mitigation measures.

In acknowledgment of the ongoing cyclical nature of planning and implementation, OPCD included in its contract with the major EIS preparation consultant (BERK) this provision in the scope of work for EIS preparation[5]:

> Throughout the process, the Consultant team's engagement will: … Address engagement fatigue and questions about lack of concrete results from prior plans.

[5] Consulting Contract "PC022-002 Seattle Comprehensive Plan Update EIS" available at: https://coscontractsearchportal.masterworkslive.com/.

There is little in the FEIS showing that this monitoring and compliance activity happened. Thus, amici are concerned that the City is not complying with the rule titled "SEPA/GMA integration monitoring," which reads as follows:

> Monitoring information is important to maintain the usefulness of the environmental analysis in plans and development regulations for project-level review and to update plans under chapter 36.70A RCW. GMA counties/cities are encouraged to establish a process for monitoring the cumulative impacts of permit decisions and conditions, and to use that data to update the information about existing conditions for the built and natural environment. If a monitoring process is developed, it should be established at the time information on existing conditions is developed. Annual or periodic reports summarizing the data and documenting trends are encouraged.

WAC 197-11-238.

The GMA itself mandates that "Each comprehensive land use plan and development regulations shall be subject to continuing review and evaluation by the county or city that adopted them." RCW 36.70A.130(1)(a). This requirement can lead to reversal of substantive land use decisions made without

the benefit of or consistent with the required review and evaluation:

> The record therefore supports the Board's conclusion that the County did not comply with the review requirements of RCW 36.70A.130 when it failed to conform its 2005 comprehensive plan to the LAMIRD statute and also supports the Board's decision to remand this case for the County to adopt compliant criteria.

Gold Star Resorts, Inc. v. Futurewise, 798, 167 Wn.2d 723, 222 P.3d 791 (2009).

One of Godfrey's main concerns is the unnecessary increase in impervious surfaces resulting from the removal of large trees to accommodate higher density housing. Amici are very familiar with this issue and believe the City has failed to update its tree ordinance to actually "protect trees." For example, an interdepartmental team did a careful evaluation of the City's tree code in 2016–2017 and determined that the City's "Current code is not supporting tree protection."[6]

[6] Document is available at: https://www.seattle.gov/Documents/Departments/UrbanForestryCommissi

Amicus Birds Connect Seattle submitted detailed comments in a 31-page submittal including data based analyses of the failures of the EIS to admit to or require mitigation of likely significant adverse impacts.[7] In response, OPCD said environmental justice "is beyond the scope of environmental review of the One Seattle Plan, so no response is necessary," and regarding tree canopy included the suggestion that "The Final EIS includes additional illustrations that show how new units in Neighborhood Residential areas *can be designed to avoid impacts*." (emphasis added).

The fact that project level permitting may need mitigation to avoid significant adverse impacts exemplifies the weaknesses of the lack of quasi-judicial SEPA reviews at the project permit stage. Lack of an analysis of the impacts of "maximum potential

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on/Resources/Final%20Report_Tree%20Regulation%20Research%20ProjectPahseII_31MAR2017_final.pdf.

[7] FEIS Appendix K, pdf pp. 704-734 (tree canopy and environmental justice issues), available at https://www.seattle.gov/documents/Departments/OPCD/SeattlePlan/FEIS2025/OneSeattlePlanFEIS-Chapter6-Appendices.pdf.

development" at the development regulation adoption stage is contrary to settled SEPA law:

> [A] county, city, or town may not rely on its existing plans, laws, and regulations when evaluating the adverse environmental impacts of a nonproject action. *Spokane County v. E. Wash. Growth Mgmt. Hr'gs Bd.*, 176 Wash. App. 555, 578 n.4, 309 P.3d 673 (2013). Rather, "an EIS is adequate [under SEPA] in a nonproject zoning action where the environmental consequences are discussed in terms of the maximum potential development of the property under the various zoning classifications allowed." *Ullock v. City of Bremerton*, 17 Wash. App. 573, 581, 565 P.2d 1179 (1977).

Heritage Baptist Church v. Cent. Puget Sound Growth Mgmt. Hearings Bd., 2 Wn. App. 2d 737, 413 P.3d 590, 599 (2018).

Many of the City's mitigation measures rely on project level mitigation to avoid significant adverse environmental impacts from the loss of large trees and increases in impervious surfaces. Project-specific measures like stormwater management systems, green infrastructure, and permeable pavements can mitigate *some* impacts. Amici believe the data clearly shows that project level impacts continue to mount despite project level mitigation. Cumulative effects from impervious surfaces are

poorly handled and the City's proposed development regulations allow for removal of large trees, to be "replaced" by small trees that will not provide the same mitigation for decades, if ever.

2. After development regulations are adopted and implemented it is too late to add effective mitigation to vested projects.

Most importantly, if effectiveness monitoring of mitigation measures is not performed, the City will not be able to adapt to changed circumstances and unmitigated impacts are likely to increase. "Without a compliant monitoring system, the adaptive management program cannot be compliant as the county cannot adequately adapt its management of critical areas if it is unable to adequately detect changes to them." *Swinomish Indian Tribal Community v. Western Washington Growth Management Hearings Board*, 161 Wn.2d 415, 166 P.3d 1198 (2007).

Adaptive management is a component of "best available science." The 2025 Legislature has inserted a requirement that the now well established "best available science" used for critical

area protection[8] will also be required for the "climate change and resilience" element in the City's next major comprehensive plan update. Without being subjected to "peer review" in front of a neutral arbiter, amici's experience is that the City is not likely to be prepared for this new requirement with regard to the lack of a good monitoring program for environmental and public health concerns.

Amici's concern in this regard is further heightened by the City's current consideration of Council Bill 191093.[9] That proposed bill implements—and goes beyond—recent state legislation intended to expand exemptions from SEPA review of specific categories of infill development, codified at RCW

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[8] RCW 36.70A.070(9): "(e)(i) The resiliency element must equitably enhance resiliency to, and avoid or substantially reduce the adverse impacts of, climate change in human communities and ecological systems through *goals, policies, and programs consistent with the best available science* and scientifically credible climate projections and impact scenarios that moderate or avoid harm, enhance the resiliency of natural and human systems, and enhance beneficial opportunities." (emphasis added)

[9] CB 121093 was heard in the City Council's Land Use Committee on December 3, 2025. This Council Bill is available at ://seattle.legistar.com/LegislationDetail.aspx?ID=7699273&GUID=E993C2BF-42BB-4986-AACF-B443822DE09D.

43.21C.229 ("Infill and housing development—Categorical exemptions from chapter."). The proposed bill recitals expressly rely on the One Seattle Plan EIS at issue here to justify expanded exemptions beyond those required by the state law:

> . . . an Environmental Impact Statement (EIS) has been completed for the Comprehensive Plan update that considers the uses and proposed density proposed for changes in SEPA categorical exemption levels, and The City of Seattle has fulfilled other obligations indicated in RCW 43.21C.229.

CB 121093v1, p.1. The problem, of course, is that if the EIS for the One Seattle Plan is not reviewed for compliance with SEPA, then the City's reliance on it for CB 191093 will not be justified.

One of the clearest examples of how the City's "cart before the horse" approach to SEPA and GMA is likely to cause significant unmitigated environmental harms is the consistent increase in the allowed percentage of impervious surfaces on new infill developments in the City's various zoning code provisions, such as allowing 80% lot coverage with buildings, plus additional "exceptions" for uses such as sidewalks and

patios that do provide space for trees. The higher the percentage of impervious surface allowed, the more difficult it is to mitigate for the significant adverse impacts of toxic laden stormwater runoff.[10]

The foregoing concerns were brought forward by both Godfrey and some of the amici. CP at 36-37. SEPA and GMA require that these issues be given a fair hearing.

CONCLUSION

Amici respectfully request that Godfrey—and her expert witnesses—have an opportunity to address OPCD's monitoring, impact, and mitigation assessments in the One Seattle Plan EIS before an unbiased hearing examiner as explicitly provided in SEPA and the Seattle Municipal Code. The current best available science indicates that such a review is the minimum process needed to ensure that significant adverse impacts on the environment are mitigated.

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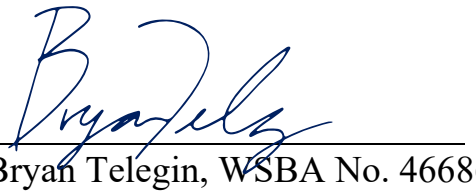
[10] See, e.g., State Department of Ecology website: https://ecology.wa.gov/water-shorelines/water-quality/nonpoint-pollution/stormwater.

Dated this 24th day of December, 2025.

Respectfully submitted,

TELEGIN LAW PLLC

The undersigned certifies that this brief contains 3,591 words, in compliance with RAP 18.17(c)(6).

By: 

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CERTIFICATE OF SERVICE

I hereby certify that on December 24, 2025, I caused to be served a true and correct copy of the foregoing AMICUS BRIEF OF ENVIRONMENTAL ADVOCATES AND EXPERTS on each of the persons and in the manner listed below:

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