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SHORELINE CITY ATTORNEY

IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR THURSTON COUNTY

SHORELINE PRESERVATION SOCIETY,
a Washington Non-Profit Organization,
JANET WAY, JOHN BEHRENS, and
WENDY DIPESO;
PETITIONERS,
v.

GROWTH MANAGEMENT HEARINGS
BOARD CENTRAL PUGET SOUND
REGION, STATE OF WASHINGTON a
state administrative board;

RESPONDENT.

NO. 16-2-00135-34

PETITION FOR JUDICIAL REVIEW
OF STATE AGENCY ACTION

RCW ch. 34.05; RCW ch. 36.70A;
RCW ch. 43.21C

Petitioners Shoreline Preservation Society, Janet Way, John Behrens and Wendy DiPeso submit the following Petition for Judicial Review of an action taken by the Growth Management Hearings Board, Central Puget Sound Region, a state agency. This appeal is brought pursuant to RCW Chapter 34.05, the Washington State Administrative Procedures Act and the Growth Management Act, RCW 36.70A.300.

I. NAME AND MAILING ADDRESS OF PETITIONERS

The Petitioners appear by and through the undersigned law firm. The identity of the Petitioners and each of their respective addresses are as follows:

PETITION FOR JUDICIAL REVIEW OF
AGENCY ACTION

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Dykes Ehrlichman P.S.
Attorneys at Law
P.O. Box 1271, Freeland, WA 98249
(360) 224-8664 email: barbara@dykesehrlichman.com

1 A. Shoreline Preservation Society. The Shoreline Preservation Society is an active
2 Washington state non-profit corporation with a mailing address of 940 NE 147th Street, Shoreline,
3 Washington 98155.

4 B. Janet Way. Janet Way brings this appeal as a citizen of the City of Shoreline. She is also
5 President of the Shoreline Preservation Society. Her mailing address is 940 NE 147th Street,
6 Shoreline, Washington 98155.

7 C. John Behrens. John Behrens brings this appeal as a citizen of the City of Shoreline. He is
8 also Treasurer of the Shoreline Preservation Society. His mailing address is 18332 Meridian Ave. N.,
9 Shoreline, Washington 98133.

10 D. Wendy DiPeso. Wendy DiPeso brings this appeal as a citizen of the City of Shoreline.
11 She is also Secretary of the Shoreline Preservation Society. Her mailing address is 328 NE 192nd
12 Street, Shoreline, Washington 98155.

13 **II. NAME AND MAILING ADDRESS OF PETITIONERS' ATTORNEY**

14 Petitioners' attorneys are the law firm of Dykes Ehrlichman P.S., with a mailing address of
15 P.O. Box 1271, Freeland, WA 98249, by and through the appearance of partners Barbara Dykes
16 Ehrlichman, WSBA No. 18378, and Tom Ehrlichman, WSBA No. 20952.

17 **III. NAME AND MAILING ADDRESS OF AGENCY WHOSE ACTION IS AT ISSUE**

18 3.1 The agency whose action is being appealed is the Growth Management Hearings Board
19 Central Puget Sound Region, State of Washington. The Board's mailing address is: Growth
20 Management Hearings Board, Environmental and Land Use Hearings Office, P.O. Box 40903,
21 Olympia, WA 98504.

22 3.1.1 The Board is a state agency created by the legislature, under a section of the
23 Growth Management Act ("GMA"). RCW 36.70A.250.

24 3.1.2 The Board has jurisdiction under RCW 36.70A.280 to hear appeals of certain
25 specified legislative actions of the City of Shoreline and other Puget Sound cities and counties
26 adopted under the GMA.

1 3.1.3 The Board also has jurisdiction to hear related appeals under RCW ch. 43.21C,
2 the State Environmental Policy Act ("SEPA").

3 3.2 Petitioners must also serve a copy of this Petition on the Washington State Attorney
4 General, Counsel for the Growth Management Hearings Boards, pursuant to RCW 34.05.542(3). The
5 Attorney General's mailing address is: 1125 Washington Street SE, Olympia, WA 98501.

6 **IV. IDENTIFICATION OF THE AGENCY ACTION AT ISSUE, BRIEF DESCRIPTION**

7 4. Petitioners appeal the *Final Decision and Order* of the Growth Management Hearings
8 Board, Puget Sound Region, in Case No. 15-3-0002 (issued December 16, 2015), including a
9 dispositive motion ruling in the same proceeding entitled: *Order on Motions* (issued September 10,
10 2015). The Board's summary of its *Final Decision and Order* is attached hereto as Exhibit A-1. The
11 decision in full can be accessed on the worldwideweb at:

12 <http://www.gmhb.wa.gov/LoadDocument.aspx?did=3906>. The Board's summary of its *Order on*
13 *Motions* and the resulting revised legal issues in the case are attached hereto as Exhibit A-2. The
14 decision in full can be accessed on the worldwideweb at:

15 <http://www.gmhb.wa.gov/LoadDocument.aspx?did=3843>.

16 **V. IDENTIFICATION OF PERSONS WHO WERE**
17 **PARTIES TO THE AGENCY PROCEEDINGS**

18 5.1 Parties to the agency proceedings included all of the Petitioners identified above
19 (Shoreline Preservation Society, Janet Way, John Behrens, and Wendy DiPeso).

20 5.2 Parties to the agency proceedings also included the City of Shoreline, a municipal
21 corporation. In the proceedings below, the City was represented by Margaret King, City Attorney,
22 and Julie Ainsworth-Taylor, Assistant City Attorney. The mailing address for the City and the City's
23 attorneys is: 17500 Midvale Avenue N, Shoreline, WA 98133.

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VI. JURISDICTION AND VENUE

6.1 The Court has jurisdiction over this appeal of the Board's agency action described in Section IV, above, pursuant to the GMA, RCW 36.70A.300(5), SEPA, RCW ch. 43.21C.075, and the State Administrative Procedures Act (APA), RCW 34.05.510, .514(1).

6.2 Petitioners have standing to seek review of the Board's action pursuant to the GMA and the APA, as set forth in Section VII, below.

6.3 Venue is proper in Thurston County pursuant to RCW 36.70A.300, RCW 34.05.514(1)(a), and RCW 34.05.570.

VII. FACTS DEMONSTRATING PETITIONERS ARE ENTITLED TO JUDICIAL REVIEW

A. **Standing.** The Petitioners have standing to bring this appeal for judicial review. Each of the facts in this Section VII are intended to be included in each of the following paragraphs 7.1 – 7.4 concerning standing.

7.1 Petitioners Have Standing Pursuant to the GMA and the APA.

Petitioners are parties aggrieved individually by the Board's decisions and orders described herein. As parties with standing below whose issues were presented to and decided by the Board, they have standing to bring this petition for judicial review under the judicial review provisions of GMA, SEPA, and the APA. The standing requirements before this court under all three statutes are similar and overlap. Thus, the detailed facts demonstrating Petitioners' standing under the APA subsection, para. 7.4 below, are intended to apply equally to the GMA and SEPA standing subsections.

7.2 GMA Standing. Petitioners each had standing before the Board under RCW 36.70A. .280(2), 300(5), based on their dedicated participation in the City legislative proceedings and environmental review process on the issues reviewed by the Board. Those issues are identified below. The evidence supporting their record of participation and issue-presentation is part of the Board's record of decision. The Board confirmed Petitioners' standing under GMA and SEPA in its orders. The GMA and SEPA issues decided by the Board's *Final Decision and Order* were the legal issues framed by the Petitioners below. The Petitioners are directly aggrieved by the Board's denial of their

1 appeal below. No other party can obtain judicial review of the Petitioners' interests in this matter
2 under GMA and SEPA. Petitioners have no other adequate remedy at law or equity to challenge the
3 Board's rulings. RCW 34.05.510.¹

4 7.3 SEPA Standing. Petitioners interests were among those the Board and the City of
5 Shoreline were required to consider because they are citizens and residents of the City with real
6 property ownership interests adjacent to or within the planned rezone area. They adequately alleged
7 facts before the Board showing the direct and perceptible harm the City's planning actions would have
8 on Petitioners respectively if not overturned. The Board upheld their SEPA standing. Those
9 allegations of harm and are detailed below.

10 7.4 APA Standing. Each of the Petitioners below has standing to bring this matter
11 before the Superior Court for review. Each of the Petitioners meet the requirements of RCW
12 34.05.530, which states:

13 A person has standing to obtain judicial review of agency action if that person
14 is aggrieved or adversely affected by the agency action. A person is aggrieved
15 or adversely affected within the meaning of this section only when all three of
16 the following conditions are present:

- 17 (1) The agency action has prejudiced or is likely to prejudice that person;
18 (2) That person's asserted interests are among those that the agency was
19 required to consider when it engaged in the agency action challenged; and
20 (3) A judgment in favor of that person would substantially eliminate or redress
21 the prejudice to that person caused or likely to be caused by the agency action.

22 The Petitioners meet each of the three requirements set out in RCW 34.05.530. Each of the
23 Petitioners is aggrieved and adversely affected by the Board's decisions to dismiss their appeal of
24 Ordinances 702, 706, and 707. The Board's decisions have prejudiced or are likely to prejudice each
25 of the Petitioners, as outlined in more detail in the paragraphs below. The Board was required to
26 consider the interests of Petitioners as litigants who properly brought an appeal before the Board and
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28 ¹ Petitioners challenged City of Shoreline Ordinance No. 707 before the Board. In its *Order on Motions*, the Board declined jurisdiction over that claim. Prior to the Board's ruling, during the 21-day appeal period under RCW ch. 30.70C, Petitioners appealed Ord. No. 707 in King County Superior Court as a placeholder in the event the Board did not have jurisdiction. See King County Superior Court Case No. 15-2-08360-1 SEA. Petitioners challenge the Board's ruling in this Petition, based on the belief the Board does have jurisdiction.

1 as citizens of the City of Shoreline who had participated in the City public process leading up to the
2 adoption of Ordinances 702, 706, and 707. A court judgment reversing the Board's decisions
3 dismissing the Petitioners' appeal would substantially eliminate or redress the prejudice caused by the
4 Board's actions. More information on each of Petitioners and how each meets the standing
5 requirements is provided in the following four paragraphs.

6 7.4.1 Petitioner Shoreline Preservation Society. The Shoreline Preservation Society
7 (SPS) is an active Washington non-profit corporation founded September 13, 2010, UBI Number
8 60347960.

9 7.4.1.1 The SPS is a local, grassroots organization fostering the
10 preservation of Shoreline's neighborhoods, as well as historical, cultural and environmental assets
11 throughout the Shoreline area. A major component of the work of SPS is to educate Shoreline
12 residents and disseminate information about proposed changes and impacts due to rezones and other
13 city or developer actions, to participate in the public process, and to provide alternatives as needed to
14 preserve the character of Shoreline's neighborhoods.

15 7.4.1.2 SPS will be directly harmed by the implementation of this
16 Board's decision and the implementation of Shoreline City Ordinances 702, 706, and 707 because the
17 character of the neighborhoods in the 185th Street Subarea, as well as surrounding areas, including the
18 historic, cultural and environmental assets, will likely be substantially altered and diminished, if not
19 destroyed by new high density development authorized by these Ordinances without the necessary
20 infrastructure to support it.

21 7.4.1.3 In adopting the 185th Street Subarea Plan, Rezone and Planned
22 Action Ordinance, the City of Shoreline failed to conduct adequate planning as required by the GMA
23 (in particular capital facilities planning) and environmental review to ensure that a dramatic and
24 intensive increase in density and up-zone in the 185th Street Subarea would not negatively affect city
25 infrastructure such as transportation networks, surface water management, water supply, sewer, and
26 schools. Because of the lack of adequate infrastructure and the lack of identified funds to pay for new
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1 infrastructure, negative impacts will result from the Board's approval of these ordinances and the
2 consequent development authorized under these Ordinances will diminish the quality of life in the
3 City of Shoreline. Infrastructure will be inadequate to handle the large surge in population that will
4 result if these densities are implemented. These impacts will destroy the character of these
5 neighborhoods which SPS is dedicated to preserving.

6 7.4.2 Petitioner Janet Way. Janet Way resides at 940 NE 147th Street, Shoreline,
7 Washington 98155. Ms. Way has resided in the City of Shoreline (City) since its incorporation in
8 1995, and in the same home for 25 years. She is the President of Shoreline Preservation Society.

9 7.4.2.1 Ms. Way is deeply committed to maintaining the character of the
10 City of Shoreline and the surrounding areas, particularly in preserving the Thornton Creek Watershed,
11 fish and wildlife habitat, and the tree canopy within the City. Her commitment is evidenced by her
12 activities with SPS, Thornton Creek Alliance, the Paramount Park Neighborhood Group, and the
13 Thornton Creek Legal Defense Fund. Ms. Way served on the Shoreline City Council from 2005-
14 2009, as well as the Shoreline Parks, Recreation and Cultural Services Commission from 1999-01.

15 7.4.2.2 Ms. Way will be harmed by the Board's decisions approving the
16 adoption of Shoreline City Ordinances 702, 706, and 707 because she will suffer from the negative
17 impacts of poorly planned intensive urban development near her home, including worsening traffic,
18 drainage impacts, impacts to the Thornton Creek watershed which she has worked so hard to restore,
19 and destruction of fish and wildlife habitat and the tree canopy within the City of Shoreline. She
20 enjoys the quiet neighborhood feel of the City of Shoreline, the many birds that live in the tree
21 canopy, and the areas of wildlife habitat, many of which will be substantially altered and diminished,
22 if not destroyed by the dense urban development that will result from adoption of these ordinances
23 and the Board's approval thereof, particularly without adequate planning for urban infrastructure to
24 support it. Also, Ms. Way will be impacted by the loss of rights to advocate for the environment
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1 through notice, comment and appeal any developments in the subarea due to the Planned Action
2 Ordinance.

3 7.4.3 Petitioner John Behrens. John Behrens resides at 18332 Meridian Ave. N,
4 Shoreline, Washington 98133. Mr. Behrens has resided in the City of Shoreline (City) since its
5 incorporation in 1995, and in the same home for 23 years. He is the Treasurer of Shoreline
6 Preservation Society.

7 7.4.3.1 His home is immediately adjacent to the MUR-45 zone, which
8 was put in place through Ordinances 702, 706, and 707, and approved by the Board in the decisions
9 now being appealed. Mr. Behrens now faces the prospect of a 45-foot high building being erected
10 five feet from his property line without adequate environmental review under the State Environmental
11 Policy Act (SEPA), which may house residential, commercial, or other uses. Up until March 16,
12 2015, this entire area was zoned single family residential.

13 7.4.3.2 Mr. Behrens will be harmed by the negative impacts of poorly
14 planned intensive urban development near his home, including worsening traffic, drainage impacts,
15 impacts to the Thornton Creek watershed, and destruction of wildlife habitat and the tree canopy
16 within the City of Shoreline. He enjoys the quiet neighborhood feel of the City of Shoreline, the
17 many birds that live in the tree canopy, and the areas of wildlife habitat, most of which will be
18 substantially degraded if not destroyed by the dense urban development that will result from adoption
19 of these ordinances and the Board's approval thereof, particularly without adequate planning for urban
20 infrastructure to support it.

21 7.4.4 Petitioner Wendy DiPeso. Wendy DiPeso resides at 328 NE 192nd Street,
22 Shoreline, Washington 98155. Ms. DiPeso has resided in the City of Shoreline (City) since 2002.
23 She is also the Secretary of the Shoreline Preservation Society.

24 7.4.4.1 Ms. DiPeso's family home is within the phase II area of the
25 rezoned adopted under Ordinance 706 by the City of Shoreline. Once the zoning automatically phases
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1 in, without any further public participation process, she and her family are threatened with the specter
2 of being surrounded by 7 to 14 story buildings blocking solar access needed for their vegetable garden
3 upon which they depend during the summer. Ms. DiPeso will be harmed by the negative impacts of
4 poorly planned intensive urban development near her home, including worsening traffic, drainage
5 impacts, impacts to the Thornton Creek watershed, and destruction of wildlife habitat and the tree
6 canopy within the City of Shoreline.

7 7.4.4.2 Ms. DiPeso enjoys the quiet neighborhood feel of the City of
8 Shoreline, the many birds that live in the tree canopy, and the areas of wildlife habitat, most of which
9 will be substantially degraded or destroyed by the dense urban development that will result from
10 adoption of these ordinances and the Board's approval thereof, particularly without adequate planning
11 for urban infrastructure to support it.

12 **B. Exhaustion of Remedies and Timely Filing.**

13 7.5 Petitioners Have Exhausted Their Administrative Remedies. RCW 34.05.534
14 Petitioners have exhausted their administrative remedies in completing their appeal to the Growth
15 Management Hearings Board, as required by RCW 34.05.534.

16 7.6 The Petition is Timely Filed. RCW 34.05.542. Petitioners have timely filed and
17 served the Petition for Judicial Review pursuant to RCW 34.05.542.

18 **C. The City of Shoreline's Zoning Action Reviewed by the Hearings Board.**

19 7.7 This appeal stems from legislative decisions by the Shoreline City Council, rezoning a
20 large area surrounding a planned mass transit stop at 185th Street, adjacent to Interstate 5 within the
21 City of Shoreline. The Council adopted zoning so dense the City acknowledges it will accommodate
22 approximately 100-years worth of future growth. Petitioners objected to the process and lack of fiscal
23 planning underlying that decision.

24 7.8 Sound Transit is in the process of extending light-rail past the City of Shoreline to
25 Lynnwood, in what is known as the "Lynnwood Extension Project." Two of the proposed stops occur
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1 within the City of Shoreline: one at 145th Street and I-5, and a second at 185th Street and I-5. Sound
2 Transit made the decision to go forward with the Lynnwood Extension Project on April 16, 2015.

3 7.9 Anticipating that Sound Transit would actually decide to extend light rail to
4 Lynnwood, the Shoreline City Council adopted a subarea plan, development regulations, and a
5 “planned action” ordinance for the 185th Street Station area, utilizing its authority under the GMA.
6 Just prior to adoption, the City approved a Final Environmental Impact Statement (“EIS”) under
7 SEPA.

8 7.10 In a concurrent, but separate process, the City started the identical process for the 145th
9 Street Station area. The EIS’ for the 145th Street Station, the 185th Street Station, and the Lynnwood
10 Extension Project are all interdependent, but none are linked to each other.

11 7.11 On March 16, 2015, the City adopted Ordinances 702 (subarea plan), 706
12 (development regulations and zoning map), and 707 (“planned action”), which implement its vision
13 for the future of 185th Street. The City also adopted a FEIS entitled “185th Street Subarea Planned
14 Action Final Environmental Impact Statement” dated December 14, 2014. The titles of these
15 Ordinances are as follows:

16 Ordinance No. 702, entitled:

17 *An Ordinance of the City of Shoreline Adopting the 185th Street Station Subarea Plan*
18 *and Amending the Comprehensive Plan and Land Use Map to Include the Subarea*
Plan.

19 Ordinance No. 706, entitled:

20 *An Ordinance of the City of Shoreline Amending the Unified Development Code,*
21 *Shoreline Municipal Code Title 20, and the Official Zoning Map to Implement the 185th*
Street Station Subarea Plan.

22 Ordinance No. 707, entitled:

23 *An Ordinance of the City of Shoreline Designating a Planned Action for the 185th*
Street Station Subarea Plan Pursuant to the State Environmental Policy Act.

1 Under Ordinance 706, the re-designation and rezoning of the subarea occurs in three phases,
 2 as outlined in the table below:²

Phases for Zoning	Date Zoning Goes Into Effect	Acreage Rezoned
Phase 1	March 16, 2015	Total =165 acres MUR-35 = 33 acres MUR-45 = 47 acres MUR-70 = 85 acres
Phase 2	March 16, 2021	Total =47 acres MUR-35 = 16 acres MUR-45 = 8 acres MUR-70 = 23 acres
Phase 3	March 16, 2033	Total =81 acres MUR-35 = 49 acres MUR-45 = 21 acres MUR-70 = 11 acres

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 19 7.12 These phases are effected automatically, meaning there is no required public
 20 participation, no additional environmental review no required re-assessment of capital facility
 21 needs by the City Council, and no required review of possible funding sources by the City Council,
 22 the City's legislative body, prior to the effective date of the subsequent phases II and III.

23 7.13 The only requirement for any consideration of the subsequent phases before they go
 24 into effect is the compilation of a report comparing planning assumptions to actual growth and
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 27 ² Ordinance 706 at Section 2. Acreages derived from March 16, 2015 staff report to City Council.

1 development, as well as reviewing progress on mitigation measures.³ There are no subsequent
2 processes identified for reconsidering the zoning choices in a public forum.

3 7.14 Presently, the 185th Street subarea is a solidly single family neighborhood covered by
4 Shoreline's signature tree canopy. The previous density of the area before the City's actions was
5 approximately 2.7 dwelling units per acre. According to the Subarea Plan, the subarea's existing
6 population is 7,944 people. This subarea, rezone, and planned action allows for buildings of 4-7
7 stories with densities upward of 48 dwelling units per acre with a build out population of
8 approximately 56,529 people -- a population eight times its existing size, and larger than the existing
9 population of the City of Shoreline as a whole.

10 7.15 Because the King County population targets adopted pursuant to the GMA only require
11 the City of Shoreline to create an additional 5800 households by 2035 (translating to approximately
12 13,920 new residents in the entire city), this action by the City of Shoreline, as articulated by the
13 Petitioners at the hearing, is a "massive and . . . huge overreach."

14 7.16 In one stroke of the pen, the City Council radically transformed a City which prides
15 itself on livability and quality of life, good schools, and a breathing and continuous canopy of trees,
16 into an urban center not unlike South Lake Union or Ballard. Because of the already developed
17 character of the neighborhoods as low density single family, Petitioners were concerned that the
18 planned wholesale transformation and transition to high density would be difficult and lack necessary
19 infrastructure improvements.

20 7.17 Because of their concerns, Petitioners Way, Behrens, and DiPeso studied the City's
21 proposal and its underlying analysis, finding that the City planners had listed a broad range of
22 infrastructure improvements that would be necessary for stormwater, traffic, potable water, fire and
23 public safety and other public services, but had not provided any analysis of how the list of needed
24 improvements could be funded to meet the planned massive influx of density.

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27 ³ Ordinance 706 at Section 3.

1 7.18 Concerned about the lack of potential funding sources, Petitioners participated
2 extensively in the City's process during consideration of this high-density alternative. Their concern
3 was not speculative or political in nature. Petitioners have made Shoreline their home for decades,
4 because of the character of the single family neighborhoods, and are not interested in moving
5 anywhere else.

6 7.19 Necessarily, the City's plan calls for complete redevelopment of single-family
7 neighborhoods within the large rezone area. There will be many years in which investors and real
8 estate speculators will buy up properties for re-development, but because they cannot obtain large
9 blocks of properties all at once, many homes will either sit empty or transition to rental units for an
10 indeterminate length of time. Petitioners voiced their concerns that the city's neighborhoods will
11 deteriorate.

12 7.20 Petitioners advocated a more conservative approach would be to plan as the GMA
13 requires for a small area around the station (which is what Sound Transit recommended), and allow
14 the neighborhoods in the larger area to transition as the need arises. In that way, the infrastructure
15 could be adequately planned necessary to support new development and could be paid for on a
16 realistic timeline.

17 7.21 Unfortunately, the conservative approach was not employed by the City in this case.
18 Instead, the City's adopted new subarea plan and intensive new zoning are based on the most
19 optimistic of planning experiments; Petitioners see no evidence of capital facilities planning in the
20 manner required by the GMA to support this explosive growth, nor do they see any statistical
21 evidence indicating this level of growth will ever come to pass.

22 **D. Petitioners' Appeal to the Growth Management Hearings Board.**

23 7.23 Based on their belief that the law requires growth to be adequately supported by
24 coordinated planning with utility providers, and capital facilities planning that identifies where funds
25 will come from to pay for growth, Petitioners filed a petition with the Growth Management Hearings
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1 Board, hoping to obtain an independent, impartial review of the City's overzealous rezone and density
2 expansion at 185th Street.

3 7.24 Petitioners filed the appeal with the Board because they are also particularly concerned
4 about the adoption of the Planned Action Ordinance (Ordinance 707) which eliminates review under
5 the State Environmental Policy Act for future site-specific apartment and retail projects falling within
6 this subarea.

7 7.25 Petitioners believed that this use of the new "planned action" phasing concept – where
8 new projects can come in at much higher densities without environmental review – would only work
9 if the City had done a detailed analysis of impacts up front, during the subarea plan stage. Because
10 the zoning for this area is so ambitious and involves not one zoning change but two others (taking
11 effect automatically) for the next several decades, this appeal was Petitioners' last chance to ensure
12 that the environmental impacts of these ordinances were addressed at the level of detail needed for
13 adequate infrastructure planning to maintain the City's quality of life.

14 7.26 Unfortunately, Petitioners' hope for an objective review by the Board did not
15 materialize. As will be demonstrated at trial, the Board decisions in this case on Petitioners' issues
16 displayed a clear predilection toward allowing intensive urban development around the future mass
17 transit stations, without requiring the detailed analysis normally required by SEPA and GMA. The
18 Board's decisions have the effect of promoting the "experimental" approach to zoning, no matter the
19 actual cost to existing residents and neighborhoods.

20 7.27 The Board (composed of a planner, an elected official, and a lawyer), ignored critical
21 errors in the SEPA Final Environmental Impact Statement and process for adoption. The Board's
22 *Order on Motions* explicitly approved a City practice that the Board itself found to be in error. Those
23 errors deprived Petitioners and other citizens the right to comment and have their comments
24 acknowledged and considered through the administrative procedure prescribed by the SEPA
25 regulations. The Board decision also ignored critical errors in the notice and public participation
26 process, depriving citizens of a due process right to adequate notice and the opportunity to be heard.

1 7.28 The Board also ignored GMA requirements set out in twenty years of the Board's own
2 precedents on capital facilities planning. Petitioners demonstrated that the record was void of any
3 details about future sources of financing for listed infrastructure deficiencies. The Board decided the
4 record was adequate without citing to the places where these required financing lists should have been
5 located in the record. And, the Board simply skipped over many of the arguments of the Petitioners to
6 reach its desired result of dismissing the appeal. The Board's decisions display a number of errors of
7 law, as well as findings of fact that were not supported by substantial evidence.

8 **E. Specific Errors in the Board Decision.**

9 The Board's errors are set out in more detail in the following paragraph nos. 7.29 – 7.47. Petitioners
10 reserve the right to brief some or all of these issues, depending on page limits imposed by the court.

11 7.29 The Board erred in Issuing the Order On Motions, by determining that it lacked
12 jurisdiction to review Ordinance 707 and by dismissing Petitioners' Legal Issues 7, 8, and 12 and
13 striking all references to Ordinance 707 and related legal references in Legal Issues 1-17. The Board
14 erroneously determined in its Order on Motions that it lacked jurisdiction over the Planned Action
15 Ordinance (Ordinance 707), even though the ordinance actually amended GMA development
16 regulations, and therefore it was itself a development regulation. The Board's determination not to
17 review issues related to the Planned Action Ordinance also caused it to fail to decide Petitioners'
18 issues related to the adequacy of the Planned Action EIS, and the Planned Action Subarea Plan, both
19 of which the Board clearly retained jurisdiction over and never ruled otherwise.

20 7.30 The Board erred in Issuing the Order On Motions, by striking reference to WAC 197-
21 11-405(4) in Issue 16(a).

22 7.31 The Board erred in Issuing the Order On Motions, by denying Petitioners' Motion for a
23 Dispositive Ruling Regarding Respondent's Failure to Provide Effective Public Notice on Ordinances
24 702, 706, and 707, and by granting the Respondent's Motion for a Dispositive Ruling Regarding
25 Notice. The Board ignored the fact that the City failed to provide adequate notice as required by
26 RCW 36.70A.035, and that the City failed to utilize an adopted public participation code by which to
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1 conduct its public process on the 185th subarea plan and development regulations, and the
2 accompanying EIS as required by RCW 36.70A.035 and .140.

3 7.32 The Board erred in Issuing the Order On Motions, by striking the portion of Petitioners'
4 Legal Issue 2(a) referencing RCW 36.70A.035 and Legal Issue 16(a) referencing WAC 197-11-510 in
5 WAC 197-11 Part Five.

6 7.33 The Board erred in issuing the Final Decision and Order by finding that the Respondent
7 conducted adequate public participation, when Respondent had no codified program to provide for
8 public participation in compliance with RCW 36.70A.035 and .140.

9 7.34 The Board erred in issuing the Final Decision and Order by finding that the
10 Respondent provided adequate coordination with other service providers, and dismissing
11 Petitioners' Issue 1 which alleged that the adoption of Ordinances 702, 706, and 707 violates the
12 GMA requirements for coordinated comprehensive planning between local governments, as well
13 as service providers, under RCW 36.70A.020(11), .070 (preamble), .100, .210(1); the Countywide
14 Planning Policies (CWPPs), including PF-2; and the City of Shoreline Comprehensive Plan,
15 including Policies LU 28, LU 29, LU 30, CF 25, CF 26, CF 28, and CF 30.

16 7.35 The Board erred in issuing the Final Decision and Order by dismissing Petitioners'
17 Issue 2, which alleged that the adoption of Ordinances 702, 706, and 707 violates:

- 18 (a) The requirements of RCW 36.70A.020(11), .035, .130(2) (a), .140; and goals
19 and policies of the Shoreline GMA Comprehensive Plan, including FG 11, LU
20 28, LU 29, and LU 30 because the City did not provide for early and
21 continuous public participation; and
- 22 (b) The requirements of RCW 36.70A.020(11), .035, .070(3), .120, .130(2) (a),
23 .140; and goals and policies of the Shoreline GMA Comprehensive Plan
24 Policies, including FG 11, LU 28, LU 29, and LU 30 by authorizing automatic
25 zoning map amendments in the future, without additional public input or
rights of appeal as to whether the City has actually completed future capital
facilities planning necessary to support the subsequent automatic zoning or
identified funding to support it.

26 7.36 The Board erred in issuing the Final Decision and Order by dismissing Petitioners' Issue
27 3 which alleged that the adoption of Ordinances 702, 706, and 707 violates the requirements of

1 RCW36.70A.020(10) and.130(2)(a) because the Ordinances failed to implement jurisdiction-wide
2 comprehensive plan policies and failed to address the cumulative impacts of the proposal under RCW
3 Chapter 43.21C.

4 7.37 The Board erred in issuing the Final Decision and Order by dismissing Petitioners' Issue
5 4, which alleged that the adoption of Ordinances 702, 706, and 707 violates the requirements of RCW
6 36.70A.20(12), 070(3) and .070(6), and the City of Shoreline Comprehensive Plan Policy FG 2, all of
7 which require the City to conduct adequate capital facilities planning to ensure that public facilities
8 necessary to support development will be adequate to serve development at the time the development
9 is available for occupancy and use without decreasing current service levels below locally established
10 minimum standards.

11 7.38 The Board erred in issuing the Final Decision and Order by dismissing Petitioners'
12 Issue 5, which alleged that the adoption of Ordinances 702, 706, and 707 violate RCW
13 36.70A.020(12), .040(3) and .120, which require that:

- 14 (a) implementing development regulations be consistent with comprehensive plan
15 policies;
- 16 (b) infrastructure be in place at the time of development; and
- 17 (c) planning decisions be consistent with budget decisions and adopted capital
18 facility plans;

19 because the amendments allow development that is inconsistent with adopted utility and capital
20 facilities plans.

21 7.39 The Board erred in issuing the Final Decision and Order by dismissing Petitioners' Issue
22 6, which alleged that Ordinances 702, 706, and 707 violates the requirements of RCW 36.70A.070
23 (preamble), .040(3), .070(3), .070(6) and .120 because the subarea and development regulations are
24 inconsistent with numerous goals and policies of the comprehensive plan, as well as other documents
25 considered part of the comprehensive plan, including FG2, FG7, FG8, FG9, FG10, FG11, FG17, Goal
26 CP 1, Policies CP1, CP2, CP3, CP4, CP8, Goal LUIV, Goal LUV, Policies LU5, LU6, LU12, LU28,
27 LU29, LU31, LU32, LU50, LU68, LU70, LU71, Goal UI, Policies U1, U4, U5, Goal CFI, Goal CFII,
28 Goal CFIII, Goal CFIV, Goal CFVI, Policies CF3, CF4, CF5, CF7, CF23, CF25, CF26, CF27, CF 28,

1 CF29, CF30, CF 31, CF 32, Goal NE VI, NE X, Policies NE1, NE2, NE6, NE7, NE11, NE12, NE19,
2 NE 21, NE 24, NE25, NE32, NE33, NE40, and NE44, as well as the 2011 Surface Water Master Plan
3 Update, and the 2009 Thornton Creek Watershed Basin Plan.

4 7.40 The Board erred in issuing the Final Decision and Order by dismissing Petitioners'
5 Issue 10, which alleged that the adoption of Ordinances 702, 706, and 707 violates the requirements
6 of GMA and the procedural and substantive requirements of SEPA, because the FEIS accompanying
7 and incorporated by reference in those ordinances violated RCW 43.21C.030, WAC 197-11-055(5),
8 -060(3)(b) and -060(4), because the FEIS failed to consider impacts identified in the 145th Street
9 Station planning and environmental review and the Sound Transit planning and environmental
10 review on the Lynnwood Link Extension, and failed to consider impacts identified in prior
11 environmental documents supporting the Shoreline Comprehensive Plan and other subarea plans.

12 7.41 The Board erred in issuing the Final Decision and Order by dismissing Petitioners' Issue
13 11, which alleged that the adoption of Ordinances 702, 706, and 707 and the FEIS accompanying
14 and incorporated by reference in those ordinances violate the requirements of GMA, including
15 RCW 36.70A.020(11), .035, .130(2)(a), .140 and Shoreline Comprehensive Plan Goal FG 11 and
16 Policies LU 28, 29, and 30; and the procedural and substantive requirements of SEPA, including
17 but not limited to WAC 197-11-440(5), -402, and -655 because the alternative adopted was outside
18 of the range of alternatives identified in the DEIS and/or the FEIS; and the City failed to analyze the
19 unique probable significant adverse environmental impacts of this alternative as additional
20 "mitigation," as required by WAC 197-11-660(2).

21 7.42 The Board erred in issuing the Final Decision and Order by dismissing Petitioners'
22 Issue 12, which alleged that the adoption of Ordinances 702, 706, and 707 violates the requirements of
23 GMA and the procedural and substantive requirements of SEPA, because the FEIS incorporated by
24 reference in Ordinance 707 failed to meet the requirements of RCW 43.21C.440, WAC 197-11-164,
25 197-11-168, and 197-11-172.

1 7.43 The Board erred in issuing the Final Decision and Order by dismissing Petitioners' Issue
2 13, which alleged that the adoption of Ordinances 702, 706, and 707 violates the requirements of
3 GMA and the procedural and substantive requirements of SEPA, because the FEIS accompanying and
4 incorporated by reference in those ordinances violated, among others, the requirement of WAC 197-
5 11-060(4) to evaluate cumulative impacts of the proposal.

6 7.44 The Board erred in issuing the Final Decision and Order by dismissing Petitioners'
7 Issue 14, which alleged that the adoption of the FEIS violated SEPA, RCW 43.21C.031, .060., WAC
8 197-11-060(4), 330(3) – (5), Part 4, 660, -906(2)(g), because:

9 (a) the FEIS did not adequately identify all probable significant adverse environmental
10 impacts of the Ordinances, including but not limited to impacts to critical areas, floodplains,
11 tree canopy, City services, schools, emergency, police and fire services, water and sewer
12 service providers, transportation, clean air, clean water, City budgets and funding sources
13 already allocated for use by other City programs;

14 (b) did not identify all the mitigation necessary to reduce the impacts of the Ordinances
15 to a level that was less than significant, with appropriate citation to adopted SEPA policies;

16 (c) did not demonstrate how proposed mitigation measures were reasonable or capable of
17 being accomplished, e.g., did not identify the funding sources available and adequate to
18 ensure the mitigation would take place at the times required by GMA, and did not identify
19 the regulatory mechanisms by which all identified mitigation would be required at the
20 required time;

21 (d) did not identify which impacts could not be avoided or would not be mitigated;

22 (e) did not disclose or discuss all significant alternatives; and

23 (f) contained factual errors or statements of fact unsupported by any underlying analysis,
24 study or report.
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1 September 10, 2015, and the *Final Decision and Order* dated December 16, 2015, for the following
2 reasons:

3 (a) The orders are not supported by evidence that is substantial when viewed in light of the
4 whole record before the court, which includes the Board's record for judicial review, supplemented by
5 any additional evidence received by the court (Issues described in paragraphs 7.4; 7.6 - 7.14; 7.26 -
6 7.29; 7.31; 7.33 - 7.41; 7.43 - 7.47);

7 (b) The Growth Management Hearings Board has erroneously interpreted or applied the law in
8 issuing the orders appealed in this case (Issues described in paragraphs 7.26 - 7.47);

9 (c) The Growth Management Hearings Board has engaged in unlawful procedure or decision-
10 making process, or has failed to follow a prescribed procedure in issuing the orders appealed in this
11 case (Issues described in paragraphs 7.26 - 7.28; 7.30 - 7.33);

12 (d) The orders are outside the statutory authority or jurisdiction of the Growth Management
13 Hearings Board (Issues described in paragraphs 7.26 - 7.47);

14 (e) The orders are arbitrary or capricious (issues described in paragraphs 7.26 - 7.47);

15 (f) The Board has not decided all issues requiring resolution by the agency (Issues described in
16 paragraphs 7.26 - 7.32; 7.35; 7.36; 7.42 - 7.44; 7.46; 7.47);

17 (g) The orders are inconsistent with prior rulings of the Growth Management Hearings Board
18 and the Board failed to explain the inconsistency by stating facts and reasons to demonstrate a rational
19 basis for inconsistency agency (Issues described in paragraphs 7.26 - 7.28; 7.31 - 7.35; 7.37 - 7.39);
20 and

21 (h) The orders are in violation of constitutional provisions on its face or as applied, particularly
22 the United States Constitution Fifth and Fourteenth Amendments for Due Process of Law and
23 corresponding provisions of the Washington State Constitution (Issues described in paragraphs 7.26 -
24 7.28; 7.30 - 7.33; 7.35; 7.46).

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IX. INCORPORATION

9.1 Each averment and pleading contained in this Petition, including those documents incorporated by reference, should be incorporated in every other paragraph as though fully set forth therein, and the Petition must be read as a whole without separation into its parts.

X. REQUEST FOR RELIEF

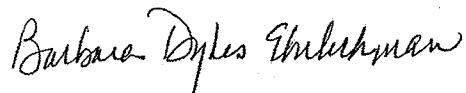
10.1 Petitioners respectfully request that the Court enter a judgment reversing the cited portions of the *Order on Motions*, issued September 10, 2015; and the findings and conclusions of the *Final Decision and Order*, issued December 16, 2015, cited herein, for the reasons outlined in Section VIII, above, and in this Petition in its entirety;

10.2 Petitioners respectfully request the Court remand this case to the Growth Management Hearings Board, Central Puget Sound Region, with instructions to conduct further proceedings in accordance with the Court's decision; and

10.3 Petitioners respectfully request the Court grant statutory attorney fees and costs, and such other relief that the Court determines is just and equitable.

DATED this 14th day of January, 2016.

DYKES EHRLICHMAN P.S.



Barbara Dykes Ehrlichman, WSBA No. 18378
Tom Ehrlichman, WSBA No. 20952
Attorneys for Petitioners

EXHIBIT A-1

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
CENTRAL PUGET SOUND REGION
STATE OF WASHINGTON

SHORELINE PRESERVATION SOCIETY
(SPS), JANET WAY, JOHN BEHRENS, AND
WENDY DIPESO,

Petitioners,

v.

CITY OF SHORELINE,

Respondent.

CASE No. 15-3-0002

(SPS)

FINAL DECISION AND ORDER

SYNOPSIS

The City of Shoreline adopted three ordinances containing the subarea plan, development regulations, and planned action ordinance for an area around Sound Transit's planned light rail station at 185th Street in the City of Shoreline. Petitioners challenged the ordinances and the Final Environmental Impact Statement for failure to comply with provisions of the Growth Management Act, Ch. 36.70A RCW (GMA), and the State Environmental Policy Act, Ch. 43.21C RCW (SEPA). As Petitioners sum up their case, it "puts a straightforward question before the Board: Can a jurisdiction adopt a plan and zoning map that expands growth seven times over the current population in the area, without providing a capital facilities analysis as required under GMA?" Petitioners' Reply Brief, p. 1.¹

Because the Board finds the City's 185th Street Station Subarea Plan and its Final Environmental Impact Statement meet GMA and SEPA standards for capital facilities review and, with respect to all other contentions of Petitioners, rules in favor of the City, the Board

¹ This Final Decision and Order refers to Petitioner's Opening Prehearing Brief (Sep. 24, 2015) as "PPB", City of Shoreline's Prehearing Brief (Oct. 15, 2015) as "CPB", and Petitioners' Reply Brief (Oct. 27, 2015) as "PRB."

1 dismisses Petitioners' appeal.

2 The Board's analysis begins with a summary of the 185th Street Station Subarea Plan
3 and its zoning provisions. Then each of Petitioners' legal theories is addressed in turn.

4 5 6 BACKGROUND

7 Two of the new light rail stations in Sound Transit's Lynnwood Link extension will be
8 located along the Interstate 5 corridor in the City of Shoreline at 185th Street and at 145th
9 Street. The 185th Street Station will have no direct access to Interstate 5; all passenger
10 access will be via surface streets in the City. Sound Transit will build a stacked parking
11 garage and various other multi-modal transportation improvements related to the station.²
12 The station is expected to be completed and operational in 2023. Completion of the planned
13 improvements to local streets will thus be needed in about eight years. Sound Transit will
14 also fund mitigation for utility infrastructure impacted by its construction and operation.

15
16 The area of the City within a half mile of the 185th Street station and parking garage is
17 primarily developed today with single family homes at an average density of 2.7 homes per
18 acre, with some larger school and church properties.³ Market analysis for the station area
19 concluded that without direct freeway access, the station area is not a candidate for major
20 retail or office park development.⁴

21
22 In 2012, after over a year of public discussion, the City of Shoreline determined that
23 the preferred development pattern for both the light rail station areas was transit-oriented
24
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26

27 ² These include intersection improvements at station and parking entrances, intersection improvements where
28 level of service is impacted along the primary access streets, pedestrian and bicycle improvements, including
29 repair of the 195th street pedestrian bridge over the freeway. Index No. 15, 185th Street Station Subarea
30 Planned Action Final Environmental Impact Statement (December 2014), hereafter "FEIS," at 3-119.

31 ³ Index No. 17, Attachment A, 185th Street Station Subarea Plan (March 16, 2015), hereafter "Subarea Plan,"
32 at 4-1 to 4-3. Prior zoning was primarily R-6 – six homes per acre.

⁴ Subarea Plan, Chapter 4, at 4-1 to 4-3, referencing "185th Street Station Subarea," BAE Urban Economics,
November 2013. The Board notes the City's comprehensive plan station area land use policy **LU 34** provides:
*Pursue market studies to determine the feasibility of developing any of Shoreline's station areas as destination
(example: regional job, shopping, or entertainment centers.)*

1 communities (TOC).⁵ The City then amended its comprehensive plan by adding a suite of
2 23 land use policies for Light Rail Station Areas, calling for residential development at
3 higher densities, with allowance for local-serving businesses – coffee shops, professional
4 offices, farmers' markets, and the like.⁶

5 Focused planning for the 185th Street Station area began promptly. Following public
6 outreach and SEPA review of various alternatives, the 185th Street Station Subarea Plan
7 and regulations were adopted March 16, 2015, in three ordinances:

- 9 • Ordinance 702, the Subarea Plan and Subarea Plan Future Land Use Map
10 amendment,
- 11 • Ordinance 706, development regulations for the subarea, and
- 12 • Ordinance 707, the Planned Action Ordinance.⁷

13 The subarea plan creates new zoning categories for the station area: MUR 35' (mixed use
14 residential with a 35-foot height limit), MUR 45', and MUR 70'. Altogether, when fully built
15 out at that density, the subarea could accommodate 23,554 households and a population of
16 56,529. Based on the market analysis, slow growth is predicted in the 20-year planning
17 period, even after the station starts operation in 2023. The subarea plan 20-year population
18 target is 13,000, up from a current 8,000.⁸

19 Petitioners' challenge to the subarea plan alleges lack of appropriate planning for
20 capital facilities to serve the density allowed under the new zoning. They focus on
21 transportation, water, sewer, and surface water management, and criticize the lack of
22 financial analysis for these infrastructure essentials. The first section of Petitioners'
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24

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26 ⁵ See, Index 1-C, City Council Meeting, October 11, 2011, beginning council discussion of station area
27 planning, and Core Document, City of Shoreline Comprehensive Plan, adopted December 10, 2012 (hereafter
28 "Comprehensive Plan"), p. 24: "Transit-Oriented Communities."

29 ⁶ Comprehensive Plan, LU 20 – LU 43, at 23-25.

30 ⁷ A planned action ordinance allows development projects consistent with the subarea plan to be permitted
31 without an additional EIS. RCW 43.21C.440. The Board's Order on Motions (Sep. 10, 2015) determined the
32 Board lacks jurisdiction to review the Planned Action Ordinance, and it is not further discussed in this Final
Decision and Order.

⁸ Subarea Plan, at 5-11. The Board notes the 20-year target is less than the allowed build-out under the prior
R-6 zoning. Since present density is only 2.7 homes per acre, R-6 potentially allowed six homes per acre, a
doubling of density and hence a doubling of population in the subarea.

1 argument alleges the capital planning deficiencies in the Subarea Plan violate various
2 provisions of the Growth Management Act. The second section alleges the capital facilities
3 review in the FEIS fails to meet standards for environmental analysis under SEPA. As set
4 forth below, having thoroughly considered the briefs and arguments of the parties, the
5 Board finds none of Petitioners' objections persuasive.⁹
6

7 **DID THE SUBAREA PLAN VIOLATE THE GMA?**

8
9 With the 185th Street Station Subarea Plan, the City significantly upzoned the area
10 around a coming Link Light Rail station. In adopting the plan, the City identified the
11 upgraded capital facilities that would be needed to serve the additional growth. The City's
12 plan states that the first phase of implementation will focus on more intensive study and
13 coordination, updating of water and wastewater system plans, and exploration of additional
14 funding and partnership options. Subarea Plan, at 7-2, 7-5. Petitioners assert that this first-
15 phase activity demonstrates the plan was adopted without completing required capital
16 facilities planning. Specifically, they allege the lack of a financing program for capital
17 facilities in the subarea violates the GMA. The Board disagrees.
18

19 Standard of Review.

20 Under the Growth Management Act, RCW 36.70A.320(1), comprehensive plans and
21 development regulations, and amendments to them, are presumed valid upon adoption.
22 Ordinance No. 702 and Ordinance No. 706 are thus presumed valid. This presumption
23 creates a high threshold for Petitioners as the burden is on the petitioner to demonstrate that
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29 ⁹ The hearing on the merits was convened November 3, 2015 by presiding officer Margaret Pageler with Board
30 panel members Cheryl Pflug and Charles Mosher. Petitioners were represented by Barbara Dykes Erlichman
31 and Tom Erlichman. Petitioners Janet Way, John Behrens, and Wendy DiPeso attended. City deputy attorney
32 Julie Ainsworth-Taylor appeared for the City of Shoreline, with City attorney Margaret King, accompanied by
City staff and officials. The transcript of the hearing on the merits is referenced herein as "HOM Transcript."
Evidentiary rulings made at and following the hearing are attached to this order as Attachment A.

1 the action taken by the city is not in compliance with the GMA.¹⁰

2 The Board is charged with adjudicating GMA compliance and, when necessary,
3 invalidating noncompliant plans and development regulations.¹¹ The GMA directs that the
4 Board, after full consideration of the petition, shall find compliance unless it determines that
5 the city's action is clearly erroneous in view of the entire record before the Board and in light
6 of the goals and requirements of the GMA.¹² An action is clearly erroneous if the Board is
7 left with a firm and definite conviction that a mistake has been made.¹³

8
9 In reviewing the planning decisions of cities and counties, the Board is instructed to
10 recognize "the broad range of discretion that may be exercised by counties and cities" and
11 to "grant deference to counties and cities in how they plan for growth," in recognition that the
12 ultimate burden and responsibility for planning, harmonizing, and implementing the City's
13 future rests with the community.¹⁴ However, a city's actions are not boundless; they must
14 be consistent with the goals and requirements of the GMA.¹⁵

15
16 Thus, the burden is on Petitioners to overcome the presumption of validity and
17 demonstrate that the City's adoption of Ordinance No. 702 and Ordinance No. 706 was
18 clearly erroneous in view of the entire record and in light of the goals and requirements of
19 the GMA.
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23 ¹⁰ RCW 36.70A.320(2) provides: "[Except when city or county is subject to a Determination of Invalidity] the
24 burden is on the petitioner to demonstrate that any action taken by a state agency, county, or city under this
25 chapter is not in compliance with the requirements of this chapter."

26 ¹¹ RCW 36.70A.280; RCW 36.70A.302.

27 ¹² RCW 36.70A.320(3).

28 ¹³ *City of Arlington v. CPSGMHB*, 162 Wn.2d 768, 778, 193 P.3d 1077 (2008) (Citing to *Dept. of Ecology v.*
29 *PUD District No. 1 of Jefferson County*, 121 Wn.2d 179, 201, 849 P.2d 646 1993); See also, *Swinomish Tribe*
30 *v. WWGMHB*, 161 Wn.2d 415, 423-24, 166 P.3d 1198 (2007); *Lewis County v. WWGMHB*, 157 Wn.2d 488,
31 497-98, 139 P.3d 1096 (2006).

32 ¹⁴ RCW 36.70A.3201

¹⁵ *King County v. CPSGMHB*, 142 Wn.2d 543, 561, 14 P.2d 133 (2000) (Local discretion is bounded by the
goals and requirements of the GMA). See also, *Swinomish*, 161 Wn.2d at 423-24. In *Swinomish*, as to the
degree of deference to be granted under the clearly erroneous standard, the Supreme Court has stated: The
amount [of deference] is neither unlimited nor does it approximate a rubber stamp. It requires the Board to give
the [jurisdiction's] actions a "critical review" and is a "more intense standard of review" than the arbitrary and
capricious standard. *Id.* at 435, n. 8.

1 In order to show the Subarea Plan is inconsistent with the Comprehensive Plan, the
2 burden is on Petitioners to demonstrate that some component of the Subarea Plan conflicts
3 with or actually thwarts goals or policies of the comprehensive plan. Mere dissatisfaction
4 with the council's balancing of the alternatives is not sufficient. **The Board concludes** that
5 Petitioners have failed to meet their burden of demonstrating that the Subarea Plan thwarts
6 or conflicts with the City's Comprehensive Plan in violation of RCW 36.70A.070.
7

8 Conclusion – No Demonstrated Violation of GMA⁹²
9

10 The Board determines that Petitioners have failed to overcome the presumption of
11 validity accorded to the City's adoption of the 185th Street Station Subarea Plan and
12 development regulations – Ordinance Nos. 702 and 706. The Board finds no violation of
13 GMA requirements for capital facilities and transportation planning, including consistency
14 with land use plans, coordination with service districts, and public participation. In view of
15 the entire record before the Board and in light of the goals and requirements of the GMA,
16 **the Board concludes** Petitioners have failed to demonstrate that the City's adoption of the
17 185th Street Station Subarea Plan was clearly erroneous. Issues 1 through 9 are dismissed.
18

19 **DID THE FEIS VIOLATE SEPA?**
20

21 Petitioners raise a series of challenges to the environmental review of the 185th
22 Street Station Subarea Plan, alleging both procedural and substantive violations of SEPA
23 and its implementing rules at Ch.197-11 WAC ("SEPA rules"). In particular, Petitioners
24 assert the FEIS failed to address the costs and financing for infrastructure improvements
25 required to mitigate impacts of the 185th Street Station area rezoning.
26

27 Standard of Review.
28

29 The FEIS is reviewed under the "rule of reason" standard, which requires "a
30 reasonably thorough discussion of the significant aspects of the probable environmental

31 most significant and necessary projects to undertake, but also *to make them competitive for grant funding from
32 a variety of sources.*" (emphasis added).

⁹² PFR Issues 7 and 8 were dismissed in the Board's Order on Motions. PFR Issue 9 was expressly
abandoned by Petitioners, PHB, p. 2, fn. 2.

1 decades from today. Though the FEIS suggested deferring effectiveness of parts of the
2 upzone, **the Board finds** the environmental analysis addressed the upzoning of the whole
3 subarea as a single action. The City's process allowed citizens to comment on ultimate
4 build-out. Indeed, as the Board reads the written comments and oral testimony for the FEIS
5 public hearing, it appears the majority of comments, pro and con, addressed the impacts of
6 full build-out.¹²⁴
7

8 Petitioners insist the City must provide a renewed opportunity to comment under
9 SEPA just prior to implementation of Phase 2 and 3 of its plan and must allow
10 contemporaneous SEPA appeals. This might be a wise strategy, but Petitioners have not
11 demonstrated that such a process is mandated by SEPA. **The Board concludes** Petitioners
12 have failed to carry their burden of proving the City violated SEPA public participation
13 requirements by adopting phased zoning.
14

15 *Conclusion – No Demonstrated Violation of SEPA.*¹²⁵
16

17 Petitioners have not demonstrated adoption of the FEIS materially violated SEPA
18 procedural or substantive requirements. **The Board concludes** the record does not support
19 Petitioners' complaints of insufficient analysis of environmental impacts or mitigation for
20 transportation, water, sewer, and stormwater management. **The Board further concludes**
21 the law cited by Petitioners does not support their demand for dollar costs and fiscal
22 analysis in the FEIS.
23

24 Giving substantial weight to the City responsible official's determination of adequacy,
25 RCW 43.21C.090, the Board determines the FEIS for the 185th Street Station Subarea Plan
26 and development regulations provides a reasonably thorough discussion of the significant
27 aspects of the probable environmental consequences of the City's action. Applying the "rule
28 of reason," the Board determines the FEIS gave the City Council sufficient information to
29

30
31 ¹²⁴ Index 1 Xx, Attachment F, Comments on FEIS received as of 5 p.m. Tuesday January 13, 2015; Index 1
32 Uu, Shoreline Planning Commission Minutes, January 15, 2015. See, e.g., Janet Way testimony on impacts of
total increased water demand, sewer flow and stormwater runoff levels. Index 1 Uu, p. 9.

¹²⁵ Issue 12 was dismissed in the Board's Order on Motions. Issue 17 was expressly abandoned. PPB, p. 55.

1 make a reasoned decision.

2 **The Board concludes** Petitioners challenge to the FEIS is without merit. Issues 10
3 through 19 are dismissed.

4
5 **ORDER**

6 Based upon review of the Petition for Review, the briefs and exhibits submitted by the
7 parties, the Shoreline Management Act and applicable guidelines, the Growth Management
8 Act, the State Environmental Policy Act and SEPA Rules, prior Board orders and case law,
9 having considered the arguments of the parties, and having deliberated on the matter:

- 10
- 11 • **The Board concludes** Petitioners failed to carry their burden of demonstrating
12 the City of Shoreline's adoption of Ordinance Nos. 702 and 706 violated goals or
13 requirements of the GMA.
 - 14 • **The Board also concludes** Petitioners failed to carry their burden of
15 demonstrating any procedural violation of SEPA or inadequacy of environmental
16 review that would invalidate the 185th Street Station Subarea Planned Action
17 Ordinance Final Environmental Impact Statement.
 - 18 • The appeal is **denied** and Case No. 15-3-0002 is **dismissed**.
- 19

20
21 Entered this 16th day of December, 2015.

22
23 _____
Margaret A. Pageler, Board Member

24
25 _____
Cheryl Pflug, Board Member

26
27 _____
Chuck Mosher, Board Member

28
29 **Note: This is a final decision and order of the Growth Management Hearings Board**
30 **issued pursuant to RCW 36.70A.300.**¹²⁶

31
32 ¹²⁶ 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 or 36.01.050. See RCW 36.70A.300(5) and WAC 242-03-970. It is

EXHIBIT A-2

Excerpts Summarizing Portions of *Order on Motions* Under Appeal
SPS v. GMHB

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
CENTRAL PUGET SOUND REGION
STATE OF WASHINGTON

SHORELINE PRESERVATION SOCIETY
(SPS), JANET WAY, JOHN BEHRENS, AND
WENDY DIPESO,

Petitioners,

v.

CITY OF SHORELINE,

Respondent.

CASE No. 15-3-0002

(SPS)

ORDER ON MOTIONS

This matter comes before the Board on cross-motions of the parties, seeking dispositive rulings on subject matter jurisdiction, standing, and public process. Petitioners also move to supplement the record. Petitioners Shoreline Preservation Society, Janet Way, John Behrens, and Wendy DiPeso (collectively, "Shoreline Preservation") challenge the City of Shoreline's ("City") plans for future development around Sound Transit's anticipated Link Light Rail 185th Street Station. The City has issued a Final Environmental Impact Statement (FEIS) and adopted three ordinances:

- Ordinance 702, the 185th Street Station Subarea Plan and land use map,
- Ordinance 706, development regulations and zoning to implement the subarea plan,
- Ordinance 707, a Planned Action Ordinance for the subarea.

Shoreline Preservation's petition for review challenges adoption of these ordinances as non-compliant with the State Environmental Protection Act (SEPA) and/or the Growth Management Act (GMA). The parties have filed dispositive motions.

Upon review of the briefs and exhibits filed by the parties, the Board rules:

- The City's motion to dismiss SEPA issues is denied.
- The City's motion to dismiss challenges to the Planned Action Ordinance is

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granted.

- Shoreline Preservation’s motion for a ruling of non-compliance with public notice requirements for the Planned Action Ordinance is denied.
- The City’s dispositive motion on public process is granted as to compliance with the public notice requirements of GMA and SEPA. The Board defers consideration of the remaining public participation issues to the hearing on the merits.
- Shoreline Preservation’s motion to supplement the record is granted as to the 1998 Comprehensive Plan Final Environmental Impact Statement, Surface Water Drainage section only,¹ and the Thornton Creek Watershed Plan.

A mark-up of the legal issues indicating issues remaining for briefing and hearing on the merits is attached to this order as Attachment A.

BACKGROUND AND STANDARD OF REVIEW

Sound Transit intends to extend light rail north from Seattle through the City of Shoreline and has designated a station location along the Interstate 5 alignment at NE 185th Street. The City in 2012 embarked on a planning process for the area around the station, anticipating opportunity for more intense development when the light rail extension is operable in 2023. The resulting comprehensive plan and land use map amendments, adopted in Ordinance 702, designate a 293-acre 185th Street Station Subarea. Now primarily developed as low-rise single family, churches, and schools, the new subarea is upzoned for mixed uses at three height levels – 35 feet, 45 feet, and 70 feet. Ordinance 706 adopts zoning and development standards for the subarea. Ordinance 707 is a Planned Action Ordinance, allowing streamlined SEPA review of development projects in the new subarea.

Under the GMA, amendments to comprehensive plans and development regulations enacted by local government are presumed valid upon adoption. RCW 36.70A.320(1). The burden is on the petitioners to demonstrate that the City’s action is not in compliance with

¹ Index No. 23, pages FEIS 2-17 to 2-19 and 2-49.

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ORDER

1. The Board lacks jurisdiction to review Ordinance 707, the Planned Action Ordinance.

- The City's motion to dismiss all issues challenging Ordinance 707 is granted.
- Shoreline Preservation's motion for a ruling that the Board has jurisdiction to review the Planned Action Ordinance is denied.
- Legal Issues 7, 8, and 12 are dismissed, and all references to Ordinance 707 in the remaining legal issues are stricken.

2. Shoreline Preservation exhausted administrative remedies and has standing to challenge SEPA compliance.

- The City's motion to dismiss SEPA issues is denied.
- Legal Issue 16(a) allegations of violations of WAC 197-11-405(4) are dismissed.

3. The City's notice procedures complied with GMA and SEPA.

- Shoreline Preservation's motion for a ruling that the City failed to provide effective notice of Ordinance 707 is denied.
- The City's motion for a dispositive ruling of compliance with GMA and SEPA notice and public participation requirements is granted as to notice. The Board defers consideration of other public participation issues, if any, for briefing and hearing on the merits.
- Legal Issue 2(a) reference to RCW 36.70A.035 is stricken, and Legal Issue 16(a) inclusion of WAC 197-11-510 in WAC 197-11 Part Five is stricken.

4. The 1998 Comprehensive Plan Final Environmental Impact Statement, Surface Water Drainage section only, is admitted as Index No. 23. The Thornton Creek Watershed Plan is admitted as Index 24.

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ENTERED this 10th day of September, 2015.

Margaret Pageler, Presiding Officer

Cheryl Pflug, Board Member

Charles Mosher, Board Member

1
2
3 **Attachment A**

4 **Statement of Legal Issues – Case No. 15-3-0002**

5
6 *Note: The Legal Issues set forth in the prehearing order are marked up to reflect*
7 *corrections and dismissals in the September 10, 2015, Order on Motions. Any additional*
8 *legal issue or portion thereof which is based on the contention that Ordinance 707 is an*
9 *amended development regulation is also dismissed.*

10
11 **A. VIOLATIONS OF THE GROWTH MANAGEMENT ACT**

12 1. Lack of Coordinated Planning. Does the adoption of Ordinances 702,
13 706, and ~~707~~ violate the GMA requirements for coordinated comprehensive planning
14 between local governments, as well as service providers, under RCW 36.70A.020(11),
15 .070 (preamble), .100, .210(1); the Countywide Planning Policies (CWPPs), including
16 but not limited to PF-2; and the City of Shoreline Comprehensive Plan, including but not
17 limited to Policies LU 28, LU 29, LU 30, CF 25, CF 26, CF 28, and CF 30?

18
19 2. Lack of Public Participation.

20
21 (a) Does the adoption of Ordinances 702, 706 and ~~707~~ violate the
22 requirements of RCW 36.70A.020(11), ~~.035~~, .130(2) (a), .140; and goals and policies of
23 the Shoreline GMA Comprehensive Plan, including but not limited to FG 11, LU 28, LU
24 29, and LU 30 because the City did not provide for early and continuous public
25 participation?
26

27 (b) Does adoption of the Ordinances also violate the requirements of
28 RCW 36.70A.020(11), .035, .070(3), .120, .130(2) (a), .140; and goals and policies of
29 the Shoreline GMA Comprehensive Plan Policies, including but not limited to FG 11, LU
30 28, LU 29, and LU 30 by authorizing automatic zoning map amendments in the future,
31 without additional public input or rights of appeal as to whether the City has actually
32 completed future capital facilities planning necessary to support the subsequent
automatic zoning or identified funding to support it?

EXHIBIT A-2

1 3. Subarea Plan Violates GMA. Does the adoption of Ordinances 702, 706,
2 and ~~707~~ violate the requirements of RCW 36.70A.020(10) and .130(2)(a)(i) because the
3 subarea plan: (i) does not implement jurisdiction-wide comprehensive plan policies; and
4 (ii) does not address the cumulative impacts of the proposed plan by appropriate
5 environmental review under RCW Chapter 43.21C?
6

7 4. Lack of Adequate Capital and Public Facilities. Does the adoption of
8 Ordinances 702, 706 and ~~707~~ violate the requirements of RCW 36.70A.020(12),
9 .070(3), and .070(6); and Shoreline GMA Comprehensive Plan Policy FG 2, because
10 the plan does not ensure that those public facilities necessary to support development
11 will be adequate to serve the development at the time the development is available for
12 occupancy and use without decreasing current service levels below locally established
13 minimum standards?
14

15 5. Lack of Consistency and Capital Facilities Planning. Does the adoption of
16 Ordinances 702, 706, and ~~707~~ violate RCW 36.70A.020(12), .040(3) and .120, which
17 require that:
18

19 (a) implementing development regulations be consistent with comprehensive plan
20 policies; (b) infrastructure be in place at the time of development; and (c) planning
21 decisions be consistent with budget decisions and adopted capital facility plans,
22 because the amendments allow development that is inconsistent with adopted utility
23 and capital facilities plans?
24

25 6. Lack of Consistency. Does the adoption of Ordinances 702, 706, ~~and 707~~
26 violate the consistency requirements of RCW 36.70A.070 (preamble), .040(3), .070(3),
27 .070(6), and .120 because the subarea plan and development regulations are not
28 consistent with the Shoreline GMA Comprehensive Plan, including but not limited to the
29 following goals, policies, and other parts of the comprehensive plan: Goals FG 2, FG 7,
30 FG 8, FG 9, FG 10, FG 11, and FG 17; Goal CP 1; Policies CP 1, CP 2, CP 3, CP 4,
31 and CP 8; Goals LU IV, and LU V; Policies LU 5, LU 6, LU 12, LU 28, LU 29, LU 31, LU
32 32, LU 50, LU 68, LU 70, and LU 71; Goal UI; Policies U 1, U 4, and U 5; Goals CF I,
CF II, CF III, CF IV, and CF VI, Policies CF 3, CF 4, CF 5, CF 7, CF 23, CF 25, CF 26,
CF 27, CF 28, CF 29, CF 30, CF 31, and CF 32, Goals NE VI and NE X; Policies NE 1,

1 NE 2, NE 6, NE 7, NE 11, NE 12, NE 19, NE 21, NE 24, NE 25, NE 29, NE 32, NE 33,
2 NE 40, NE 42, and NE 44; as well as the 2011 *Shoreline Surface Water Master Plan*
3 *Update*, and the 2009 *Shoreline Thornton Creek Watershed Basin Plan*?

4
5 ~~7. Board has Jurisdiction over Development Regulations. Did Ordinance~~
6 ~~707, the Planned Action Ordinance, amend City development regulations by adopting~~
7 ~~different standards for development than the standards adopted in Ordinance 706,~~
8 ~~thereby authorizing Board review under RCW 36.70A.280(1) (because Ordinance 707~~
9 ~~amends development regulations)?~~

10
11 ~~8. Planned Action Ordinance Violates GMA and SEPA. Does the adoption of~~
12 ~~Ordinance 707 violate RCW 36.70A.020(6), .020(7), and .020(10), RCW 36.70A.040,~~
13 ~~and the planned action statutes and regulations, including but not limited to RCW~~
14 ~~43.21C.440 and WAC 197-11-164, 197-11-168, and 197-11-172?~~

15
16 ~~9. Development Regulations and Planned Action Ordinance Violate GMA.~~
17 ~~Does the adoption of Ordinances 706 and 707 violate RCW 36.70A.020(6) and .020(7)~~
18 ~~and RCW 36.70A.370 and Shoreline Comprehensive Plan Goal FG11 because the~~
19 ~~development standards are not clearly identified in the regulations, thus creating~~
20 ~~uncertainty and unfairness in the permitting process for potential developers,~~
21 ~~landowners and the public; and authorizing an arbitrary and discriminatory process for~~
22 ~~approving permits?~~

23
24 **B. VIOLATIONS OF THE STATE ENVIRONMENTAL POLICY ACT**

25
26 10. Illegal Segmentation/Piecemealing of Proposal. Does the adoption of
27 Ordinances 702, 706, and 707 violate the requirements of GMA and the procedural and
28 substantive requirements of SEPA, because the FEIS accompanying and incorporated
29 by reference in those ordinances violated RCW 43.21C.030, WAC 197-11-055(5), -
30 060(3)(b) and -060(4), because the FEIS failed to consider impacts identified in the
31 145th Street Station planning and environmental review and the Sound Transit planning
32 and environmental review on the Lynnwood Link Extension, and failed to consider
impacts identified in prior environmental documents supporting the Shoreline
Comprehensive Plan and other subarea plans?

1 11. Adopted Alternative Outside the Range of Alternatives. Does the adoption
2 of Ordinances 702, 706, and 707 and the FEIS accompanying and incorporated by
3 reference in those ordinances violate the requirements of GMA, including but not limited
4 to RCW 36.70A.020(11), .035, .130(2)(a), .140 and Shoreline Comprehensive Plan
5 Goal FG 11 and Policies LU 28, 29, and 30; and the procedural and substantive
6 requirements of SEPA, including but not limited to WAC 197-11-440(5), -402, and -655
7 because the alternative adopted was outside of the range of alternatives identified in the
8 DEIS and/or the FEIS; and the City failed to analyze the unique probable significant
9 adverse environmental impacts of this alternative as additional "mitigation," as required
10 by WAC 197-11-660(2)?

11
12 ~~12. FEIS does not Support Planned Action Ordinance. Does the adoption of~~
13 ~~Ordinances 702, 706, and 707 violate the requirements of GMA and the procedural and~~
14 ~~substantive requirements of SEPA, because the FEIS incorporated by reference in~~
15 ~~Ordinance 707 fails to meet, among others, the requirements of RCW 43.21C.440,~~
16 ~~WAC 197-11-164, 197-11-168, and 197-11-172?~~

17
18 13. Failure to Analyze Cumulative Impacts. Does the adoption of Ordinances
19 702, 706, and 707 violate the requirements of GMA and the procedural and substantive
20 requirements of SEPA, because the FEIS accompanying and incorporated by reference
21 in those ordinances violated, among others, the requirement of WAC 197-11-060(4) to
22 evaluate cumulative impacts of the proposal?

23
24 14. FEIS Inadequacy. The violations of GMA and SEPA cited elsewhere in
25 this Petition are hereby incorporated by reference in their entirety, as independent
26 bases for finding the EIS inadequate. In addition, does the adoption of the FEIS violate
27 SEPA, RCW 43.21C.031, .060., WAC 197-11-060(4), 330(3) – (5), Part 4, 660, -
28 906(2)(g), because:

29
30 (a) the FEIS did not adequately identify all probable significant adverse
31 environmental impacts of the Ordinances, including but not limited to impacts to critical
32 areas, floodplains, tree canopy, City services, schools, emergency, police and fire
services, water and sewer service providers, transportation, clean air, clean water, City
budgets and funding sources already allocated for use by other City programs;

1 (b) did not identify all the mitigation necessary to reduce the impacts of the
2 Ordinances to a level that was less than significant, with appropriate citation to adopted
3 SEPA policies;

4 (c) did not demonstrate how proposed mitigation measures were reasonable
5 or capable of being accomplished, e.g., did not identify the funding sources available
6 and adequate to ensure the mitigation would take place at the times required by GMA,
7 and did not identify the regulatory mechanisms by which all identified mitigation would
8 be required at the required time;

9
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11 (d) did not identify which impacts could not be avoided or would not be
12 mitigated;

13 (e) did not disclose or discuss all significant alternatives; and

14
15 (f) contained factual errors or statements of fact unsupported by any
16 underlying analysis, study or report?

17
18 15. Use of Prior Environmental Documents. To the extent the City relied upon
19 prior existing environmental documents, did adoption of the FEIS violate the specific
20 parameters for use of these documents under RCW 43.21C.034; WAC 197-11-600?

21
22 16. Failure to Provide Adequate Opportunity for Public Review and Comment.

23 (a) Did the City's process for issuance of the Draft EIS and adoption of
24 the Final EIS violate SEPA's requirements for public participation? ~~RCW 43.21C.550,~~
25 ~~.560; WAC 197-11-550; WAC 197-11-560; WAC 197-11 Part Five; WAC 197-11-~~
26 ~~904(3). WAC 197-11-405(4).~~

27
28 (b) Did the City's adoption of the Ordinances also violate these public
29 participation requirements by approving automatic zoning map amendments in the
30 future, without additional public input or rights of appeal as to whether the City: (a) will
31 have actually completed the promised, future capital facilities planning necessary to
32 support the subsequent automatic zoning; and/or (b) has appropriate mitigation
measures in place for this future zoning, as specified in the FEIS and required by SEPA,
RCW 43.21C.031, .060?

1 17. Failure to Condition the Proposal Based on Adopted SEPA Policies.

2 Did the City violate RCW 43.21C.060 and WAC 197-11-660, -902, -906(2)(g), by
3 purporting to condition the proposal (adoption of the Ordinances) with mitigation
4 measures from plans, reports or ordinances that have not been adopted by the City as
5 policies available for the exercise of substantive authority; are not enforceable under the
6 City's SEPA authority; and therefore are not enforceable mitigation measures that are
7 reasonable and capable of being accomplished?
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